

**M54 to M6 Link Road**

**TR010054**

**Volume 3**

**3.3 Consents and Agreements Position  
Statement**

Regulation 5(2)(q)

Planning Act 2008

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

February 2021

Infrastructure Planning

Planning Act 2008

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

**M54 to M6 Link Road  
Development Consent Order 202[ ]**

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**Consents and Agreement Position Statement**

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<b>Regulation Number</b>	Regulation 5(2)(q)
<b>Planning Inspectorate Scheme Reference</b>	TR010054
<b>Application Document Reference</b>	3.3
<b>Author</b>	M54 to M6 Link Road Project Team and Highways England

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# 1 Introduction

## 1.1 Purpose of this document

- 1.1.1 This Consents and Agreements Position Statement (CAPS) sets out Highways England's intended strategy for obtaining the consents and associated agreements needed to implement the proposed M54 to M6 Link Road Scheme (the Scheme).
- 1.1.2 This CAPS is submitted in accordance with regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures Regulations) 2009, as amended.
- 1.1.3 The purpose and objective of this CAPS is to identify the consents and agreements which are expected to be necessary to implement the Scheme, and how these consents will be obtained (subject to the Scheme gaining development consent).

## 1.2 The Scheme

- 1.2.1 A detailed description of the Scheme is provided in Chapter 2: The Scheme of the Environmental Statement (ES) **[TR010054/APP/6.1]**.

## 2 Strategy

### 2.1 Highways England's Consents Strategy

2.1.1 The basis of Highways England's consents strategy is that:

- A Development Consent Order (DCO) must be sought as the principal consent for the works (under the Planning Act 2008 (the PA 2008)) including to provide the necessary land acquisition and temporary possession powers;
- The intent of the PA 2008 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 PA 2008 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; and
- The 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, with a summary of the current situation reported in Appendix A of this CAPS.

2.1.2 The consents strategy is informed by the National Policy Statement for National Networks to ensure that relevant permissions that need to be obtained for activities within the development have been identified.

2.1.3 Engagement with statutory consultation bodies has informed the approach during the pre-application stage. Highways England is seeking to agree with each body the principles against which applications for the other consents, licences, and permits should be considered, in order that all relevant issues may be explored during the Examination of the application for development consent.

## 3 Consents and Agreements

### 3.1 Consents

3.1.1 The principal consent for the Scheme will be a DCO. The DCO provides development consent for the works and enables land acquisition and temporary possession, along with many consents and powers to be dealt with at the same time.

3.1.2 The DCO application may however need to be supplemented by other applications because:

- a) a specific consent cannot be contained in the DCO;
- b) a consenting authority declines to allow a consent to be contained within the DCO; or
- c) it is not desirable or appropriate to include a consent within a DCO due to the stage of design development because the detail required is not yet available.

3.1.3 At this point (the examination of the DCO application) the majority of the consents and all the powers required have been included, or addressed, within the DCO as permitted by various provisions of the PA 2008. These fall into the categories below:

- authorisation of all permanent and temporary works;
- compulsory acquisition of land and / or rights over land such as easements, restrictive covenants and the temporary possession of land;
- consent to carry out street works and to stop up highways permanently or temporarily;
- highway matters (such as designating and classifying types of highway);
- traffic regulation matters (such as speed limits, clearways and restrictions on use);
- consent to stop and divert public rights of way;
- consent to stop up and re-provide private means of access;
- consent to carry out tree works (including works to trees subject to a Tree Preservation Order);
- consent to remove hedgerows (including any 'important hedgerows'); and
- consent to carry out any required utility diversions (subject to protective provisions).

3.1.4 The permits, consents and agreements that may need to be sought separately from the DCO are identified below and described in more detail in Appendix A.

- Badger Licence (Protection of Badgers Act 1992, s. 10);
- Protected Species Licences (Wildlife and Countryside Act 1981, s. 16) for Great Crested Newts and Bats;

- Environmental Permits for capture and movement of fish (Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015);
- Land Drainage consent for works in, under or over, any relevant watercourses (Land Drainage Act 1991. Section 23);
- Permit(s) from the Environment Agency (EA) to discharge surface/ground waters (Environmental Permitting (England and Wales) Regulations 2016);
- Water abstraction licence (if there is a need to remove more than 20m<sup>3</sup>/day) (Water Resources Act 1991 (as amended by the Water Act 2003), Environment Act 1995, The Water Resources (Abstraction and Impounding) Regulations 2006);
- Diversion of watercourses / dewatering of ponds (Water Resources Act 1991);
- Exemptions for operations such as U1 (import of waste for use in construction) and T15 (crushing of aerosols to minimise hazardous waste) (if exemption limits can be met) (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- Mobile plant licences for crushing operations or site permits if not using a subcontractor with their own mobile licences (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);
- CL:AIRE Materials Management Plan (CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice (v.2) (DoWCoP));
- Trade effluent consent (e.g. for welfare facilities) (Water Industry Act 1991);
- Environmental Permit for waste operations (Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016);  
and
- 
- Consent/ licence for the felling of trees (The Forestry Act 1967).

3.1.5 This list is not exhaustive and the final set of permits, consents and agreements are largely dependent on finalisation of the detailed design, the detailed construction site set up and methodologies, and discussions with the consenting authorities. These are not sufficiently developed at this stage to confirm the requirements and therefore it is not practicable to include them within the DCO.

## 3.2 Agreements

- 3.2.1 Agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.
- 3.2.2 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground (SoCG) with a variety of relevant stakeholders to identify the matters on which parties agree and disagree, to narrow the focus for examining the application concerned and to make the Examination process more efficient. These are being progressed by Highways England where appropriate and are accompanied by a Statement of Commonality [TR010054/APP/8.8] setting out the SoCGs being prepared, the progress with each and the common issues on which each party agrees. This Statement of Commonality will be updated as appropriate throughout the Examination process.
- 3.2.3 Progress on finalising any SoCG or other forms of agreement, along with updated / final documents, will be reported to the Examining Authority before the close of the Examination.
- 3.2.4 Other possible forms of agreement alongside SoCG are legal agreements regulating land and works powers undertakings and memoranda of understanding and letters of comfort. Again, these will be progressed by Highways England where appropriate.



## **LIST OF APPENDICES**

APPENDIX A: Consents and Agreements

APPENDIX B: Agreements from consenting authorities

## APPENDIX A: CONSENTS AND AGREEMENTS TABLE

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
Badger Licence	Badger Licence under section 10 of the Protection of Badgers Act 1992	Natural England	<u>Badgers</u> have been observed within the Order Limits. It will be necessary to undertake the permanent closure and destruction of confirmed badger setts during the Scheme construction	<p>A Letter of No Impediment was issued by Natural England on 13 Dec 2019 confirming that Natural England sees no impediment to a licence being issued, should the DCO be granted – refer to Appendix B (B1) of this CAPS.</p> <p>A further badger survey is planned for early 2021 to inform development of an application for the licence, with the aim of submitting the application in June / July 2021. The draft licence submitted for LONI was a comprehensive draft so will only need a minor update. Natural England have a 6-week determination period once the DCO has been made so we anticipate that the licence will be obtained by mid Dec 2021.</p>
Protected Species Licences	Conservation of Habitat and Species Regulations 2017	Natural England	Required for the translocation of <u>Great Crested Newts</u> in the Order limits prior to the commencement of construction.	<p>A Letter of No Impediment was issued by Natural England on 10 Jan 2020 confirming that Natural England sees no impediment to a licence being issued, should the DCO be granted – refer to Appendix B (B2) of this CAPS.</p> <p>Surveys carried out in Spring/ Summer 2020 confirmed that there were no Great Crested Newts in any ponds directly affected by the Scheme. These surveys reduced the need for compensatory habitats for newts. The Environmental Masterplan [AS-086 to AS-092/6.2] was revised to accommodate this change, with the change accepted by the ExA in October 2020. The Applicant submitted a revised draft licence to</p>

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
				<p>Natural England by 29 January 2021, with a view to obtaining a revised Letter of No Impediment to submit to the ExA.</p> <p>Further surveys are planned for Spring/Summer 2021 with an aim to submit the application for a licence in August / September 2021. Natural England has a 6-week determination period following the DCO being made, therefore we anticipate that the licence will be obtained by mid Dec 2021.</p>
	Conservation of Habitat and Species Regulations 2017	Natural England	For the disturbance or removal of <u>bat</u> roosts in the Order limits prior to the commencement of construction.	<p>A Letter of No Impediment was issued by Natural England on 14 Jan 2020 confirming that Natural England sees no impediment to a licence being issued, should the DCO be granted – refer to Appendix B (B3) of this CAPS.</p> <p>Further surveys planned for Spring/Summer 2021 ready for submission following a decision on the DCO. A draft licence submitted to obtain the LONI was a comprehensive draft and is only likely to require a minor update. Natural have a 6-week determination period once the DCO has been made so we anticipate that the licence will be obtained by mid Dec 2021.</p>
Environmental Permits for Fish	Environmental Permit. FR2 Application & Permission Salmon and Freshwater Fisheries Act	Environment Agency	For use of electrofishing equipment. FR2 Application for authorisation to use fishing instruments other than rod and line in England	<p>A permit application would be made prior to the commencement of development. The permit application is determined within a statutory period of 20 working days by the EA.</p> <p>The EA has advised that the permit applications can be made in advance of the DCO being made.</p>

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
	1975. - Section 27A			<p>No aquatic species of interest or importance have been found to date that could affect this process.</p> <p>The Applicant is aiming to commence work to determine an appropriate receptor site for fish in February 2021 and intends to discuss the use of the receptor sites with landowners in Spring 2020. An application for a permit will be submitted in summer 2021.</p> <p>No update surveys are considered necessary at this time.</p>
	<p>Environmental Permit. SP1 Application and Permission</p> <p>Application for a site permit under the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015</p>	Environment Agency	<p>To move fish to a suitable receptor site.</p> <p>SP1 Permission to move live fish to or from a fishery.</p>	<p>A permit application would be made prior to the commencement of development in May 2021 once a suitable receptor site has been identified and movement of fish has been agreed with the owner. The permit application is determined within a statutory period of 20 days by the EA. We expect to receive the permit in Autumn 2021.</p> <p>The EA has advised that the permit applications can be made in advance of the DCO being made.</p> <p>No aquatic species of interest or importance have been found to date that could affect this process.</p> <p>No update surveys are considered necessary at this time.</p>
Temporary and permanent works affecting the flow in	Land Drainage Act 1991 Section 23	Staffordshire County Council (as Lead Local	Land Drainage Consent application will be required to allow for any temporary or permanent works that	<p>Multiple consents will be required.</p> <p>A detailed consents register that lists water consents required for each water course affected by the scheme was prepared in January 2021 in</p>

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
ordinary watercourses		Flood Authority, LLFA)	may affect the flow of an ordinary watercourse (i.e. all watercourses/ ditches that can convey water at times (except Main Rivers)).	<p>parallel with the detailed design. Discussions regarding the consents required are planned to take place in February 2021. A request for formal pre application consultation will also be submitted to the Environment Agency during February 2021.</p> <p>Consultation with the LLFA is planned to take place during February 2021.</p> <p>Following consultation with the EA and the LLFA, applications for consents will be prepared during March to July 2021. Applications for consents will be submitted in July 2021. The EA and LLFA have a three month determination period. We expect to receive consents in October 2021.</p>
Temporary Water Discharge Activities (i.e. this does not apply to operational discharges from the highway)	Environmental Permitting Regulations (England and Wales) Regulations 2016 (as amended)	Environment Agency	A Water Discharge Activity Permit is required for the discharge or entry of any poisonous, noxious or polluting matter, waste matter trade or sewage effluent to an inland freshwater, coastal waters or relevant territorial waters. It also includes disturbance of existing sediments being held back by a structure or the cutting or uprooting of a	<p>Multiple consents will be required.</p> <p>A detailed consents register that lists water consents required for each water course affected by the scheme was prepared in January 2021 in parallel with the detailed design. Discussions regarding the consents required are planned to take place in February 2021. A request for formal pre application consultation will also be submitted to the Environment Agency during February 2021.</p> <p>Consultation with the LLFA is planned to take place during February 2021.</p> <p>Following consultation with the EA and the LLFA, applications for consents will be prepared during March to July 2021. Applications for consents will be submitted in July 2021. The EA and LLFA have a three</p>

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
			substantial amount of vegetation in any inland freshwaters or so near to any such waters that it falls into them, where it is not reasonable to take steps to remove the vegetation from these waters.	month determination period. We expect to receive consents in October 2021.
Temporary dewatering during construction works	Water Resources Act (1991).	Environment Agency	A Temporary Water Abstraction Licence is required for the temporary abstraction of water from a watercourse or groundwater where more than 20m <sup>3</sup> /day for less than 28 consecutive days, or a full licence for a longer period, and no exemptions apply.	Discussions with the EA have not yet taken place in respect of this consent. A detailed consents register that lists water consents required for each water course affected by the scheme was prepared during January 2021 in parallel with the detailed design.  Consultation for temporary consents will take place with the EA and LLFA during February 2021.  Following consultation with the EA and LLFA applications for consents will be prepared during March to July 2021. Applications for consents will be submitted in July 2021.
Diversion of watercourses / dewatering of ponds	Water Resources Act (1991).	Environment Agency	A Transfer Licence may be required from the EA for the diversion of a watercourse where more than 20m <sup>3</sup> of water a day	Discussions with the EA have not yet taken place in respect of this licence. A detailed consents register that lists water consents required for each water course affected by the scheme was prepared in January 2021 in parallel with the detailed design.

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
			<p>is moved from one source to another without intervening use.</p> <p>An Impoundment license may also be required subject to consultation with the EA (see below).</p>	<p>Consultation for temporary consents will take place with the EA and LLFA during February 2021.</p> <p>Following consultation with the EA and LLFA applications for consents will be prepared during March to July 2021. Applications for consents will be submitted in July 2021</p>
Impoundment of waterbodies	Water Resources Act (1991).	Environment Agency	An Impoundment Licence may be required from the EA for structures within inland waters that can change water levels and flow.	<p>Discussions with the EA have not yet taken place in respect of this consent. A detailed consents register that lists water consents required for each water course affected by the scheme was prepared in parallel with the detailed design.</p> <p>Consultation for temporary consents will take place with the EA and LLFA during February 2021.</p> <p>Following consultation with the EA and LLFA applications for consents will be prepared during March to July 2021. Applications for consents will be submitted in July 2021</p>
Waste and materials	Exemptions for operations such as U1 (import of waste for use in construction) and T15	Environment Agency	For importation and treatment of limited quantities and types of material at the site. May be required depending on the nature of the activities	<p>The EA will be informed of the intention by Highways England to seek such exemptions prior to the start of construction activities in the location where these exemptions are required.</p> <p>The Applicant is developing construction details to confirm whether the exemption is applicable. Should the activities not be exempt, a Standard Rules Permit (SRP) would be required. The applicant is</p>

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
	<p>(crushing of aerosols to minimise hazardous waste) (if exemption limits can be met)</p> <p>Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016</p>		<p>taking place during the construction phase.</p>	<p>aiming to confirm the requirement for an SRP during February 2021. An application for a SRP (if required) would be submitted in May 2021. The EA require a 6-month determination period so the SRP would be issued in November 2021. It is not necessary for planning permission to be in place for the SRP to be granted so the permit can be sought and obtained prior to the DCO being made.</p>
<p>Waste and materials</p>	<p>Environmental Permit for waste operations (Pollution Prevention and Control Act 1999), Environmental Permitting</p>	<p>Environment Agency</p>	<p>Only required if the borrow pit cannot be restored under the CL:aire code of practice</p>	<p>To be discussed with the EA. It is currently envisaged that the borrow pit will be restored under the CL:aire code of practice using clean, inert excavated material arising from the Scheme and the area being used for the borrow pit would be required for landscaping and ecological reasons so would not be restored to the same conditions as before the development. It is therefore anticipated that this permit will not be required. However, this will be kept under review during the detailed design phase.</p>



Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
	(England and Wales) Regulations 2016)			<p>Discussions with contractor are ongoing to check the quantities and types of material likely to be used in restoring the borrow pit.</p> <p>An application will be made for this SRP if it is not considered possible / appropriate to restore the borrow pit under an exemption or CL:aire code of practice.</p> <p>Should a SRP be required then an application will be made in May 2021. We would expect to receive the SRP in November 2021 following a 6 month determination period. It is not necessary for planning permission to be in place for the SRP to be granted.</p>
Waste and materials	<p>Mobile plant licences for crushing operations or site permits if not using a subcontractor with their own mobile licences</p> <p>Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales)</p>	Environment Agency	Mobile plant typically comes with a mobile plant permit attached to the equipment. If mobile plant is used onsite that does not already have a permit attached PPCA 1999 will be required.	<p>Discussions will take place with the EA in advance of construction works requiring crushing and mobile plant licences to determine the need for these permits.</p> <p>Enquiries are being made in February 2021 to gain an understanding of whether contractors to be used for the construction will use mobile plant that comes with its own permit or whether a permit is required. If the plant does not come with its own permit then an application will be made for a SRP in May 2021. We would expect to receive the SRP in November 2021 following a 6 month determination period. It is not necessary for planning permission to be in place for the SRP to be granted so the application can be submitted in advance of the DCO being made.</p>

Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
	Regulations 2016			
Waste and materials	CL:aire Materials Management Plan  CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice (v.2) (DoWCoP)	Environment Agency	It is considered that the majority of soil materials excavated during the works would be re-used within the DCO Order Limits following guidance in CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice (v.2) (DoWCoP).	It is not necessary to undertake negotiations with the EA at this time. It is the intention of Highways England to commence discussions regarding the use of CL:aire Materials Management Plans and put suitable management plans in place following the examination period and prior to the commencement of construction.  A data review is being undertaken in February 2021, the Materials Management Plan (MMP) is to be prepared between April and July, with the intention to send it to the EA in August 2021. The MMP could be approved as early as September 2021.
Noise and vibration during the construction stage	Section 61 consent if proposed by the contractor (Control of Pollution Act 1974);	South Staffordshire Council	Consent offers Highways England protection from any subsequent action by the local authority under Section 60 of the Control of Pollution Act 1974 or under Section 80 of the Environmental Protection Act 1990.	Discussions to be held within the project team to identify potentially noisy activities and determine need and approach to S61 agreement or whether alternative community consultation have been carried out. Discussions with the Environmental Health Officer of South Staffordshire Council took place in early Feb 2021. It was agreed that a Preliminary Works Noise and Vibration Management Plan will be prepared and submitted to South Staffordshire Council in September 2021 and determined by November / December 2021 but that a Section 61 agreement is not required.



Issue	Consent/ Licence/ Agreement & Legislation	Consenting Authority	Requirement	Status of negotiations
Consent / Licence for the felling of trees.	Felling Licence. The Forestry Act 1967	Local Authority / Forestry Commission	Powers for the removal of trees for the construction of the scheme including trees protected by TPOs are sought within the DCO. However, trees that are felled for purposes other than construction e.g. ecological enhancement may require approval from the Forestry Commission under a Felling License. This involves notifying the Forestry Commission in advance of felling additional trees. Certain tree felling can be carried out under an exemption however limitations apply to area of size and so a felling license may be required.	No discussions have taken place with the Forestry Commission as an application / prior notification can be made 2-3 months prior to works being carried out and there is currently insufficient certainty on the quantum of trees to be felled and whether this consent would be required due to the stage of design development.  The Applicant intends to have pre-application discussions with the tree officer in April 2021, submit an application in July 2021 for determination in August/ September 2021.

## **APPENDIX B: AGREEMENTS FROM CONSENTING AUTHORITIES**

B1: Letter of no impediment from Natural England (Badgers)

B2: Letter of no impediment from Natural England (Great Crested Newts)

B3: Letter of no impediment from Natural England (Bats)



Mr Andrew Kelly  
Project Manager, Highways England  
*Sent by e-mail only*

Dear Mr Andrew Kelly,

<p><b>DRAFT MITIGATION LICENCE APPLICATION STATUS:</b> INITIAL DRAFT APPLICATION <b>LEGISLATION:</b> THE PROTECTION OF BADGERS ACT 1992 (as amended) <b>NSIP:</b> M54 to M6 Link Road <b>SPECIES:</b> Badgers</p>
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Thank you for your subsequent draft badger species management licence application in association with the above Nationally Significant Infrastructure Project (NSIP) site, received in this office on 15 November 2019. As stated in our published guidance, once Natural England is content that the draft licence application is of the required standard, we will issue a 'letter of no impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals.

### **Assessment**

Following our assessment of the resubmitted draft application documents, I can now confirm that, on the basis of the information and proposals provided, Natural England sees no impediment to a licence being issued, should the Development Consent Order (DCO) be granted.

However, the following points will need to be considered further and acted upon in support of the full licence application submission:

#### Experience:

The licensed ecologist will need to provide recent and relevant experience in support of the full badger licence application submission.

Full details of the authorised individuals, their experience and roles within the Scheme will need to be included within the full licence application submission.

#### Survey:

An updated survey will need to be undertaken to inform the status and extent of the badger setts within the area of the Scheme Boundary.

A walkover survey must be undertaken within 3 months prior to the submission of the full licence application to highlight any changes in setts and their usage.

Photographs will need to be provided of the setts and the surrounding habitat in support of the full licence application.

The area (in hectares) to be temporarily impacted and/or permanently lost needs to be detailed within the Method Statement. This should also correspond to the supporting Figures.

Impacts:

Whilst Sett 6 is presently active and is proposed to be subject to a licence to be excluded and closed, a number of other disused setts will also be lost to the Scheme. Whilst closure of disused setts can be undertaken without a licence, these will still need to be considered and noted as part of the Method Statement. Once an active sett is subject to one-way gating, the other available setts within the clan's territory will become more important to the excluded badgers. This may mean that a dis-used sett will become active.

Depending on the timing of the planned disused sett closure, it may be appropriate to consider proofing these prior to destruction, to ensure displaced badgers do not enter these setts once excluded from Sett 6. Alternatively, the disused setts could be destroyed prior to the exclusion of Sett 6.

Mitigation:

From the supporting Figures, creation of new habitat is proposed. Details of this need to be included in the Method Statement, clearly demonstrating how this will support the badger clans.

Tunnels are noted to be included as part of the mitigation proposals. These need to be clearly shown within the supporting Figures. Justification also needs to be provided for their suitability for year round use by badgers to help maintain and enhance the connectivity to the wider landscape. Details should be included to demonstrate any on-going management of the tunnels to ensure they remain accessible and usable, as well as any proposed ways to maintain connectivity, even at times of heavy rainfall or flooding.

Guide fencing and underground proofing was also discussed as part of the previous DAS meeting on 4 September 2019.

- Guide fencing was recommended to shield the badgers from the new road layout and reduce the risk of mortality.
- Underground proofing was also recommended where badger setts would remain in close proximity to the new road layout.

These were only recommendations to help to reduce the risk of needing to apply for future species licenses, but may need to be explored and justified as part of the Method Statement if they are to be taken forward as part of the proposal. If these methods are to be undertaken, then they will need to be clearly marked on the supporting Figures.

Figures:

The badger setts should be marked and referenced on all the supporting maps so that impacts, habitat measures and connecting features can be clearly linked to the supporting Method Statement.

**Next Steps**

Should the DCO be granted then the species management licence application must be formally submitted to Natural England. At this stage any modifications to the timings of the proposed works, e.g. due to ecological requirements of the species concerned, must be made and agreed with Natural England before a licence is granted.

If other minor changes to the application are subsequently necessary, e.g. amendments to the work schedule/s then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do

not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

Full details of Natural England's licensing process with regards to NSIPs can be found at the following link:

[http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-g36\\_tcm6-28566.pdf](http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-g36_tcm6-28566.pdf)

As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

I hope the above has been helpful. However, should you have any queries then please do not hesitate to contact me.

Yours sincerely,

Helen Woolley  
Wildlife Management Lead Adviser  
Natural England Wildlife Licensing Service (DT1)  
Tel: 020 802 60871  
E-mail: [REDACTED]

## **Annex - Guidance for providing further information or formally submitting the licence application.**

**Important note: when submitting your formal application please mark all correspondence 'FOR THE ATTENTION OF Helen Woolley.**

### **Submitting Documents.**

Documents must be sent to the  
Customer Services Wildlife Licensing:  
Natural England,  
Horizon House,  
Deanery Road,  
Bristol, BS1 5AH.  
T. 020802 61089  
[wildlife@naturalengland.org.uk](mailto:wildlife@naturalengland.org.uk)

### **Changes to Documents –Reasoned Statement/Method Statement.**

Changes must be identified using one or more of the following methods:

- underline new text/strikeout deleted text;
- use different font colour;
- block-coloured text, or all the above.

### **Method Statement**

When submitting a revised Method Statement please send us one copy on CD, or by e-mail if less than 5MB in size, or alternatively three paper copies. The method statement should be submitted in its entirety including all figures, appendices, supporting documents. Sections of this document form part of the licence; please do not send the amended sections in isolation.





Mr Andrew Kelly  
Project Manager, Highways England  
*Sent by e-mail only*

Dear Mr Andrew Kelly,

**DRAFT MITIGATION LICENCE APPLICATION STATUS:** INITIAL DRAFT APPLICATION  
**LEGISLATION:** THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010  
(as amended)  
**NSIP:** M54 to M6 Link Road  
**SPECIES:** Great Crested Newts

Thank you for your draft EPS Mitigation licence application in association with the above Nationally Significant Infrastructure Project (NSIP) site, received in this office on 06 December 2019; and resubmission received on 08 January 2020. As stated in Natural England's published guidance, once Natural England is content that the draft licence application is of the required standard, it will issue a 'letter of no impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals.

### **Assessment**

Following assessment of the resubmitted draft application documents, I consider that, on the basis of the information and proposals provided, Natural England sees no impediment to a licence being issued, should the Development Consent Order (DCO) be granted.

However, the following points will need to be considered further and acted upon in support of the full licence application submission:

#### Application Form:

The applicant details will need to be provided within the application form submitted as part of the full licence application.

#### Survey:

The maximum age of survey data to support this licence application should be 2 breeding seasons, based on the proposed level of impact.

An updated survey is intended to be undertaken in 2020 to confirm the status and extent of the GCN waterbodies. This may have a bearing on the impacts, mitigation and compensation proposals. Any changes within the Method Statement, will also need to be reflected in the

corresponding sections of the Habitat Management Plan and supporting Figures.

A walkover survey must be undertaken within 3 months prior to the submission of the full licence application to highlight any changes to the habitat across the site.

New Licensing Policy 1:

The area to be subject to NLP1 needs to be noted as an area (in hectares).

Justification will be needed to demonstrate the approach and location of the NLP1 impact areas. At present, although the areas are indicated, reasoning will need to be provided to support this approach as part of the full licence application submission.

A duration for the use of NLP1 will also need to be provided. This can be included as a row in the Work Schedule.

Receptor Sites:

Where amphibian fencing is used to protect a receptor area from the working area, the receptor should not be enclosed for more than 2 years.

Drainage:

Where possible, newt-friendly drainage should be implemented.

Monitoring:

The approach to monitoring differs across the site. Justification behind this approach needs to be included with the full licence application.

Figures:

Figure C3.2a needs to include all referenced waterbodies, including those that are separated by barriers. Waterbodies 103-105 need to be included on this Figure as part of the full licence application.

Habitat Management and Maintenance Plan (HMMP):

This is presently missing from the submission but is intended to support the full licence application. This document should look to support the retained and created habitats, ensuring they become suitably established for the GCN.

The commitments within the HMMP should also be reflected in Figure E5.1 that will also need to be provided as part of the full licence application.

Imperative Reasons of Overriding Public Interest Test:

Natural England believes that sufficient information and supporting evidence has been provided to demonstrate that this test would be met, should the development achieve all necessary consents it requires in order to proceed.

No Satisfactory Alternative Test:

Natural England believes that sufficient information and supporting evidence has been provided to demonstrate that this test would be met, should the development achieve all the necessary consents it requires in order to proceed.

However, it is recommended that when a formal application is submitted, the two documents referenced *M54 to M6 Link Road Environmental Statement* and *Transport Assessment Report*, referenced as supporting evidence in the Reasoned Statement, are included with the application along with the other supporting evidence.

## Next Steps

Should the DCO be granted then the EPS Mitigation licence application must be formally submitted to Natural England. At this stage any modifications to the timings of the proposed works, e.g. due to ecological requirements of the species concerned, must be made and agreed with Natural England before a licence is granted.

If other minor changes to the application are subsequently necessary, e.g. amendments to the work schedule/s then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, Natural England will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

Full details of Natural England's licensing process with regards to NSIPs can be found at the following link:

[http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-g36\\_tcm6-28566.pdf](http://webarchive.nationalarchives.gov.uk/20140605090108/http://www.naturalengland.org.uk/Images/wml-g36_tcm6-28566.pdf)

As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, Natural England will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

I hope the above has been helpful. However, should you have any queries then please do not hesitate to contact me.

Yours sincerely,

Helen Woolley  
Wildlife Management Lead Adviser  
Natural England Wildlife Licensing Service (DT1)  
Tel: 020 802 60871  
E-mail: [REDACTED]

## **Annex - Guidance for providing further information or formally submitting the licence application.**

**Important note: when submitting your formal application please mark all correspondence 'FOR THE ATTENTION OF Helen Woolley.**

### **Submitting Documents.**

Documents must be sent to the  
Customer Services Wildlife Licensing:  
Natural England,  
Horizon House,  
Deanery Road,  
Bristol, BS1 5AH.  
T. 020802 61089  
[wildlife@naturalengland.org.uk](mailto:wildlife@naturalengland.org.uk)

### **Changes to Documents –Reasoned Statement/Method Statement.**

Changes must be identified using one or more of the following methods:

- underline new text/strikeout deleted text;
- use different font colour;
- block-coloured text, or all the above.

### **Method Statement**

When submitting a revised Method Statement please send us one copy on CD, or by e-mail if less than 5MB in size, or alternatively three paper copies. The method statement should be submitted in its entirety including all figures, appendices, supporting documents. Sections of this document form part of the licence; please do not send the amended sections in isolation.

Date: 14 January 2020  
Our ref: M54 to M6 Link Road  
(NATIONALLY SIGNIFICANT INFRASTRUCTURE  
PROJECT)



Mr Andrew Kelly  
Highways England  
2 Colmore Square  
38 Colmore Circus  
Birmingham B4 6BN

*Sent by e-mail only*

Dear Mr Kelly.

**DRAFT MITIGATION LICENCE APPLICATION STATUS:** INITIAL DRAFT APPLICATION  
**LEGISLATION:** THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010  
(as amended) THE WILDLIFE AND COUNTRYSIDE ACT 1992 (as amended)  
**NSIP:** M54 to M6 Link Road.  
**SPECIES:** Bats.

Thank you for your initial draft bat mitigation licence application in association with the above NSIP site, received in this office on the 5<sup>th</sup> December 2019. As stated in our published guidance, once Natural England is content that the draft licence application is of the required standard, we will issue a 'letter of no impediment'. This is designed to provide the Planning Inspectorate and the Secretary of State with confidence that the competent licensing authority sees no impediment to issuing a licence in future, based on information assessed to date in respect of these proposals.

### **Assessment**

Following our assessment of the resubmitted draft application documents, I can now confirm that, on the basis of the information and proposals provided, Natural England sees no impediment to a licence being issued, should the DCO be granted.

However, please note the following issues have been identified within the current draft of the method statement that will need to be addressed before the licence application is formally submitted. Please do ensure that the Method Statement is revised to include these changes prior to formal submission. For clarity these include:

### **Experience / Application Form**

- Insufficient evidence of the ecologists experience has been provided in support of the current, draft, application. Given the national significance of this project, it would be expected that the named ecologist has extensive experience of successfully delivering mitigation projects for the bat species named on the application form; including survey experience, design of mitigation and compensation, delivery of mitigation, and provision of compensation habitats.

## **Surveys / Method Statement**

- It is appreciated that this is a preliminary application and the survey details provided are likely to change during the project development and when surveys are being up-dated. However, the following points should be observed:
- Surveys listed should be broken down in to specific dates and structures / trees being surveyed. It is not acceptable to list a surveying period and a number of structures being surveyed. As subsequent applications should have less detail as only the structures that are being demolished and have a direct impact on bats should be listed, this will shorten the provide information considerably.
- Dates, times and conditions when the surveys are being carried out should be specific. This allows us to evaluate any sub-standard surveys due to weather conditions for example or surveys that were carried out too early or late to detect early emerging bats.
- Surveys should be carried out during the active season May-August in suitable conditions. As the project start is some time in the future, surveys should be up-dated with data from the preceding survey season.
- Please ensure that the equipment used to carry out surveys is listed and if for example EMT 2 is used, it is made clear if the results were analysed by the ecologist carrying out the survey or if the software is being used to identify encountered bat species.
- Species of bats have to be identified and listed on the application. We are unable to license bats identified as “myotis species” or issue precautionary species and numbers.
- If the Method Statement refers to a specific Annex or survey report, please ensure that the references match and the report is provided in the application.

## **Figures**

- Figure C6 survey results; we appreciate that there is a large area to cover and a large volume of data to be submitted. However, when the final application is being submitted, please ensure that this Figure includes locations of samples being taken, flight lines, access points and dimensions of existing roost.
- Figures provided need some improvement, Figure D should only show the structures and trees where the development has a direct impact on the bat population. Trees or buildings that are being retained need not to be listed and referenced. Neither need the structures and trees outside of the project boundary.
- Figure E3 provides details of the compensatory roosts provided and their location as well as the habitats being created. We would suggest that you don't sign up to a specific make of bat box as this Figure forms part of the licence and should this particular make of bat box not be available would require an amendment. This also applies to Figure E4. It is also worth to note that bat boxes have to be retained for five years from the completion of the development, not 5 years from roost loss as stated on the Figure.

## **General guidelines**

- Applications usually take 30 working days to process, longer if an application is submitted during busy periods.
- Surveys must be up to date and have been conducted within the current or most recent optimal season. Surveys must be undertaken in accordance with the most up to date edition of BCT Guidelines. Full justification must be given if surveys deviate from the aforementioned best practice guidelines.

- Figures provided will form part of the Annex and should be clearly legible, specific and referenced and dated clearly.
- Any modification to the Annex, once issued, can take an additional 30 working days to process.

## **Next Steps**

Should the DCO be granted then the mitigation licence application must be formally submitted to Natural England. At this stage any modifications to the timings of the proposed works, e.g. due to ecological requirements of the species concerned, must be made and agreed with Natural England before a licence is granted. Please note that there will be no charge for the formal licence application determination, should the DCO be granted, or the granting of any licence.

If other minor changes to the application are subsequently necessary, e.g. amendments to the work schedule/s then these should be outlined in a covering letter and must be reflected in the formal submission of the licence application. These changes must be agreed by Natural England before a licence can be granted. If changes are made to proposals or timings which do not enable us to meet reach a 'satisfied' decision, we will issue correspondence outlining why the proposals are not acceptable and what further information is required. These issues will need to be addressed before any licence can be granted.

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As stated in the above guidance note, I should also be grateful if an open dialogue can be maintained with yourselves regarding the progression of the DCO application so that, should the Order be granted, we will be in a position to assess the final submission of the application in a timely fashion and avoid any unnecessary delay in issuing the licence.

I hope the above has been helpful. However, should you have any queries then please do not hesitate to contact me.

Yours sincerely

A black rectangular redaction box covering the signature of Dagmar Lewis.

**Dagmar Lewis**

**Wildlife Management Lead Adviser**

Tel: 020 802 60884

E-mail: [Dagmar.Lewis@naturalengland.org.uk](mailto:Dagmar.Lewis@naturalengland.org.uk)

## **Annex - Guidance for providing further information or formally submitting the licence application.**

**Important note: when submitting your formal application please mark all correspondence 'FOR THE ATTENTION OF DAGMAR LEWIS.'**

### **Submitting Documents.**

Documents must be sent to the Customer Services Wildlife Licensing:  
Natural England,  
Horizon House,  
Deanery Road,  
Bristol, BS1 5AH.  
T. 020802 61089  
wildlife@naturalengland.org.uk

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