

A12 Chelmsford to A120 Widening Project

Deadline 5 – Summary of oral
representations made at ISH 3 & 4

10 May 2023

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1. Issue Specific Hearing 3

Set out below are summaries of the oral representations made by Essex County Council (the Council) representatives at the examination hearing on 26 April 2023.

Traffic and Transport – Boreham

Witness: Mark Stubbs, Associate Director Transport Planning

The Applicant has reaffirmed its position that additional interventions are not required to ensure compliance with the proposed reduced speed limit within Boreham Village and between Main Road and Boreham Village. During the hearing, the Applicant quoted average speeds for these sections of road, however, this does not take account of the variation in traffic speed along the length of the route.

The Council's year-round GPS based traffic speed monitoring (as set out in Figures 3 & 4 of **REP3-034**) shows that:

- Through Boreham village, average peak hour speeds currently vary between 20mph and 40mph
- Between Boreham and Hatfield Peverel, average peak hour speeds vary between 35pmh and 50mph

This variation in traffic speed is an important consideration, because the additional traffic attracted to the B1137 due to the A12 scheme in the AM peak will increase the risk of collisions, if speeds are not reduced.

The DCO scheme does not include any measures to encourage a reduction in speed on the B1137, other than the proposed speed limit reduction. However, there is no guarantee that this will result in a consistently lower speeds - particularly on those sections of road where the existing average speed is around 10 miles per hour higher than the proposed one.

In ongoing discussions with the Council, the Applicant has indicated that it is considering the possibility of providing road narrowings, a new zebra/signalised pedestrian crossing and locally designed road signs within the A12 DCO scheme. However, the Council has been given no assurance that these will actually be delivered.

The Council would respond as follows:

- Main Road is long and straight, with a uniform width; its physical nature doesn't help to discourage speed limit exceedances.
- Simply reducing the speed limit (even in combination with occasional road narrowings) is unlikely to bring about a consistent reduction in speed along the whole length of Main Road - which is what needs to be achieved to prevent Main Road from attracting more traffic from Maldon Road than has been forecast by NH.

- Average speed cameras are the key element of the package of measures necessary to ensure better adherence to the proposed speed limit reductions on the B1137. This is especially so between Boreham village and Hatfield Peverel.

As such, the Council maintains that all elements of the proposed speed mitigation measures put forward by the Council should be included in the DCO scheme, including speed cameras.

In response to a question from the Examining Authority, the Council explained that Essex Police are responsible for enforcing speed limits in Essex (note this includes the back-office processing of offences detected by safety cameras.) The Safer Essex Roads Partnership (SERP) is responsible for the ongoing maintenance of safety camera systems. The SERP has its own budget and comprises highway authorities and emergency services in Essex, including Essex Police and Essex County Council.

Traffic and Transport – De-trunking section of the A12

Witness: Sean Perry, Transport Planning Manager

As discussed at previous hearing sessions the issue of de-trunking is still the item the Council remains furthest apart from the applicant on in terms of common ground, however the Council notes and acknowledges the applicants technical note (**REP4-057**) for which there are several key points criticising the alternative scheme as presented by Essex County Council in its technical note **REP3-082** and **REP3-081** namely Policy, Safety DCO processes and Costs. The following text responds to each of the aspects as above as well as a re-iteration of the policy alignment which the council believes with its proposed alternative represents a closer alignment.

Policy Alignment

The Applicant has claimed that the Council's alternative proposals for the de-trunked sections of the A12 are not justified in policy terms and present significant and unnecessary costs. However, the Council is firmly of the view that improvements to the DCO proposal are necessary, because the de-trunked sections does not align with the County Council's placemaking agenda, or its policies and strategies that place an emphasis on enhancing place and quality of resident's lives (such as Everyone's Essex Corporate strategy, the Essex Green Infrastructure Strategy and the existing and emerging Local Transport Plan). In fact, it is felt that the current DCO proposals do not align with National Highways own Sustainable Development Strategy (2017) or conform to several the key principles set out in The Road to Good Design (Highways England, 2018) or National Highways' Strategic Design Panel 2 Progress Report (2018).

The DCO scheme in its current form does not:

- Reduce barriers to access and participation
- Fit in with the context and aesthetic in relation to where it passes
- Enhance a sense of place
- Make an important contribution to the conservation and enhancement of the natural and built environment

The DCO proposals for the de-trunked sections do not align with wider Government Policy, including the emerging updated National Policy Statement for National Networks (NPSNN) which places significantly greater emphasis on sustainability, net zero principles and improved environmental outcomes. In addition, they do not accord with the latest LTN1/20 guidelines, an important feature and requirement for other parts of the DCO application. Finally, the proposals under the current DCO add significantly to the Council's burden on maintenance programmes for the local highway network.

The Applicant states that it will hand over the de-trunked sections in a safe and serviceable condition. However, this still represents a significant missed opportunity to address some long running issues of poor walking, cycling and equestrian provision as well missing an opportunity to improve the local environment with a safer, greener and healthier local network following the implementation of the A12 widening scheme.

It is felt therefore that the alternative proposal as presented by the Council within the Deadline 3 submission (**REP3-081** and **REP3-082**) has a much stronger alignment to these more updated policies and agendas.

Safety

The Applicant has stated that the dual carriageway proposed to be retained on the de-trunked sections of the A12 provides a higher inherent safety level compared to a single carriageway as it separates opposing traffic flows and removes right-turns at accesses.

However, the Council (as stated at ISH 1 on 28th February 2023 – EV-015) and Essex Police (as stated in **REP4-050**) strongly believe that the long straight sections of dual carriageway, as proposed in the DCO, would result in higher speeds and the potential for increased exceedances of stated speed limits, due to the much lower predicted traffic flows. There would also be an increased risk of anti-social behaviour and potentially higher numbers of road traffic collisions given the low use. The introduction of roundabouts to assist in mitigating these risks, as proposed in the DCO, may also compound the issue of increasing collisions due to higher speeds and lower use.

In response to access arrangements, the Council have given this careful consideration and with the proposed enablement of single carriageway working this would reduce the overall level of traffic speed and reduce the potential for conflict with traffic accessing properties (right in, right out) i.e traffic needing to cope with traffic from one direction under the Councils alternative single carriageway proposal as opposed to coping with traffic from two directions under the DCO and/or making long diversions to access properties if road restraint systems are left in situ.

In response to the points raised at ISH 3 on 26th April 2023 regarding diversionary routes, emergency access and better resilience, the main premise of the A12 widening project to three lanes is to provide a safer more resilient network therefore reducing the need for traffic to divert onto the de-trunked sections during times of incident. Given this objective it is felt that the resultant number of lanes i.e. 10 lanes (including 4 lanes of which will be de-

trunked) in the vicinity of Kelvedon to Marks Tey section, in particular, is over provision and not required.

DCO Process

The Applicant has stated that, assuming the alternative de-trunking proposals put forward by the Council would be associated development linked to the A12 Nationally Significant Infrastructure Project and applied for as part of the overall A12 scheme, that the Applicant would be required to withdraw the current DCO application. They consider that withdrawing the current application and submitting a new scheme could mean a two-year delay to the consenting process.

It is unclear why the Applicant believes that the current DCO application would need to be withdrawn and re-submitted. One approach option could be to provide the changes as part of the DCO process much like the Applicant is currently doing with their targeted consultation. The DCO has not been withdrawn and is continuing through the process with the design and assessment of the changes being made in parallel.

In addition, the Council does not accept that there is no other mechanism to incorporate changes to their de-trunking proposals and that the Applicant is forced to withdraw their DCO application. This was discussed further during Issue Specific Hearing 4 under Agenda Item 3 which can be found here: [New requirement – A scheme for de-trunking](#).

Cost

The Applicant in their technical note **REP4-057** (Table 61, Page 16) identified a high level cost estimate based on a similar design to the Council's alternative proposal, albeit with less green infrastructure, stating that it would cost an additional £5.4 million over and above the original DCO proposal for the de-trunked sections. Based on the Applicants own cost estimates and with an overall scheme cost of £1bn - £1.2bn the provision of the Council's own estimate would only amount to a 0.5% increase in the overall cost of the scheme. It is therefore the view of the Council that this is entirely appropriate and should have been included from the outset given the Council's sustained and consistent view on the de-trunking proposals as presented in the DCO and is also well within normal contingency allowances for projects of this size.

Summary

In summary the Council supports the overall scheme however it cannot support the proposals for de-trunking as they currently stand. The Council has consistently raised concerns with the Applicant's approach to de-trunking (this is demonstrated in [Appendix B](#), which summarises the Council's comments on this aspect of the scheme at various stages in the scheme development). The Applicant's suggestion that the Council has only recently raised concerns is therefore frustrating and incorrect. Work on developing our alternative proposals only commenced in mid-2022, however these proposals have only been developed because the Council considered that the Applicant wasn't giving due regards to our legitimate concerns on this aspect of the project. The fact is the Applicant has known about our concerns on de-trunking for several years and has had ample time to work with us to

address them – the limited time now left before the end of the examination shouldn't be a justification for not progressing appropriate proposals.

The Council's position remains that we will continue to engage in good faith working collaboratively on wording of any further requirements written into the DCO as presented.

Traffic and Transport – Messing and Inworth

Witness: *Billy Parr, Head of Network Development*

The Council note the acknowledgement from NH that they will deliver some of the measures we have proposed for mitigating the impacts of the new junction 24 on the local road network, namely 'village entry' treatments and 'unsuitable for HGV' signs. This is the first time the Council have heard this.

These two measures are from a list of eight measures that the Council stated in our LIR [REP2-055] should be investigated further. These measures were based on our assessment of potential mitigation measures, as detailed in the Inworth, Messing and Tiptree mitigation technical note [REP3-033]. The Applicant has unilaterally decided what the measures should be without engagement with the Council as the local highway authority. As is the case for the B1137, the Council believe speed cameras on Inworth Road amongst other measures are also required.

To reiterate, the Council has three main concerns with the current proposals for junction 24: the design of the new Inworth Road roundabout, the need for additional measures on Inworth Road to accommodate the forecast increase in traffic (42% increase in AM peak to 1,111 vehicles/hour) and the need for measures to reduce the likelihood of traffic routing to/from the junction via inappropriate routes (or rat running).

As the Council indicated in our Deadline 4 submission [REP4-075], with regards to the new roundabout we believe the land constraint issues are driving the design and that Manual for Streets is not the standards that would typically be used for a roundabout of this nature. The Council do understand the desire to minimise the impacts on residential properties (as can be seen north and south of the proposed roundabout in General Arrangement plan sheet 14 of 21 in AS-012), but believe as a direct result additional measures are needed (most effective of which will be speed cameras) to ensure vehicles travel and approach the roundabout at safe speeds.

Therefore, the Council's position remains that the Applicant need to go further in terms of the measures that are implemented to mitigate the impacts of junction 24 as far as possible.

Traffic and Transport – Monitoring and management of wider impact on the local highway network

Witness: *Billy Parr, Head of Network Development*

For the reasons the Council set out at ISH 1 on 28 February and within the Council's LIR [REP2-055], we believe there is a need for the actual traffic and in some cases air quality impacts to be monitored at a number of specific locations across the local highway network.

The Council set out our proposed locations in section 8.2.36 of the LIR. Following recent engagement with Feering Parish Council, we think there is a case for monitoring to be undertaken at an additional two locations. Other stakeholders may have additional suggested locations. The Council note the acknowledgement by the Applicant that they will consider additional monitoring locations where they are 'clearly justified', but what constitutes clear justification needs to be determined and this shouldn't just be up to the discretion of the Applicant.

The Council were expecting further detail from the Applicant at Deadline 4 on their proposed approach to monitoring, as indicated in their response to our LIR [REP3-021]. The Council understand the Applicant have not been able to provide this but are intending to discuss this with us at an upcoming meeting. The Council will continue engagement on this, and we do consider that a requirement like Requirement 17 of the A14 DCO could cover a lot of what we believe is necessary.

The Council note the Applicant's resistance to a Requirement involving working with the Council to investigate and, if necessary, implementing suitable mitigation should monitoring indicates an adverse effect, on the basis that it will be difficult to determine that a change in conditions is a direct result of the scheme. However, Requirement 17 of the A14 includes this, at (2)(ix) – a mechanism for the future agreement of mitigation measures – and the Council would like to agree such a mechanism for this scheme. This was discussed further during ISH4 during agenda item 3 - [New requirement – Monitoring and managing wider impacts on the local highway network](#)

Traffic and Transport – Hinds Bridge widening

Witness: *Billy Parr, Head of Network Development*

The Council's position remains as set out in our Deadline 4 submission [REP4-075], namely that the bridge should be widened so that it can accommodate two large vehicles passing in opposite directions as it is an existing pinch point.

By 2042 there is predicted to be an increase in peak hour traffic (circa 80 vehicles in the AM peak hour, a 9% increase) and incidents are most likely to occur at these busier times. NH has said that it expects the proportion of heavy/wide vehicles to decrease, though we haven't seen the detail of this and would welcome it.

The load-bearing capacity of the bridge is not a concern; it underwent strengthening works in summer 2018 and it doesn't have a weight restriction. The closure of the bridge to undertake these works resulted in significant disruption to the local road network and we are concerned that the new junction 24 arrangement would result in greater disruption overall when works are required at the bridge in future (noting also that widening of the bridge could enable single lane working to minimise disruption).

We would also like to draw attention to our request for the Grade II Appleford Bridge to be widened (8.3.54 to 8.3.56 of our LIR [REP2-055]). This bridge is on Braxted Road, a parallel route to Inworth Road for trips between Tiptree and the A12. It is narrower than Hinds Bridge and has there is less visibility on the approaches, so it is subject to a high number of bridge strikes. While NH forecasts do not suggest a material change in traffic flows on Braxted Road, we have noted in previous submissions our concerns with the modelling of this part of the network and believe there is justification for the widening of this bridge also.

Land Use

Witness: Shirley Anglin, Public Right of Way (PRoW) Officer

At ISH 3, NH made reference to conversations with landowners regarding location, width and boundary features of the PROW around the severances of FP 93 Witham, Gershwin's Boulevard Bridge, and Footpath 103 Witham, Colemans Cottages Fisheries. This has given rise to a conversation between the Council's PROW Team and the Applicant outside of the inquiry and we would like to draw your attention to the following points in addition to our submission at deadline 4:

Footpath 95 Witham, Gershwin Bridge:

The Council have no objection to the proposed bridge staying as per original proposal and built in compliance with LTN1:20.

However, NH design is a structure built to facilitate cyclists and connects not to the footpath but to highway off Gershwin's Boulevard north of the A12. A connection to Howbridge Hall Road would be of significant benefit to the public wanting to access cycle routes out of Witham for leisure to the south as well as addressing the severance for walkers using the southern section of Footpath 95 Witham. The Council would welcome this cycle connection.

Footpath 103 Witham, Colemans Cottages:

The Council has been made aware of mitigation discussed with the landowners in respect of providing security and space to the fisheries business that will result in what is likely to be a semi-enclosed corridor footpath with high fencing on one side and a 5m revetment on the other. This is not the optimum design for a public footpath created through development and not in line with the Council's guidelines for developers.

Considering these details around the design for the footpath, the Council object to the proposed alignment as it is presented in the supporting documents for the DCO. The Council's preferred option is now to have a connecting footpath south along the A12 to join Footpath 101 Witham within the Whetmead nature reserve.

The Council and the Applicant are to attend a site visit to look in detail at the options at both sites on Monday 13th May.

Any other matters

Witness: Michael Humphries KC (MHKC), Counsel for Essex County Council (the Council)

MHKC identified three other matters that the Council wishes to seek discussed at future ISHs, if not agreed beforehand.

1. As per our REP4-075 submission we are continuing to discuss the proposed speed limit changes with the Applicant, however, concerns remain regarding their current approach. This is also impacting our discussions with the Applicant's concurrent Stage 5 detailed design, as the outcome will impact design standards.
2. Construction Impacts at per paragraphs 8.2.38 to 8.2.40 of the Council's LIR [**REP2-055**]. The first traffic management forum took place on 25 April 2023 and would welcome if construction impacts is examined in future hearings.
3. Ongoing discussions between the Council and the Applicant have led to potential improvements being proposed by the Applicant for the WCH bridges across the A12. These are summarised in a Letter of Intent sent to the Council on 24 April 2023, We are keen to review these proposals in detail. However, the Applicant has still not provided evidence to confirm that they can, or will, improve the cycle facilities in a number of key locations, to accord with the Govts LTN 1/20 guidelines. In particular, the Council have still not been provided with:
 - Plans to demonstrate that WCH crossing facilities can be designed to accord with LTN1/20 at 7 key junctions
 - Traffic Modelling to demonstrate the impact of providing the above and a commitment to including them in the A12 scheme
 - Confirmation of proposed WCH overbridge widths or ramp gradients.

2. Issue Specific Hearing 4

Counsel for Essex County Council (the Council), Michael Humphries KC (MHKC) made the following points at the examination hearing on 27 April 2023 on the draft DCO:

Agenda Item 2: Articles and Schedules of the dDCO

Article 14 (Construction and maintenance of new, altered or diverted streets and other structures)

MHKC referred to the Council's summary of its oral submissions at ISH2 on 1 February 2023 (**REP3-035**).

MHKC again explained that this articles imposes very significant new burdens on the Council, a the local highway authority, to maintain at its own expense the new, altered and de-trunked roads and other structures (other than trunk roads) within the DCO. This is particularly so, bearing in mind that some of the assets may not be in good condition. Importantly, Article 14(5) requires the Council to maintain at its own expense those sections of the A12 that are to be de-trunked.

Unless National Highways is prepared to agree to implement a scheme for de-trunking that broadly accords with the Council's proposals set out in **REP3-081**, the Council sees no reason why it should be required to take on the financial liability for the continued maintenance of the de-trunked sections of the A12 and is not currently minded to accept such a substantial liability under art.14.

This liability would only be acceptable to the Council if (a) any de-trunking can only happen with the consent of the Secretary of State in consultation with the Council (see comments on art.15 below), and (b) there is a requirement for a de-trunking scheme that retains one carriageway for two-way traffic and converts the other carriageway for WCH purposes (see comments on new de-trunking requirement below).

Article 15 (Classification of roads etc)

At ISH2 MHKC had pointed out that art.15(5) refers to the 'local planning authority', whereas it should more appropriately refer to the 'local highway authority'. This has now been corrected.

During ISH 3 on traffic and transport, MHKC referred to paragraph 4.1.4 of the National Highways Technical note on De-Trunking Proposals (**REP4-057**) which says that, as far as National highways is aware, the A14 Cambridge to Huntingdon Improvement DCO is the only improvement scheme which bypasses dual carriageways and that this did not involve substantial physical alterations to the bypassed routes. MHKC explained that he was not making a point about the extent of physical alterations for the A14 project, but about the mechanisms that the ExA and Secretary of State introduced to address Cambridgeshire CC's concerns relating to de-trunking.

MHKC pointed to:

- The A14 National Highways Updated position statement on de-trunking, traffic monitoring and mitigation (**REP15-033** of the A14 examination);
- The A14 ExA Report (11 February 2016) at paras 8.2.29-8.2.33, 8.4.82, and 8.10.1-8.10.5;
- The Secretary of State's decision letter (11 May 2016) at para 75; and
- The A14 DCO at art.12(5) and requirement 17.

During ISC 4 on DCO drafting, MHKC explained that in the A14 DCO the Secretary of State had introduced a new art.12(5) in the following terms

“(5) The undertaker may only make a determination for the purposes of paragraph (4) with the consent of the Secretary of State, who must consult the local highway authority before deciding whether to give that consent.”

This provision requires the Secretary of State, in consultation with the relevant highway authority, to give consent before National Highways may ‘determine’ under art.12(4) that certain roads may be de-trunked.

MHKC suggested that such a provision would be appropriate in the current A12 DCO and would become art.15(7). The new provision in art.15 should be:

“(7) The undertaker may only make a determination for the purposes of paragraph (6) with the consent of the Secretary of State, who must consult the local highway authority before deciding whether to give that consent.”

The Council asks that the ExA recommends to the Secretary of State that this provision be inserted into the DCO.

Article 16 (Speed limits)

As MHKC pointed out at ISH2, Article 16(1) makes provision for the imposition of various speed limits as set out in Part 6 of Schedule 3. MHKC made clear that the Council does not agree with all of the speed limits proposed in that Part on its local roads. At ISH1 Mr Parr, on behalf of the Council, had explained that the local highway authority has raised this previously with National highways, but to no avail. At **REP3-035** Appendix C the Council has set out an appendix with comments on its views concerning National Highways proposed speed limit. The Council will continue to discuss these concerns, but it is important that this issue is brought to a head so that any amended speed limits may be reflected in Schedule 3.

It is clearly important that speed limits are not imposed on local roads that the responsible local highway authority does not agree with. MHKC also, again, mentioned the relationship between this article and art.23 that was discussed later.

Article 18 (Street works)

Again, as explained at ISH2, this article gives National Highways significant powers to carry out works to any streets within the Order Limits. Those works include the breaking up of streets, tunnelling under streets and the placing of apparatus in streets, but the nature and location of any such proposed works is not identified in the dDCO.

MHKC suggested that where such works are proposed (other than on trunk roads), the relevant street authority should have a power of prior approval. At ISH2, MHKC referred to a similar provision in the Silvertown Tunnel DCO where art.6(3) provides that:

“(3) TfL must not carry out works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.”

This should be adapted for the A12 DCO as follows and inserted in art.18:

“(3) The undertaker must not carry out works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.”

The Council asks that the ExA recommend that the Secretary of State impose this provision on the A12 DCO.

National Highways seeks to resist the insertion of this provision on the basis that it is not precedented in any of National Highways previous DCOs. That is not an adequate answer and it is clear from the Secretary of State’s decision on the Silvertown Tunnel DCO that he does regard this as a proper protection for local highway authorities.

Article 20 (Permanent stopping up and restriction of use of streets and private means of access)

MHKC explained that the Council’s PROW unit is continuing to discuss PROW with National Highways. See the Council’s Deadline 5 ISH3 summary of representations on Land Use above

Article 23 (Traffic Regulation)

As MHKC explained at ISH2 (see summary in **REP3-035**), this article gives National Highways power to make various traffic regulations on roads in respect of which it is not the traffic authority; in other words, the county highway network.

As is clear from the quotations from the Explanatory Memorandum on this provision in **REP3-035**, the purpose of the provision is, in part, to allow National Highways to align the speed limits on roads outside the Order Limits (i.e. the Council’s roads) with those within the Order Limits. As MHKC explained, this is another reason why it is so important that the speed limits to be imposed under art.16 should be agreed with the Council, which they are not.

In their current forms articles 16 and 23 are, therefore, unsatisfactory and will require amendment. This may, however, be resolved by National Highways agreeing to amend some of the proposed speed limits in Schedule 3. As the moment, therefore, the Council has not proposed alternative wording for arts.16 and 23.

Article 24 (Discharge of water)

This article relates to the discharge of water into watercourses, public sewers or drains. Some of these will be the Council facilities. Article 24(3) provides that the undertaker may not discharge into such watercourses etc without the consent of the person to whom it belongs with consent not to be unreasonably withheld. Article 24(4)(b) again requires consent of the person to which any a public sewer or drain if the undertaker wishes to make any opening into such a public sewer or drain.

Article 24(6) provides that if the person who receives any such application for consent under paragraph (3) or (4)(b) has not notified the undertaker of its decision within 28 days of receiving and application consent is deemed to have been granted.

As the Council's watercourses, sewers and drains are public infrastructure serving the wider community this 28 day period is inadequate to determine whether water discharged from the new A12 improvements may properly discharge into existing watercourses etc. The Council has suggested that 56 days is a more appropriate period and asks to ExA to so recommend to the Secretary of State. This extended period will not delay construction etc if National Highways makes its discharge application sufficiently early which, as its engineers and contractors will be designing the scheme, should be perfectly possible.

Article 60 (Certified Documents)

MHKC again pointed out that it may be necessary to have additional 'certified documents' in Schedule 12 and that these may include:

- Any scheme for de-trunking sections of the A12, or at least the principles against which any scheme for future approval would have to be considered; and
- A plan for the monitoring and management of wider impacts on the local highway network.

Agenda Item 3: Schedule 2 of the dDCO – Requirements

Requirement 1 (Interpretation) and Requirement 2 (time limits)

At ISH2, as summarised in **REP3-035**, MHKC made extensive submissions about the interrelationship of the requirement 1 definition of 'commence' and the original dDCO time limit which related to the term 'begin'. **REP3-035** suggested alternative drafting that would resolve a potential issue highlighted by the Swansea Bay Tidal Lagoon decision in the Court of Appeal.

In the rev3 version of the dDCO the term ‘begin’ in requirement 2 was changed to ‘commence’, but this still leaves some legal uncertainty that should be cleared up. At ISH4, Reuben Taylor KC said that National Highways would look again at this issue, which is clearly capable of resolution.

Requirement 10 (Detailed design)

MHKC said that the Council has a number of concerns about the detailed design of the new and amended highways in the dDCO. The Council’s witnesses explained a number of these points in ISH1 on 28 February 2023 and they are also set out in sections 8.2 and 8.3 of its Local Impact Report (**REP2-055**).

The Applicant is clearly sympathetic to a number of these points and, indeed, has sent the Council a ‘Letter of Intent’ relating to some of its concerns.

In addition, however, MHKC explained at ISH2 (see **REP3-035**) that it is appropriate that the Council should have the power to approve the detailed design of highways for which it will be the local highway authority. This is not currently reflected in requirement 10.

Furthermore, requirement 10 currently states that the detailed design ‘must’ accord with the ‘preliminary scheme design’ shown on the works plans (**APP-005/9**) and the principles in the ‘environmental masterplan’ (**APP-086/8**) and this would appear to preclude later refinements to reflect the Council’s points. Whilst the detailed design may depart from the design those documents where ‘agreed in writing’ by the Secretary of State, only the Applicant (not the Council) may seek such agreement. Thus the Applicant would have the ability to prevent any mitigation that was not in the ‘preliminary scheme design’ shown on the works plans and the principles in the ‘environmental masterplan’ by simply not applying to depart from those documents.

Requirement 10 needs to be amended to reflect these concerns and the Applicant has proposed that the words “Subject to the other requirement in this Schedule,” be inserted at the start of requirement 10(1). That appears to be a neat solution to the departure from design documents issue and the Council asks that these words are inserted into requirement 10(1).

New requirement – A scheme for de-trunking

As explained by the Council at ISH1, the Council has considerable concerns about National Highways proposals for the de-trunked sections on the A12 and the Council has produced its own proposals for de-trunking, as can be seen in **REP3-081**. At ISH3 Mr Perry explained further the Council’s concerns about the Applicant’s de-trunking proposals and responded to the Applicant’s deadline 4 response (**REP4-057**); see the Council’s ISH3 summary above

In **REP3-035** MHKC proposed a new requirement along the following lines:

“[XX]. (1) No part of the authorised development is to open for public use until a written scheme for the de-trunking of the sections of the A12 between [LOCATION 1] and [LOCATION

2] and also between [LOCATION 3] and [LOCATION 4] has been submitted to and approved by the local highways authority.

(2) The said de-trunking scheme must include:

(a) [CRITERION A]

(b) [ETC]

(3) The undertaker shall implement the approved de-trunking scheme at its own expense within [XX] months of the first opening of the authorised development for public use.”

A de-trunking scheme requirement did not appear in rev3 or rev4 of the dDCO. At ISH4 National highways indicated that it was prepared to discuss the wording of such a requirement with ECC. ECC is happy to discuss appropriate wording and did not, therefore, put forward text during ISH 4 (or this summary of oral submissions), subject to the following.

MHKC makes two points in relation to the wording of such a requirement:

1. It is important to emphasise that ECC seeks a scheme that, broadly, reflects the preferred scheme in its de-trunking technical note (**REP3-081**); that is, any such scheme should provide for one carriageway for two-way traffic and convert the other carriageway for WCH purposes; and
2. The scheme under the requirement should be approved by ECC.

If it is said that the such scheme should not to be approved by ECC, but (say) by the Secretary of State, then that simply reinforces the need to the requirement to be explicit about what the scheme should seek to achieve.

At section 3.1 of its de-trunking proposals technical note (**REP3-081**) ECC explained its concerns about National Highways proposed de-trunking proposals. These included, as well as its concerns about speed limits, anti-social behaviour and safety, that it does not regard the additional maintenance burden on ECC to be acceptable ('Concern 4'). It is not acceptable that National Highways can create a substantial additional maintenance burden on ECC by handing over a de-trunked dual carriageway with a capacity that is way beyond that required for a local road. This relates back to the ECC's comments on articles 14/15 above.

It is clear that National Highways does have power within the DCO as drafted to undertake the works that ECC seeks as part of its de-trunking proposals. As MHKC pointed out during ISH 4, the 'Other Associated Development' in Rev4 to the dDCO (**REP4-009** p.88) includes powers to carry out a wider range of relevant works (see paras (a), (f), (g), (h), (q), (s) and (t)). Furthermore, ECC has additional powers to undertake works pursuant to the Highways Act 1980.

National Highways has expressed concerns about the environmental effects of any such de-trunking works, but these would be modest and there is no reason to conclude that there would be materially new or materially different environmental effects. This can be seen from section 5 of the ECC de-trunking proposals Technical Note (**REP3-081**)

The Council has set out a number of reasons why there should be a more appropriate de-trunking scheme for the bypassed sections of the A12 dual carriageway. The justification for such a scheme relate to speed, safety and sustainability issues, but also to the burden of maintaining an unnecessary dual carriageway that will otherwise fall on ECC. ECC has long urged National Highways to promote more appropriate de-trunking proposals, without success.

It should not be the case that National Highways failure to bring forward its own appropriate de-trunking scheme is now used as justification for not doing anything. The Council has engaged in good faith on this issue and seeks the ExA's support for a more appropriate solution to be delivered through a requirement.

The Council will continue to engage in good faith, including on the wording of any such requirement.

New requirement – Monitoring and managing wider impacts on the local highway network

At ISH1 on 28 February 2023 ECC's witnesses explained their concerns about modelling uncertainty and the impacts of the proposed project on the wider highway network for which it is responsible.

During ISH 2, MHKC mentioned requirements in the A428 Black Cat DCO and the draft Lower Thames Crossing DCO; both National Highways projects. These provisions were reproduced in **REP3-035**.

During ISH 3 and ISH 4 MHKC introduced a further example of such wording that had arisen on the A14 DCO in the context of de-trunked sections of dual carriageway (see the references above to the A14 ExA Report and Secretary of State's decision letter). The wording in requirement 17 of the A14 DCO is as follows:

“(1) No part of the authorised development is to commence until written details of a traffic impact monitoring and mitigation scheme has been submitted to and approved in writing by the highway authority.

(2) The traffic impact monitoring and mitigation scheme must include—

- (i) a before and after survey to assess the changes in traffic;*
 - (ii) the locations to be monitored and the methodology to be used to collect the required data;*
 - (iii) the periods over which traffic is to be monitored;*
 - (iv) the method of assessment of traffic data;*
 - (v) control sites to monitor background growth;*
 - (vi) the implementation of monitoring no less than 3 months before the implementation of traffic management on the existing [A14];*
 - (vii) agreement of baseline traffic levels;*
 - (viii) the submission of survey data and interpretative report to the highway authority;*
- and*

(ix) a mechanism for the future agreement of mitigation measures.

(3) The scheme approved under sub-paragraph (1) must be implemented by the undertaker.”

Requirement 17 does refer to mechanisms for the future agreement of mitigation measures. This is clearly an advance on the A428 Black Cat DCO and draft Lower Thames Crossing DCO provisions in **REP3-035** and it clearly more appropriate. If monitoring reveals that the traffic effects of the A12 improvements on the wider highway network are not as forecast by National Highways’ traffic modelling, it is clearly appropriate that National Highways should carry out appropriate mitigation at its own expense.

ECC will discuss such a provision with National Highways and seek to agree appropriate wording.

New requirement – village specific mitigation

During ISH 3 ECC continued to press for additional village specific mitigation, including average speed cameras on Main Road, Boreham. These points are set out in ECC’s summary of its ISH 3 oral submissions.

Shortly before ISH 3 National Highways sent ECC a letter dated 24 April 2023 and headed “*LETTER OF INTENT – A12 Chelmsford to A120 proposed scheme: Main Road, junction 21 and, walking cycling and horse-riding (WCH) overbridges*”. This letter was not available to the ExA during ISH 3, but was then send to the ExA.

The Letter of Intent proposes various additional mitigation measures in and around local villages. Whilst ECC welcomes these measures, it considers that they do not go far enough; as was discussed during ISH 3.

During ISH 4, MHKC made the point that, in any event, these and any other mitigation measures will need to be secured through the DCO requirement.

These matters are to be discussed between the parties with the objective of agreeing as much as possible and then presenting the ExA with alternative text on anything now agreed.

Any other matters

ECC proposes the following suggested text for discussion with National Highways.

The issues are, briefly:

1. The need for a Detailed Local Operating Agreement (DLOA) prior to the start of works, which defines roles and responsibilities for management of the local highway network during construction

Suggested wording taken from A303 Sparkford to Ilchester Dualling Development DCO Schedule 8 (Protective provisions) Part 4 for the protection of the local highway authority regarding vehicular highways at para 32 is as follows:

“(1) Before commencing the construction of, or the carrying out of any work authorised by this Order which involves interference with a local highway (including interference with the use by the public of a local highway and temporary or permanent stopping up of any part of a local highway), the undertaker must use reasonable endeavours to agree with the local highway authority a Detailed Local Operating Agreement covering the following—

- (a) communications and customer care: communication with stakeholders and identification of which party is responsible for each activity;*
- (b) operational areas – scheme operational areas: definitions and scheme extents for the works areas, zone of influence and Free Recovery Area; 94*
- (c) asset handover: describing the scheme existing assets and activities to be undertaken to enable commencement and completion of Works, and the party responsible for each;*
- (d) asset inspection;*
- (e) routine maintenance and repair;*
- (f) winter maintenance and severe weather;*
- (g) continuity of technology;*
- (h) occupancy management;*
- (i) incidents;*
- (j) traffic management: provides the key activities to be undertaken with regard to the design, installation, maintenance and removal of Traffic Management; and*
- (k) claims made by and against the undertaker.*

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the Works or the removal of the undertaker from all local highways, whichever is the earlier.

(3) Where agreement cannot be reached under sub-paragraph (1), the terms of the detailed local operating agreement will be resolved by arbitration under article 45 (arbitration).

2. Pre- and post-construction surveys of local diversion routes during construction to allow a proper assessment on impacts on diversion routes

Suggested wording taken from A303 Sparkford to Ilchester Dualling Development DCO Schedule 8 (Protective provisions) Part 4 for the protection of the local highway authority regarding vehicular highways at para 33 is as follows:

- (1) Before commencing the construction of, or the carrying out of any Works the undertaker must provide to the local highway authority the Design Detailing and the Other Detailed Information relating to those Works.*
- (2) The undertaker must not commence construction of, or the carrying out of the Works in question until approval has been given by the local highway authority to the Other*

Detailed Information or the Other Detailed Information has otherwise been agreed in writing between the undertaker and the local highway authority.

- (3) The Works must not be constructed except in accordance with the Other Detailed Information as may be approved or agreed in accordance with sub-paragraph (2). (4) If within 28 days after the Other Detailed Information has been submitted the local highway authority has not approved or disapproved it or it has not been otherwise agreed, the local highway authority is deemed to have approved it as submitted.*

And from the definitions in para 30:

“Other Detailed Information” relating to any Works, means—

- (a) a schedule of timings for the Works, including dates and durations of any closures of any part of a local highway;*
- (b) traffic management proposals, including any diversionary routes and any Detailed Local Operating Agreement;*
- (c) a schedule of condition of the affected local highway within the Order limits; and*
- (d) where the local highway is occupied under this Order in connection with the Works but Works are not undertaken on, to or under the local highway, a specification of the condition in which the local highway will be returned after the occupation has finished;*

3. Power for ECC to inspect works that affect its local highway network during construction.

Suggested wording taken from A303 Sparkford to Ilchester Dualling Development DCO Schedule 8 (Protective provisions) Part 4 for the protection of the local highway authority regarding vehicular highways at para 35 is as follows:

(1) Any officer of the local highway authority duly appointed for the purpose may at all reasonable times, subject to any necessary and reasonable health and safety restrictions imposed by the undertaker, enter upon and inspect any part of the authorised development which—

- (a) is in, over, under or adjacent to any local highway, or*
- (b) may affect any local highway or any property of the local highway authority, during the carrying out of the Works, and the undertaker must give to such officer all reasonable facilities for such inspection.*

(2) The testing of materials used in any Works affecting local highways must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works). The local highway authority must receive copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable. Notwithstanding the foregoing, the local highway authority has full power to test all or any materials used or proposed to be used in any work to the local highway at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

(3) The undertaker must not alter, disturb or in any way interfere with any property of the local highway authority on or under any local highway, or the access thereto (except to the extent authorised under the powers conferred by this Order), without the prior written consent of the local highway authority.

Appendix A – Essex County Council response to REP4-057

Key Points Raised in the Applicant’s Technical Note on De-Trunking Proposals		The Council’s Response
1	<p>The Scheme Assessed</p> <p>The Applicant has assessed Essex County Council's request to convert the existing southbound carriageway of the de-trunked section of the A12 to a single carriageway and redesign the northbound carriageway as an active travel corridor.</p>	<p>In its Technical Note (REP4-057), the Applicant has presented a version of the alternative de-trunking proposals put forward by Essex County Council (known as the Council here on). The scheme assessed by the Applicant has many similarities, in principle, but is not the actual scheme outlined in the Council’s Technical Note (REP3-081 and REP3-082). As such, many of the technical issues raised by the Applicant in REP4-057 have already been considered and addressed in REP3-081 and REP3-082.</p> <p>Furthermore, the scheme described in the bulk of the Applicant’s Technical Note undersells the active travel provisions, landscaping enhancements and biodiversity net gain, whilst completely excluding the equestrian provision and sustainable drainage systems actually proposed by the Council in their alternative proposals.</p>
2	<p>Traffic and Safety</p> <p>The dual carriageway proposed to be retained (in the DCO scheme) provides a higher inherent safety level compared to a single carriageway as it separates opposing traffic flows and removes right-turns at accesses. The addition of appropriately sized roundabouts also provides safer turning manoeuvres and a measure of speed reduction effect. On this basis, the sections of the de-trunked A12 are considered to be safe</p>	<p>It is not agreed that the DCO proposals for the de-trunked sections is inherently safer than the Council’s alternative proposals.</p> <p>Forecast future traffic flows simply do not warrant dual carriageway provision. While it is proposed to introduce new lower speed limits on these sections, the Council and Essex Police strongly believe that retaining them in their current form would result in speed limit exceedances, anti-social driver behaviour and an increased risk of road traffic collisions, as has been seen elsewhere including at Copdock after this stretch of the A12 was de-trunked in the 1980s. Retention of the dual carriageways would also place an unnecessary, significant ongoing maintenance burden on the council. For the Council to commit to maintaining such as asset would mean resources are diverted from the maintenance of other assets.</p>

	and serviceable in operational safety terms, and conversion to a single carriageway is not necessary for road safety reasons.	Enabling right-in, right-out access to properties would introduce the potential for conflict with vehicles from two directions, rather than one. However, the significant reduction in traffic on the mainline carriageway and the greater likelihood of adherence to the speed limit with a single carriageway in place, would reduce the likelihood of collisions compared with the current situation.
3	<p>Cost Estimate</p> <p>This assessment included undertaking a high-level design and cost estimate of the alternative proposal to understand the implications on the design submitted in the DCO Application. the Applicant undertook a design exercise to allow for an initial estimate of costs. The cost estimate indicated that the requested alternative proposal for the de-trunked sections of the A12 would cost significantly more than the proposed design in the DCO Application.</p>	<p>The additional cost indicated by the Applicant is likely to be less than 0.5% of the overall DCO scheme cost (based on a published figure of between £1bn-£1.2bn).</p> <p>The Council maintains that this cost should have been included in the overall budget for the DCO, as the Applicant’s current plans to retain dual carriageways in these locations do not align with Essex County Council’s placemaking agenda or wider Government policies, including the emerging updated National Policy Statement for National Networks (NPSNN) which places significantly greater emphasis on sustainability, net zero and improved environmental outcomes.</p>
4	<p>DCO Process and Potential Delay</p> <p>ECC's proposal would require the withdrawal and resubmission of the current application for development consent. This would be expected to delay the delivery of the proposed scheme by approximately two years. The additional costs due to increased works and caused by the ensuing delay are disproportionate to the benefits expected to be realised from the enhancements</p>	<p>It is unclear why the Applicant believes that the current DCO application would need to be withdrawn and re-submitted. One approach option could be to provide the changes as part of the DCO process much like the Applicant is currently doing with their targeted consultation. The DCO has not been withdrawn and is continuing through the process with the design and assessment of the changes being made in parallel.</p> <p>In addition, the Council does not accept that there is no other mechanism to incorporate changes to their de-trunking proposals and that the Applicant is forced to withdraw their DCO application. This was discussed further during Issue Specific Hearing 4 under Agenda Item 3.</p>

5	<p>Walking, Cycling and Horse Riding Facilities</p> <p>Considerable improvements to walking, cycling and horse riding facilities have already been included in the proposed scheme, including in Rivenhall End, Feering and Marks Tey. These improvements, in combination with the design for the de-trunked sections of the A12 presented in the DCO Application and the wider considerations for the well-being of road users and communities affected by the proposed scheme, means the Applicant's scheme before the Examination already accords with the NNNPS, specifically paragraph 5.205. The existing non-motorised provision adjacent to the A12 will benefit from the reassignment of strategic traffic, in particular Heavy Goods Vehicle movements, to the new alignment of the A12.</p>	<p>Although the Applicant has proposed a number of new WCH overbridges and walking/cycling facilities in the DCO scheme between Witham and Kelvedon and Feering and Marks Tey, many of these do not accord with the DfT's LTN1/20 guidelines. In addition, the existing shared-use walking/cycling provision between Feering and Marks Tey does not accord with LTN1/20 guidelines and there are no proposals within the DCO to amend this situation.</p> <p>In line with local and national priorities, the Council's alternative proposals would encourage sustainable travel, provide green infrastructure to help offset the carbon impacts of this and other schemes, and offer considerable placemaking, biodiversity, and wider environmental benefits.</p> <p>The landscaped setting for the active travel routes would be significantly different in the Council's proposals compared to the roadside routes proposed by the Applicant, thus encouraging the leisure user rather than just the commuter. In addition, the setting for those properties to the north of the A12 would also be improved with additional screening provided by the vegetation.</p> <p>The proposals at Rivenhall End do far more than provide an additional pedestrian connection across the A12. The Council's alternative proposals seek to take a unique opportunity to visually and physically link both sides of the Rivenhall End community and create a focal point where once only a busy highway existed and could be transformative to the community.</p> <p>The Biodiversity Net Gain (BGN) associated with the proposals, which becomes an obligatory planning consideration in November this year, would be significant and targets the Applicant's own grassland and woodland BNG targets (3.5ha of verges, native species rich grassland, scrub and woodland and Individual specimen trees, equating to approximately 27 BNG units).</p> <p>These soft landscape elements would reduce the Council's ongoing maintenance liabilities.</p>
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<p>6</p>	<p>Severance</p> <p>The enhancements suggest by ECC are not considered to represent a reasonable opportunity to address existing severance issues that act as a barrier to non-motorised user to include in the DCO Application.</p>	<p>The alternative proposals by the Council directly address severance issues east-west by reducing the number of junctions to cross. Furthermore, by positioning the active travel corridor set back from the retained carriageway, the accesses have been redesigning to afford priority to these modes and enhance the experience of users.</p> <p>The alternative proposals would also reduce north-south severance, by replacing the currently proposed crossing of four lanes via a central refuge to a single stage crossing of just two lanes.</p> <p>LTN 1/20 states ‘Cycle infrastructure should be accessible to everyone from 8 to 80 and beyond: it should be planned and designed for everyone’, the Applicant’s proposed provision of sub-standard facilities directly adjacent to a dual carriageway does not meet LTN 1/20 design standards, and conversely in the Council’s view, would act as a barrier to active travel use.</p>
<p>7</p>	<p>Property Accesses</p> <p>Works would be required to connect existing accesses and the local road to meet the new vehicular route on a southbound single carriageway. These works would include the construction of new at grade priority junctions to allow for acceptable vehicle swept paths in and out of the property accesses.</p> <p>At the property accesses, DMRB CD123 Geometric design of at-grade priority and signal-controlled junctions, Chapter 4, provides guidance on the appropriate gradient for a direct access onto roads of this nature. The gradient of the access approach</p>	<p>Typical and modest private access arrangements would be more appropriate than priority junctions for the vast majority of accesses along the sections of de-trunked A12. The Council agrees that works will be required to redesign these accesses, but in doing so this will significantly benefit the convenience in accessing residential properties and businesses by permitting right-in, right-out manoeuvres.</p> <p>The Council accepts that accesses will require negative gradients to tie in with the retained southern carriageway. However, as the road would be a de-trunked local road, the design criteria quoted within DMRB CD 123 with regard to access gradients is not mandatory. The Council as the Highway Authority would be in a position to permit steeper gradients, subject to internal review, to facilitate the required tie ins. Furthermore, the residential properties and businesses are typically set back from the northern carriageway. With agreement from property owners, sections of driveways or access roads could be reprofiled as accommodation works to lessen the gradients.</p>

	<p>should not exceed 2% immediately adjacent to the road and should not exceed 4% over a distance of 10 metres.</p>	
<p>8</p>	<p>Policy</p> <p>ECC's alternative proposals are not justified in policy terms and present significant and unnecessary costs as well as disruption to frontage owners.</p>	<p>The Council is firmly of the view that improvements to the DCO proposal are necessary, because the de-trunked sections does not align with the County Council's placemaking agenda, or its policies and strategies that place an emphasis on enhancing place and quality of resident's lives (such as Everyone's Essex Corporate strategy, the Essex Green Infrastructure Strategy and the existing and emerging Local Transport Plan).</p> <p>The current DCO proposals do not align with National Highways own Sustainable Development Strategy (2017) or conform to several the key principles set out in The Road to Good Design (Highways England, 2018) or National Highways' Strategic Design Panel 2 Progress Report (2018).</p> <p>The DCO scheme in its current form does not:</p> <ul style="list-style-type: none"> • Reduce barriers to access and participation • Fit in with the context and aesthetic in relation to where it passes • Enhance a sense of place • Make an important contribution to the conservation and enhancement of the natural and built environment <p>The DCO proposals for the de-trunked sections of the A12 do not align with wider Government Policy, including the emerging updated National Policy Statement for National Networks (NPSNN) which places significantly greater emphasis on sustainability, net zero principles and improved environmental outcomes. In addition, they do not accord with the latest LTN1/20 guidelines, an important feature and requirement for other parts of the DCO application. Finally, the proposals under the current DCO add significantly to the Council's burden on maintenance programmes for the local highway network.</p>

		<p>The alternative proposals put forward by the Council represent a much closer alignment to all relevant policies and strategies than those put forward in the DCO scheme. They are entirely justified in policy terms.</p> <p>The Council acknowledges that there will be increased short-term impact to frontages due to the requirement to redesign their accesses. However, once complete, all accesses would then permit right-in and right-out manoeuvres. This will improve the convenience, journey times and the experience of road users accessing residential properties and businesses alike long-term, and could in the latter case, lead to increased patronage over the Applicant's proposals.</p>
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Appendix B – De-trunking timeline

The figure below summarises the Council’s comments to the Applicant on de-trunking since 2017.




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