

A12 Chelmsford to A120 widening scheme

TR010060

9.20 Summary of proposed changes to dDCO to be made at Deadline 3

Rule 8(1)(k)

Planning Act 2008
Infrastructure Planning (Examination Procedure)
Regulations 2010

Volume 9

February 2023

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

A12 Chelmsford to A120 widening scheme

Development Consent Order 202[]

Summary of proposed changes to dDCO to be made at Deadline 3

Regulation Number	Rule 8(1)(k)
Planning Inspectorate Scheme Reference	TR010060
Application Document Reference	TR010060/EXAM/9.20
Author	A12 Project Team and National Highways

Version	Date	Status of Version
Rev 1	13 February 2023	Final for Deadline 2

CONTENTS

1 Introduction1

2 Summary of proposed changes to submission draft Development Consent Order2

1 Introduction

- 1.1.1 The submission draft Development Consent Order (DCO) (document reference TR010060/APP/3.1) was given the examination document number APP-039.
- 1.1.2 The following referencing errors were notified to the Applicant in S51 advice received at the time of acceptance of the application for development consent.
- 1.1.3 The following referencing errors were rectified in the second version of the draft DCO submitted under cover of the Applicant's letter of 21 September 2022:
- Article 12 (4) on p14
 - Article 15 (4) on p18
 - Article 22 (3) on p22
 - Article 30 (2) on p30
 - Article 31 (10) on p32
 - Article 42 (1) on p39
- 1.1.4 The revised draft DCO (version 2) is examination document number AS-020. The Applicant has since noted a number of additional revisions to the draft DCO that it proposes to make.
- 1.1.5 Rather than provide a further version of the draft DCO close to the Issue Specific Hearing on the topic of the draft DCO, scheduled for Wednesday 1 March 2023, the Applicant is submitting this list to inform the ExA and Interested Parties of the changes the Applicant proposes.
- 1.1.6 Following the ISH on 1 March the Applicant will submit a revised draft DCO, Explanatory Memorandum and validation report, together with comparisons, at Deadline 3.

2 Summary of proposed changes to submission draft Development Consent Order

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
Part 2, Principal Powers Limits of Deviation Article 10 (3)(b)	'Undertaking' to be replaced with 'undertaker' (3) In constructing and maintaining the— (a) flood mitigation works; and (b) borrow pits restoration works shown on the permanent works plans, the undertaking undertaker may deviate laterally within the limits of deviation for those works shown on those plans.	Correction of a typographical error.	-	-
Article 12 (4) on p14 (change made following S51 Advice)	(4) The consent of the Secretary of State under this article is not required where the powers of article Error! Reference source not found. (compulsory acquisition of rights and imposition of restrictive covenants) are, with the consent of the undertaker given under article Error! Reference source not found. , proposed to be exercised by a statutory undertaker rather than by the undertaker, or are proposed to be exercised for the express benefit or accommodation of owners and occupiers of land, as identified in column (4) of the table in Part 3 4 of Schedule 4 (permanent stopping up of highways and private means of	change made following S51 Advice	-	-

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
	access and provision of new highways and private means of access) to this Order.			
Part 3, Streets Classification of roads, etc. Article 15 (4) (change made 26 September 2022 following S51 Advice)	Article 15(4) will be amended to refer to "Part 12" of Schedule 3: (4) On such day as the undertaker may determine, the orders specified in column (3) of Part 8 ¹² (revocations and variations of existing traffic regulation orders) of Schedule 3 are to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.	ExQ1, 6.0.12 states: 'Art 15 - Classification of road, (4) refers to Part 8 of Schedule 3, yet the EM [APP-040] refers to Part 12 of Schedule 3, please clarify and update as necessary'. Change made 26 September 2022 following S51 Advice	-	-
Article 22 (3) (change made 26 September 2022 following S51 Advice)	(3) Except as provided in paragraph Error! Reference source not found. , on and after such day as the undertaker may determine, no person is to proceed or cause or permit any vehicle to proceed on any part of the lengths of road described in column (2) of Part 8 ⁹ (traffic regulation measures (prohibitions)) of Schedule 3 (classification of roads, etc.) and identified on the traffic regulation measures movement restrictions plans if they are, or the vehicle is of a type specified in the corresponding row of column (3) of that Part except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.	change made 26 September 2022 following S51 Advice	-	-

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
<p>Part 5, Powers of Acquisition</p> <p>Article 30 (2)</p> <p>(change made 26 September 2022 following S51 Advice)</p>	<p>(2) The powers of paragraph Error! Reference source not found. may be exercised by a statutory undertaker or by an owner or occupier of land identified in column (4) of the table in Part 3 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to this Order, instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions.</p>	<p>change made 26 September 2022 following S51 Advice</p>	-	-
<p>Article 31 (10)</p> <p>(change made 26 September 2022 following S51 Advice)</p>	<p>(10) From such date as the undertaker may determine, which may not be later than the date on which the private means of access listed in column 2 of Part 3 4 of Schedule 4 is stopped up, the owners and occupiers, their agents contractors and any person with the permission of the owner or occupier of the land to be accessed by the private means of access to be substituted or provided on the Order Land and listed in column 4 of Part 3 of Schedule 4, will be entitled to take access to their land at all times with or without vehicles across or along the private means of access to be substituted or provided on the Order Land listed in column 4 of Part 3 of Schedule 4.</p>	<p>change made 26 September 2022 following S51 Advice</p>	-	-
<p>Statutory Undertakers, Article 42(1)</p>	<p>Reference to Schedule 10 (protective provisions) changed to Schedule 11 (protective provisions) in Revision 2 of the dDCO.</p>	<p>Correction to cross reference.</p> <p>Change made 26 September 2022 following S51 Advice</p>	-	-

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
(change made 26 September 2022 following S51 Advice)	<p>(1) Subject to the provisions of article Error! Reference source not found. (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 10<u>11</u> (protective provisions) and paragraph Error! Reference source not found., the undertaker may—</p> <p>(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and</p> <p>(b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.</p>			
<p>Part 6, Operations</p> <p>Felling or lopping of trees and removal of hedgerows Article 46, 4 (b)</p>	<p>Addition of 'subject to consultation with the relevant planning authority'</p> <p>(1) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph Error! Reference source not found.—</p> <p>(c) remove any hedgerow described in Part 1 or Part 2 of Schedule 9 (hedgerows and trees); and</p> <p>(d) subject to consultation with the relevant planning authority remove any hedgerow within the Order limits that may be identified and that is not otherwise set out within Part 1 or Part 2 of Schedule 9.</p>	<p>In response to ExQ1, 6.0.6, which states 'Art 46, Felling or lopping of trees and removal of hedgerows: Parts 1 and 2 of Schedule 9 identifies those trees to be removed, however 4(b) appears to allow for the removal of any hedgerow regardless of whether it has been identified for removal or not. Please explain and justify why this element of Art 46 is required '</p>	<p>A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (2022 No. 934), Article 42(4)</p>	

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
	(2) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997 ⁽¹⁾ and includes important hedgerows.			
Part 7, Miscellaneous and General, Crown Rights, Article 53 (1)(a)(i), (ii) and (iii) Paragraph renumbering.	Amend "Her Majesty" to "His Majesty" 53. —(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker (e) to take, use, enter upon or in any manner interfere with any land or rights of any description— (i) belonging to Her His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners; (ii) belonging to Her His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or (iii) belonging to a government department or held in trust for Her His Majesty for the purposes of a government	Accession of King Charles III and comments made by the ExA in ExQ1 6.0.24. Formatting error in paragraph numbering.	-	-

⁽¹⁾ S.I. 1997/1160 as amended by S.I. 2003/2155, S.I. 2015/1997, S.I. 2015/377, S.I. 2009/1307 and S.I. 2013/755.

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
	<p>department without the consent in writing of that government department.</p> <p>(b) (2) Paragraph Error! Reference source not found. does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.</p> <p>(2) A consent under paragraph Error! Reference source not found. may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.</p>			
<p>Schedule 1 – Authorised Development</p>	<p>Colchester Borough Council needs to be changed to Colchester City Council:</p> <p>In the County of Essex, in the administration areas of Chelmsford City Council, Braintree District Council, Maldon District Council and Colchester Borough City Council.</p> <p>The Works are situated as follows—</p> <p>U180A, U146A and part of Work Nos. 45a, 45b, 65b, 66a, 68a, 74a, 88a, 88b, 88c, 89a, 91b, 91c, 76A, T39, T41, T43, T45, T46, T48, T49, U137, U140, U141, U149, U150, U154, U167, U168, U169, U170, U171, U172, U173 in the administrative area of Colchester Borough City Council.</p>	<p>Colchester now has City status. The change will be made at each instance in the dDCO where there is reference to the former status of the Council.</p>	<p>--</p>	<p>-</p>

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
	<p>The authorised development is a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act(a) and associated development within the meaning of section 115(2) of the 2008 Act, comprising—</p>			
<p>Schedule 2, Part 1 Requirements Requirement 6</p>	<p>The Applicant proposes to amend Requirement 6 to include the wording contained in the made A47 Blofield to North Burlingham Order 2022 as follows:</p> <p>(2) Where the risk assessment prepared in accordance with sub-paragraph (1) determines that remediation of the contaminated land is necessary, a written scheme and programme for remedial measures to be taken to render the land fit for its intended purpose and to prevent any impacts on controlled waters must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority <u>and the Environment Agency</u> on matters related to their functions.</p>	<p>Amendments further to consultation with the Environment Agency.</p>		
<p>Schedule 9, Hedgerows and Trees, Parts 1 and 2</p>	<p>The following hedgerows need to be moved from Part 2 'Removal of Other Hedgerows' to Part 1 'Removal of Important Hedgerows' within Schedule 9:</p> <p>9, 16, 20, 23, 26, 27, 30, 33, 34, 36, 37, 38, 39, 45, 46, 48, 52, 57, 59, 66, 68, 69, 70, 78, 83, 84, 85, 88, 94, 95, 103, 133, 134, 135, 156, 159, 160, 163, 170,</p>	<p>Change required to reflect the relevant conclusions of the Environmental Statement.</p> <p>Hedgerows conforming to only the archaeology and heritage criteria of the Hedgerow Regulations 1997</p>	-	-

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
	185, 186, 187, 192, 194, 195, 199, 200, 205, 206, 209, 219, 230, 244, 256, 335, 994, 9161 and 23001	were omitted from Schedule 9 Part 1 and listed in Schedule 9 Part 2 in the submission draft Order.		
Schedule 9, Hedgerow and Trees, Part 3, Trees Subject to Tree Preservation Orders	Addition of new line to Schedule 9 Part 3P Sheet 8 Column (1): Maldon District Council TPO 07/22 Blue Mills, Blue Mills Hill, Wickham Bishops, CM8 3LH Column (2): Potential pruning and lopping of branches Column (3): Work U69	The TPO was made in July 2022, at the time the submissions documents were finalised.		
Schedule 11, Protective Provisions, Part 5 – For the Protection of Cadent as Gas Undertaker	The dDCO will be amended to update the cross reference within the Cadent Protective Provisions to Paragraph 1 of Part 1 of Schedule 2 (Requirements). <u>"Commence" has the same meaning as in Paragraph 1 of Part 1 of Schedule 2 (Requirements).</u>	In response to ExQ1, 6.0.3 which states 'Within Art 2 Interpretation of the dDCO [APP-039], there is no definition of 'commence'. Neither is this explained in the EM [APP-040]. Furthermore, the Protective Provisions for Cadent Gas define 'commence' as having the same meaning as in article 2 (1) of dDCO. Please review and provide the necessary definition.'	-	-
Proposed Changes to Explanatory Memorandum				

Article/Schedule	Change	Reason for change	Precedent	Consequential changes
Paragraph 4.67 and 4.68	<p>These references are in error and the next version of the Explanatory Memorandum, to be submitted at Deadline 3 will amend this to state:</p> <p>"4.67. Paragraph (1) imposes speed limits on certain sections of the proposed scheme as described in Part 6 of Schedule 3."</p> <p>In addition Paragraph 4.68 of the Explanatory Memorandum needs to be amended as follows:</p> <p>4.68 Paragraph (2) makes it clear that the national speed limit is the default speed limit which will apply to certain lengths of road described in Parts 6 and 7 of Schedule 3.</p>	<p>In response to ExQ1, 6.0.14 which states 'Paragraph 4.67 of EM [APP-040] refers to 'Paragraph (14)', please identify where this reference is.'</p>	-	-