

A12 Chelmsford to A120 widening scheme

TR010060

9.55 Written submission of oral case for Compulsory Acquisition Hearing 2

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A12 Chelmsford to A120 widening scheme
Development Consent Order 202[]

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1 Applicant's responses to Representations made at Compulsory Acquisition Hearing 2 (CAH2) held on Thursday 27 April 2023 at 14:00

1.1. Introduction

- 1.1.1 CAH2 for the A12 Chelmsford to A120 Widening Scheme (**DCO**) application was held virtually on Microsoft Teams and in person at First Floor, Kingsland Church, 86, London Road, Lexden, Colchester, CO3 9DW on Wednesday 26 April 2023, commencing at 14:00.
- 1.1.2 The Examining Authority (**ExA**) invited the Applicant to respond to matters raised at the Hearing but also in writing following CAH2.
- 1.1.3 This document summarises the responses made at CAH2 by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.1.4 The Applicant has responded to the topics raised by each of the attending parties in the sequence that the ExA invited them to speak and provides cross-references to the relevant application or examination documents in the text below.
- 1.1.5 Where it assists the Applicant's responses, the Applicant has appended additional documentation to this response document.

1.2. Post-hearing submissions in response to matters raised at CAH2

Ref:	Comment/Representation by:	Questions/Issues Raised at the CAH2	Applicant's Response
1.		Welcome, introductions, arrangements for Hearing	
2.		The ExA detailed the formal purpose of this hearing.	
3.		Applicant's update on the CA Schedule	
3.1		<p>Applicant's update on the CA schedule</p> <p>The ExA asked the applicant to provide an update on the 54 Objections to which there are on-going negotiations.</p>	<p>The Compulsory Acquisition Schedule has been updated since deadline 4 and the updated CA schedule will be provided by deadline 5 [Applicant Reference TR010060/EXAM/9.8 Status of negotiations CA schedule revision 3]. Offers have been made in the majority of the 54 cases where objections have been made and where there are ongoing negotiations. Responses are awaited in most of these cases. Some cases have been provisionally agreed and there has been progress in those cases where land is required for borrow pits. Heads of Terms have been issued in respect of borrow pit leases and meetings have been invited to discuss in more detail. Initial discussions with the Buntings agents have been positive and the Applicant is hopeful that agreement can be reached on this issue.</p> <p>Of the 54 acquisition cases:</p>

Ref:	Comment/ Representation by:	Questions/Issues Raised at the CAH2	Applicant's Response
			<ul style="list-style-type: none"> • 34 - Offers made and awaiting response. • 12 - In discussions but agreement subject to detailed design issues. • 6 - No response received to progress acquisition by agreement negotiations • 2 - Response now received and meetings arranged. <p>19 blight/discretionary purchases have been agreed, 2 are outstanding, a claim has now been received in respect of Wishingwell Farm and that case will now be progressed.</p>
3.2	ExA	The ExA specifically requested information on Mr Wacey.	<p>Simon Peart, for the Valuation Office Agency (VOA) explained that Mr Wacey's claim was received last week. The Applicant is progressing the blight claim and it is anticipated that that agreement can be reached in the near future.</p> <p><i>The ExA requested clarification that agreement had not been reached with the Wacey family when the CA Schedule was submitted and therefore it should be showing as amber.</i></p> <p>It was clarified that the blight application had been accepted by the Applicant and the delay was in relation to receiving a claim from the Wacey's agent. The claim has now been received and the Applicant is confident this can be settled before the end of examination. The CA Schedule submitted at deadline 4 should have been amber for the Wacey's and not green. This has been updated in the deadline 5 submission.</p>

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3.3	ExA	<p>The ExA noted that there are many of those landowners here today, so we will wait until they speak to hear about those. Mr Gorse noted that Lord Rayleigh are numbers 2 and 3 on the CA Schedule and are not here at the CAH2 hearing today. He requested an update on their meeting of March 16th 2023.</p>	<p>The Applicant has made offers in respect of both of those interests. The offer has been provided and discussed with the agents. Draft HoTs have been issued for the borrow pit lease, and they have been invited to a meeting to discuss that. There are ongoing discussions regarding other technical / construction related matters.</p>
3.4	ExA	<p>The ExA noted that in both entries on the CA Schedule the Applicant confirms that a position statement is to follow. The ExA asked whether that will come through to them.</p>	<p>Offers and draft Heads of Terms have been issued so the intention is to progress these and not the Position Statement.</p>

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3.5		The ExA asked when the Applicant will be lodging the next version of the CA Schedule, stating that it would be helpful to have it before Deadline 6, ideally before 31 st May.	It was agreed to submit the next version of the CA Schedule, Status of Negotiations at Deadline 5 on the 10 th May as it is being updated as progress is made with each landowner [Applicant Reference TR010060/EXAM/9.8 Status of negotiations CA schedule revision 3].
4.		Representations from Statutory Undertakers	
4.1		<p>Representations from Statutory Undertakers</p> <p>The ExA asked the applicant to summarise on the latest position regarding Statutory Undertakers and provided the opportunity for any Statutory Undertakers to make an oral representation</p>	<p>The Examining Authority will be familiar with the tests which apply under section 127 or 138 of the Planning Act 2008, to the taking of land or interests in land of statutory undertakers and the taking of the apparatus of statutory undertakers.</p> <p>A small amount of land is to be acquired from Network Rail, Anglian Water and Cadent, together with some temporary possession and so Section 127 is engaged.</p> <p>As described in more detail during the ISH into the draft DCO, the Applicant is precluded from exercising its powers of compulsory acquisition over Network Rail land without Network Rail consent.</p> <p>With regard to the Anglian Water and Cadent land, this is not considered to be operational land.</p>

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			<p>However in any event Anglian Water and Cadent are protected from serious detriment by their respective protective provisions in the draft DCO.</p> <p>Similarly, the protective provisions protect Anglian Water and Cadent from having their apparatus taken by the Applicant unless replacement apparatus is provided together with rights which are no less favourable – in the usual way.</p> <p>The Applicant has undertaken extensive meetings with statutory undertakers affected by the scheme to progress technical discussions. These are detailed at some length in the Statements of Common Ground.</p> <p>Anglian Water</p> <ul style="list-style-type: none"> • Restrictions to operations, access the Surface Water Outfall on plot no 9/1q, and access and to the Witham Water Recycling Works (WWRW), along Blackwater Lane, will be protected despite National Highways taking temporary possession of this access under the DCO. • Anglian Water agreed the scheme can include provision for the Barrow's Creep Underpass to be sealed off. • Open Space Replacement Land (replacement of 9/10d with 9/1q) has been agreed. • Access at Hatfield Peverel Pumping Station will be maintained whilst River Ter bridge modifications are carried out. • Existing clearance of Brain Bridge will be maintained following the completion of the widening works proposed. • New Anglian Water rising main at Junction 19 on Countryside Zest Ltd land. The new main has been installed and is now considered as an existing asset. National Highways is to ensure the access route

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			<p>through Countryside Zest land is not impacted by the proposed scheme.</p> <ul style="list-style-type: none"> • Anglian Water have advised that the trees at the eastern boundary of WWRW these trees provide screening in respect of the odour arising out of the WWRW. Discussions are ongoing. • Anglian Water wishes to be included as a consultee through inclusion on the on-going Surface Water Management investigations and designs. Discussions are ongoing. • Protective Provisions are agreed save in one respect, which has just been raised and which relates to notifying Anglian Water of works near their apparatus. This deviates from the protective provisions contained in the A47 schemes and the A428, and we have asked for justification for the change. Discussions ongoing. <p>Cadent Gas Limited</p> <ul style="list-style-type: none"> • Cadent's High-Pressure and Medium Pressure Teams and National Highways have been working together during the development phase to identify the solutions required to address the impact of the proposed works on Cadent assets. • National Highways has engaged with Cadent in relation to the protective provisions and it is understood that the provisions included in the DCO are likely to be in agreed form. • Cadent is undertaking a review of existing and proposed accesses to apparatus which may be impacted by proposals. Resolution is also subject to agreed form of Protective Provisions • Cadent has not yet completed detailed design studies of its diversions therefore land and consents cannot be confirmed at this stage. We are

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			<p>expecting Cadent to update the ExA once these studies have been completed.</p> <p>Network Rail</p> <ul style="list-style-type: none"> • National Highways is seeking 32 clearances from Network Rail. Some have been rejected, however that is not unusual, and work is being undertaken to understand NR's concerns and resolve the remaining issues. The process is ongoing. • One issue which has arisen through the clearance process is signalling. The Applicant has sought an explanation of this issue from Network Rail and is awaiting details. • The parties are negotiating a Framework Agreement which will provide for the acquisition of the relevant land and rights by private treaty. A Bridge Agreement is also being negotiated. • Protective provisions are included in the draft DCO. The final form of these provisions is still under negotiation with relatively few areas of difference which the parties continue to negotiate. • The parties are working to ensure that the details of the A12 scheme and the details of Network Rail's plans for Beaulieu Park work together. This includes the details of the Paynes Lane Bridge. • Discussions are ongoing in relation to the parties respective access requirements. • The traffic impact on the overbridge at New Lane, Feering (near junction 24). This is expected to be small, with around 20 to 50 additional vehicles per day predicted to use the bridge as a result of the proposed scheme.

Ref:	Comment/ Representation by:	Questions/Issues Raised at the CAH2	Applicant's Response
			<ul style="list-style-type: none"> The drainage design proposal for Plots 2.17g and 2/7m will be worked through in detailed design with due consideration of the potential interface with the existing railway embankment to avoid stability issues and agreed with NR.
4.2	ExA	<p>The ExA requested an update on Paynes Lane footbridge, specifically with reference to the 'signalling issues' with Network Rail.</p>	<p>The Applicant is in discussions with Network Rail. Discussions are ongoing with NR, including with better understanding the issues that NR have raised regarding potential signalling issue. The Applicant does not believe that there is likely to be any remaining issue once the missing details have been shared by Network Rail. This is because the piers that will support the proposed bridge are horizontally outside NR's operational land. With the vertical limits of deviation any vertical issues relating to the bridge design and signal sighting or proximity to the overhead electrical equipment could be designed out. The Applicant believes therefore that the structure is outside the envelope where is could be of concern to NR both horizontally and vertically, and therefore the Applicant does not believe there would be an issue.</p> <p>The Applicant believes it is unlikely, once the clearance process is complete, that there will be any issue.</p> <p><i>The ExA appreciated the update and noted that they will keep an eye on this as Paynes Lane footbridge has had a lot of attention.</i></p>
5.		Funding Statement	

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5.1		<p>Funding Statement</p> <p>Applicant to refer to the Ministerial Statement on 9 March 2023 and the effect (if any) on the A12 Project</p>	<p>The Applicant continues to manage the Road Investment Strategy (RIS) portfolio proportionately and has undertaken prudent planning for inflationary risks at a portfolio level. The recent levels of inflation fell within the RIS portfolio parameters.</p> <p>The Ministerial Statement on 9 March 2023 noted a couple of schemes that were to be deferred. However, this did not include the A12 Chelmsford to A120, which remains a committed scheme in the RIS.</p> <p>Referring to para.4 of the Ministerial Statement released in March of this year, "all RIS 2 schemes will continue to progress", with only the A27 and the Port of Liverpool being deferred due to ongoing challenges.</p> <p>For this reason, we see no risk to the progression of the A12 road widening scheme.</p>
5.2	ExA	<p>The ExA noted that in the Statement of Reasons at paragraph 5.2.5 of APP-042, the Applicant sets out a number of general considerations. They asked the Applicant to amend the wording to say the following to reflect paragraph 14 of Compulsory Acquisition guidance.</p> <p>"Acquisition and implementation becoming available"</p>	<p>The ExA asked that the Applicant check whether or not it <u>is</u> solely relating to acquisition, and update the wording accordingly.</p> <p>An updated version of the Statement of Reasons [APP-042] will be submitted at Deadline 5 [Applicant Reference TR010060/APP/4.1 Statement of Reasons revision 2] reflecting the ExA's comments in relation to paragraph 5.2.5.</p>

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6.		Crown Land	
6.1		<p>Crown Land</p> <p>The ExA requested an update concerning progress with obtaining crown land consent under s.135 of the Planning Act.</p> <p>The ExA reminded the Applicant that this was an issue on the A47, where the Inspector was unhappy that consent was not available by the end of examination.</p>	<p>The Applicant is progressing negotiations with the Crown Estate and has been organising extensive monthly consultations with all disciplines in attendance. The most recent was a face to face workshop on 17 March 2023. The Applicant has exchanged Heads of Terms and is working through the principal outstanding issues which are in the Statement of Common Ground updated at Deadline 4 [REP4-040].</p> <p>The provisions of s.135 of the Planning Act 2008 have been discussed with The Crown Estate. The Applicant has requested a statement about the position on s.135 in the SoCG.</p> <p>The Applicant will continue to discuss the process for securing s.135 consent with The Crown Estate and we remain confident that a consent will be secured by the end of the Examination.</p> <p>The next meeting with the Crown Estate is being arranged for mid-May. <i>The ExA responded that we will see where we get to following that meeting</i></p>
7.	ExA	Borrow Pits	

Ref:	Comment/ Representation by:	Questions/Issues Raised at the CAH2	Applicant's Response
7.1	ExA	<p>Borrow Pits</p> <p>Initial discussion with update from the Applicant in respect of the current position with the planning application to Essex County Council for the Colemans Farm Quarry (para 2.5.15; Applicant's responses to ExQ2) which appears to have been determined on 14 June 2022.</p> <p>The ExA noted that ECC had clarified that this application was approved by them in January 2023, and that we are now waiting for the s106 agreement to be agreed. The ExA asked whether the applicant was able to give any more information on this.</p>	<p>The Planning application was submitted by Brice aggregates in August and November 2021 to revise the existing minerals consent for Coleman's Quarry appropriately for the A12 Scheme.</p> <p>That application was heard by Essex CC Development and Regulation Committee on 27th January (application no ESS/36/21/BTE; ESS/51/21/BTE and ESS/98/21/BTE - see link to report https://cmis.essex.gov.uk/essexcmis5/CalendarofMeetings/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/5046/Committee/37/SelectedTab/Documents/Default.aspx.)</p> <p>The Applicant understands that the applications were approved, but at the time of writing the response were not yet evidenced on Essex CC website. There was a resolution to approve subject to completion of legal agreement (s106) which has to be sealed before planning permission is granted.</p> <p>The Applicant confirmed that that is the extent of its knowledge. It is not an application that the Applicant is responsible for, as it was made by the owners of the quarry. The Applicant is in constant contact with the owners requesting updates. The Applicant's understanding towards the end of last week is that the draft S.106 agreement is still with ECC's legal department and a response to the draft is awaited.</p>
7.2	ExA	<p>The ExA requested that, in light of the Coleman's Farm Quarry planning application being determined by the ECC in January 2023, REP4-055 paragraph 2.5.15 should be updated to reflect this in the wording in two locations: page 31 and page 32.</p>	<p>Whilst the minerals planning authority may have resolved on the application, permission has not yet been issued (perhaps because a legal agreement is yet to be completed). The Applicant therefore believes its statement in REP4-055 remains correct at this time. The Applicant will continue to monitor the position.</p>

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7.3	ExA	<p>The ExA referred to the SoCG with the Brice Family at REP4-041. They believe the number of issues still in discussion [as shown in this document at page 30] are disparate from a statement that says commercial terms between the Applicant and the quarry operator have been settled [quoted from REP4-055 paragraph 2.5.15 on page 32].</p> <p>The ExA sought clarification from the Applicant, with more openness on negotiations and where they have got to.</p>	<p>The Applicant confirmed that it would respond in writing to that point, confirming the commercial terms agreed relates to, and if outstanding matters are beyond commercial terms or if they have been resolved.</p> <p>The Brice family own the quarry land which forms the new Junction 22 of the A12. To ensure that minerals are extracted ahead of construction works, the Applicant has been working with the Brice family on the construction programme and supporting them in amending the original planning permission so that the phasing of the mineral extraction can align with the A12 works. The Brice's planning applications were approved at the end of January, with the current status as below:</p> <ul style="list-style-type: none"> • ESS/98/21/BTE Granted subject to S.106 - for increase on HGV, re-phasing and inert materials recycling facility in advance of the A12 scheme. • ESS/51/21/BTE Granted subject to S.106 - for the importation of as raised sand and gravel from a proposed western extension to the site; the importation of inert materials • ESS/36/21/BTE Granted subject to S.106 - for the Proposed western extension to the current site using existing approved facilities <p>The reference to a commercial agreement is an agreement with the Brice Family and the Applicant specifically and only in relation to the infilling of the land where the minerals are planned to be extracted under Junction 22 ahead of the construction works so that the land is in a suitable standard to support the new junction / road.</p> <p>Alongside the commercial discussion referred to above, The Applicant has been working with the Brice family to resolve the wider DCO matters referred to in the Statement of Common Ground [REP4-41] that covers all of their land affected by the Order. The relatively high number of "amber" issues under</p>

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			discussion is due to the Brice Family wanting further clarity on detailed design and more technical wording included. A design update meeting was held with the Brice Family on 21 st March 2023, where design experts gave an update on progress for drainage, ecology and access. Once the technical wording has been provided, the Applicant is hopeful that many of these issues should be able to be moved to "agreed".
7.4	ExA	The ExA returned to a document that was floated at ISH3 with significant redactions and asked the applicant whether they wanted to stand by the exemption under s42 of the Freedom of Information Act 2000.	Please refer to the Applicant's written response to ISH3 under document 9.53, item number 6.7.
8.		Affected Person's Site Specific Representations	

Ref:	Comment/ Representation by:	Questions/Issues Raised at the CAH2	Applicant's Response
8.1		<p>Affected Person's Site Specific Representations</p> <p>A number of Affected Persons as listed below made oral representations at CAH1. They and other APs may wish to make a further representation in addition to any submissions that are already in the Examination. Whether or not an oral representation is made at this CAH2, an Affected Person can continue to provide written submissions at relevant Deadlines and oral representations at subsequent hearings (if they are held).</p> <ul style="list-style-type: none"> • Essex County Council • Ian Mahoney • Mary Lindsay and John Chilcott Lindsay • Roger Wacey • Henry Robert Siggers (and Parker Strategic Land) • Bunting Family Partnership • Prested Hall • Royal London and Edmundson Electrical Ltd <p>Representatives from the Bolton family, Hammond Estates and Gearston Ltd have</p>	<p>The following is a summary of the position in relation to the main Interested Parties. Further representations were made in responses to the individual points made by the Interested Parties in the rows below.</p> <p><u>Essex County Council</u></p> <p>A meeting has been arranged for 3rd May to progress acquisition by agreement.</p> <p>Discussions are ongoing and both parties are optimistic that agreement on the land acquisition elements will be reached.</p> <p><u>Mr and Mrs Lindsay</u></p> <p>A meeting was held on 15 March to further explain the discretionary purchase process.</p> <p>Mr and Mrs Lindsay confirmed they wish to stay at the property, subject to anticipated impacts during the construction phase.</p> <p><u>Roger Wacey</u></p> <p>A claim was received by the Applicant on 18 April and the Valuation Office are now being instructed to progress negotiations. It is anticipated this can proceed at pace.</p> <p><u>Henry Robert Siggers (and Parker Strategic Land)</u></p> <p>Meetings were held on 24 February, 24 and 28 March and 20 April to progress acquisition by agreement and details predominately around the borrow pit.</p> <p>The parties are somewhat apart on how the borrow pit land could be reinstated / returned to the landowner if the freehold was not acquired.</p> <p>The Applicant submitted a Technical Note on Ecological Mitigation to the examination at Deadline 3 [REP3-010]. This technical note summarises the</p>

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		<p>also indicated that they will be attending CAH2.</p>	<p>reasons why land for ecological mitigation is required, alternatives considered, the area of land required for reptile mitigation, general principles for the locations of protected species mitigation and details on why plots 11/4c and 11/8d (owned by the Siggers) were selected.</p> <p><u>Prested Hall</u></p> <p>Since the last Compulsory Acquisition Hearing a comprehensive in-person meeting at Prested Hall was held on 28 March 2023. Matters discussed were:</p> <ul style="list-style-type: none"> • Business overview and concerns • Access to Prested Hall • Programme • Working hours • Dust • Planning • Compensation & Land Values • Lighting • Journey times • DCO timeline • Next steps – an offer has been made for a specialist in business interruption/injurious affection to attend the next meeting

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			<p>The Applicant has been made aware of the constraints the proposed scheme may put on the business and is committed to working with the Interested Party in order to mitigate this wherever practicable.</p> <p>An offer was made on 24th March 2023 for the permanent acquisition of land and rights, however, the primary issue is likely to be one of injurious affection and that is very difficult to quantify at this stage.</p> <p>The Applicant submitted a Technical Note on Ecological Mitigation to the examination at Deadline 3 [REP3-010]. This technical note summarises the reasons why land for ecological mitigation is required, alternatives considered, the area of land required for reptile mitigation, general principles for the locations of protected species mitigation and details on how why plot 15/15a (close to Prested Hall, owned by the Sherwoods) was selected.</p> <p><u>Royal London and Edmundson Electrical Ltd –</u></p> <p>The Applicant held a site meeting with representatives from Edmundson and Royal London on 8 March 2023. The Applicant was made aware of the site security issues, Edmundson's delivery vehicles that operate on site and the preference for any disruption to be outside of business hours, as well as the pinch point of rigid trucks parking in the proposed access way.</p> <p>The Applicant has investigated alternative access options to the proposed diversionary works directly from the A12 northbound which would result in traffic disruption to this junction. The Applicant has also investigated access via the Trilux site which is similarly not viable or realistic on account of cost or increased disruption and therefore have been discounted.</p> <p>However, the Applicant is committed to working with Edmundson and minimising disruption so have drafted Heads of Terms for an access licence through the operational Edmundson site and easements in favour of The</p>

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			<p>Applicant for culverts and a utilities easements for surveys, diversions and installation and maintenance of relevant apparatus.</p> <p><u>Bolton family, Hammond Estates and Gearston Ltd:</u></p> <p>Both parties are working towards a position that can be agreed and detailed plans are being produced to reflect this negotiated position. Meetings were held with the landowner's agent on 28 March and 21 April 2023 to go through the areas where it might be possible to acquire the freehold via agreement. Detailed plans are being produced to ensure this meets both parties requirements.</p> <p>As set out in REP3-009 (Applicant's Comments on WR's), the Applicant has worked with the Interested Party for over two years leading up to the submission of the application to understand the use of the land and make changes to the Order Limits and location of mitigation to minimise the impact of the scheme at the request of the Interested Party. The changes are explained in more detail in Relevant Representation response RR-050-003 and RR-050-006 and [REP1-002].</p> <p>Please see the Applicant's response to the Interested Party's written representation REP2-051 in the Applicant's Comments on Written Representations [REP3-009].</p> <p>The Applicant submitted a Technical Notes on Ecological Mitigation to the examination at Deadline 3 [REP3-010]. This technical note summarises the reasons why land for ecological mitigation is required, alternatives considered, the area of land required for reptile mitigation, general principles for the locations of protected species mitigation and details on how why plot 1/11a and 2/12g (owned by the Boltons) was selected. REP2-051 submitted by the Bolton family raised a number of questions in relation to the selection of sites</p>

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			<p>of ecological mitigation and proposed an alternative location within their land holding. The Applicant provided a detailed response in the Applicants Response to Written Representations [REP3-009].</p>
8.2	<p><i>Linfield Properties (LP)</i> <i>Tim Hancock (TH)</i></p>	<p>TH made submissions that a sliver of land adjoining the HGV court at Linfield Motors has, since the BoR was first issued, been updated to reflect that it is now registered along with the adjoining parcel (7/1a) into title number EX818299. He maintained that this was an error in the BoR that should be amended.</p> <p><i>The ExA responded to clarify that it is not an error in the BoR as the BoR simply reflects whatever the title documentation from the Land Registry says. The inspector clarified that the BoR is strictly speaking correct until LP's application that the title has changed due to long ownership has been reviewed by the Land Registry.</i></p>	<p>The Applicant confirmed that there had been a sliver of unregistered land but the Land Registry updated the title, hence the Book of Reference and Land Plans were updated to reflect this.</p> <p>TH asked the Applicant as a matter of detail whether the Land Registry have unilaterally taken this action, or if additional information has come to light from National Highways to allow the Land Registry to make those amendments.</p> <p>The Applicant confirmed, that as far as it was aware, no information was submitted to the Land Registry in relation to that plot or title.</p> <p>TH thanked the Applicant for that clarification, and explained that LP wanted this matter documented as a result of due process.</p>

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8.3	<p><i>Essex County Council (ECC)</i></p> <p><i>Roger Moore (RM)</i></p>	<p>RM submitted 3 main points:</p> <p>1) ECC as a landowner has minor interests to be acquired. Since the last hearing, ECC had initial contact with NH and we are confident we will reach an agreement on land acquisition matters.</p> <p>2) RM is not aware that ECC have received any contact about replacement land and the acquisition of open space. They are still keen to enter into discussions, and note it may be picked up as part of other actions. ECC submitted that it would be helpful if the applicant could contact ECC on this matter in due course.</p> <p>3) Under the detrunking process, it is understood that potentially significant areas of land will be returned to ECC. RM submitted that ECC are still awaiting contact from NH regarding the proposed land transfer back to ECC. They submitted that they would like to see progress in assessing the implications of what is being transferred back in property and highway terms.</p> <p>RM further submitted that ECC was recently approached by NH as part of a county wide proposal to transfer registered titles that don't apply to non-</p>	<p>The Applicant has had a number of meetings with ECC on replacement land. The Applicant can provide a list if necessary. During these discussions it has been noted that the parties wish to include this in the SoCG. A meeting has been arranged for 3 May 2023 to move this from 'under discussion' to 'agreed'.</p>

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		<p>trunk roads. He stated that these proposals will take up a lot of ECC's resource and asked whether this process will be coordinated with the proposals for transferring land back under this Scheme to make it more efficient.</p> <p><i>The ExA responded requesting that NH's reply remains focused on Compulsory Acquisition. The ExA asked NH whether they could offer any update on the replacement land point made by ECC.</i></p>	
8.3a	<p><i>Mr & Mrs Lindsay</i> <i>Mary Lindsay</i> <i>(ML)</i></p>	<p>ML emphasised that they are extremely concerned and anxious about the impact of the Scheme on their quality of life and mental health.</p> <p>They requested confirmation that their hedgerow along the B1023 will not be affected by the works.</p> <p>ML also submitted that they need to know what NH considers the value of their house to be to allow them to fully assess their options – that is, to stay in their property and see if it is tolerable (and if it is not tolerable, try to sell their property during construction) or try to find a property that equates to the one they have now and navigate the discretionary purchase procedure. MH further</p>	<p>Regarding the hedgerow, detailed design is ongoing in parallel to the examination and the Applicant is considering what can be offered in terms of a REAC commitment or by another mechanism.</p> <p><i>The ExA asked the Applicant whether any assistance can be provided from NH to pay for the agents fees for Mr & Mrs Lindsay.</i></p> <p>Parliament has given National Highways the ability to purchase properties that are outside of the Order Limits (offline) under section 246 of the Highways Act 1980 where the owners have a pressing need to sell their property and are unable to do so except at a significantly reduced price as a result of our proposed road scheme.</p> <p>When selling to National Highways under discretionary purchase the owner / occupier normally pays their own surveyor's costs, legal fees and moving expenses. However, where the application is accepted under: Section 246 (off-line property) on the grounds that you, or a dependant living with you has a</p>

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		<p>submitted that they feel NH 'holds all the cards' unless Mr & Mrs Lindsay pay for agents to negotiate on their behalf.</p> <p>They asked the ExA to reiterate their position to NH and consider mitigation and concessions until the need arrives.</p> <p>Finally, MH questioned why there was a need for a new stretch of road parallel to an existing road.</p> <p><i>The ExA responded that CAH2 would not be dealing with ML's final sentence as the point has already been made and heard.</i></p> <p><i>The ExA noted that they have seen Mr & Mrs Lindsay's property and appreciate that they are very significantly affected by the works at Junction 24. They noted that this has been ongoing for many years, during which Mr & Mrs Lindsay have attended many consultations, and it has had a considerable effect on them. The Inspector noted that this is something he is sure NH appreciate, and it is something the ExA have taken on board.</i></p>	<p>pre-existing medical condition that will be severely aggravated by the physical effects of the scheme, we will reimburse your reasonable surveyor's costs, legal fees and a disturbance payment in line with entitlements under the Compensation Code.</p> <p>The legislation set out in Section 246 of the Highway Act 1980 is applied to all National Highway road schemes in England. It is imperative that there is a consistent approach to the policy being applied across the country.</p> <p>The completion of a discretionary purchase application form is relatively straightforward and can be completed by Mr and Mrs Lindsay without the need for specialist advice. It's only if / when the application is accepted by National Highways would specialist advice be required to value the property and submit a claim.</p> <p><i>The ExA then asked Andy Goodwin, appearing on behalf of the Applicant, whether further mitigation could be considered.</i></p> <p>The Applicant confirmed that it would continue to try and minimise the impacts on the Interested Party but was not sure at this stage if there is anything further that can be added to the mitigation that has not already been proposed. At Deadline 4 the Applicant provided a haul road management plan at [REP4-061], updated the Construction Compound Management Plan [REP4-025] which together include some of the key mitigation proposals as well as the First Iteration Environmental Management Plan [REP4-022] to include the Communications Plan.</p>

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8.4	<p><i>Henry Robert Siggers / Parker Strategic Land (PSL)</i></p> <p><i>Will Thomas (WT)</i></p>	<p>WT submitted that Siggers/PSL stand by the reasoning set out in the written representations, and Miss Hall's representations at ISH3 regarding borrow pits.</p> <p>WT then repeated the points that Miss Hall made at ISH3.</p> <p><i>The ExA acknowledged that Mr Garvey made points nearly 2 months ago, and Miss Hall reiterated them yesterday [at ISH3]. The Inspector notes that he raised these issues with the applicant and is hopeful they will be providing us with some information. He stated that some of the Applicant's replies to ExQ2 were not as full as the ExA were hoping.</i></p> <p><i>The ExA asked what agricultural grade the land was, and whether it was allocated from a development land status. This was to substantiate WT's submissions that the land is of good agricultural quality and developmental value.</i></p> <p>WT: It is an allocated site to PSL which was detailed at the outset of the examination in the relevant reps. There is support for a local plan for an employment site. It is in early stages of promotion, but Siggers/PSL feel there is potential. I will</p>	<p>The Applicant has responded in detail on the matter of borrow pits in the various relevant representations made by the Interested Party's representative and the Applicant's Written Summaries of ISH2, ISH3 and CAH1.</p> <p>The interested party has suggested that the figures for the deficit fill and the volumes to be taken from the borrow pits are unclear. Whilst no detailed representations have been made on these concerns to afford the Applicant an opportunity to respond, the Applicant has been entirely consistent and has fully justified the figures presented. In summary there is, 1.9Mm³ required and 1.3Mm³ available from the scheme which leaves a deficit of 0.6Mm³ of general fill required, to be sourced from borrow pits E (100,000m³), F (100,000m³) and I (400,000m³).</p> <p>In addition, a further 445,000m³ of engineering fill is required, of which 300,000m³ is available from borrow pit J.</p> <p>Clearly the volumes (m³) required are different to areas (m²) required and the two should not be confused.</p> <p>Similarly, the actual driven distances between the source of material and the worksite should not be mistaken for the direct line distance (as the crow flies).</p> <p>To assist the Interested Party in their understanding, the Applicant has produced a simplified summary of its case for the borrow pits and the quantities required. [Appendix A – The A12 Proposed Scheme Earthworks Deficit Plan to the Applicant's Response to ISH3 [Applicant Reference TR0100/60/EXAM/9.53]</p> <p>In the event that this does not provide clarity to the Interested Party as to the calculation of volumes required, the Applicant would ask that the Interested</p>

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		have to take instructions on the agricultural grade.	Party provides in detail written details of their concerns to afford the Applicant and opportunity to respond.
8.5	ExA	<i>The ExA noted, in response to WT's submission that Siggers/PSL want temporary rights to be taken over the land, rather than permanent rights, that in their replies the Applicant said they will reach agreement with the landowners of the borrow pits so it will not impact them.</i>	<p>The dDCO provides for the taking of temporary possession of land, however it also provides that the land must (save in certain limited circumstances) be restored to the reasonable satisfaction of the owner of the land. This power is not therefore suitable for use in relation to borrow pits.</p> <p>The Applicant has proposed by agreement HoTs to the Interested Party and their agent. It is not possible to create a lease under powers of compulsory acquisition, and such powers cannot therefore be included in the dDCO. It would be possible to seek an agreement for lease with borrow pit landowners by private treaty to lease the land and return it. The Applicant does not propose that the land would be returned in its current condition following extraction of materials and the land might not be able to be used for its current use at the end of the lease term. Because of this the Applicant believes a freehold acquisition is more appropriate, but will continue to negotiate with the relevant owners.</p>
8.6	ExA	<i>The ExA noted that, elsewhere, the Applicant has said that they cannot agree the land being temporarily possessed, and then switching back, because of potential criminal liability. The panel is aware of the potential for criminal liability, but feels that, if the Applicant is prepared</i>	<p>The Applicant confirmed that in designing the borrow pits, excluding borrow pit F, essential environmental mitigation has been intentionally excluded so that it creates the possibility of returning borrow pits to the owners in the future if they can reach an agreement.</p> <p><i>The ExA noted that, whilst they appreciate that, they find criminal liability an unlikely route for the authority to take, noting that the authority could bring</i></p>

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		<p><i>to agree for the borrow pits, it could accept the risk in some cases but not in others. They requested clarity on this point.</i></p>	<p><i>conjunctive proceedings to the landowner who is not complying. The Inspector asked whether NH have ever had a criminal case brought to them for mitigation.</i></p> <p>The Applicant has sought the detail requested by the ExA but can confirm that it is not aware of any instances where National Highways has faced sanction because of the failure of a landowner to maintain the land as required by the DCO. However, that is because, in respect of land acquired for essential mitigation in order to compensate for the residual adverse impacts of a scheme identified in the ES, the Applicant's approach has always been to retain ownership of the land to ensure the essential mitigations are provided and maintained and not left to third parties. Therefore, the Applicant has not experienced such sanctions because it has not opened itself up to that risk.</p> <p>The Applicant submitted a Technical Note on Ecological Mitigation to the examination at Deadline 3 [REP-010], which in the view of the Applicant sets out a compelling case for the acquisition of land for the purpose of ecological mitigation.</p>
8.7	<p><i>Prested Hall (PH) Michael Harman (MH) of Holmes & Hills Solicitors</i></p>	<p>MH referred to REP3-095 and highlighted the lack of meaningful engagement at the last hearing regarding the impacts of the scheme on the client's business. He submitted that there needs to be substance to the discussions held.</p> <p>MH submitted that the notes from the meeting dated 28th March 2023 show that minimum consideration was taken in choosing the access option now being</p>	<p>Since CAH1, a comprehensive in-person meeting at Prested Hall was held on 28 March 2023.</p> <p>The Applicant is committed to working with the Interested Party in order to mitigate the scheme impacts wherever practicable.</p> <p>As stated in the Applicant's response to REP2-096-003 [REP3-009] the Applicant explored alternative locations and alignments of the new access. These are described in the Environmental Statement Chapter 3 – Assessment of Alternatives Table 3.4 [APP-070]. The access that is now proposed was found to result in the most efficient, safe design and have the least impact to the rows of trees along the existing access. It also ensured that access could</p>

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		<p>promoted, with no consideration of the business impact on PH.</p> <p>PH submitted that NH agreed to do what they can for mitigation and would compensate PH after their losses have been incurred, but that this was insufficient. PH are having to absorb downturning trade being suffered now without any available recourse for recovering losses. MH emphasised that this could have a 'potentially catastrophic impact' on PH.</p> <p>MH further submitted that PH remain concerned about their spa business, which needs peace and tranquillity to function. He notes that the spa requires ease of access, which has not been confirmed by the Applicant.</p>	<p>be provided at all times throughout construction, apart from when the Applicant is undertaking tie-in works or similar. In those circumstances advance notice will be given to Prested Hall, following engagement with the Interested Party on appropriate timings for those works.</p> <p>With the scheme constructed a reduction in noise of 1.7 dB(A) (minor) is predicted at Prested Hall due to the resurfacing of the concrete surface on the A12 with low noise surfacing. The predicted noise change is shown on sheet 9 of Figure 12.8 [APP-235].</p> <p>The Applicant does not accept that its scheme proposal is already leading to business loss. If in due course the Interested Party can demonstrate pre acquisition loss caused by the A12 scheme then the Interested Party can include a suitably evidenced claim when seeking compensation, in accordance with the provisions of the compensation code.</p>
8.8	<p><i>Prested Hall (PH)</i> <i>Michael Harman (MH) of Holmes & Hills Solicitors</i></p>	<p>PH submitted that NH agreed to investigate journey times at their March meeting, but to date PH have not received this.</p> <p>NH also agreed to bring in a specialist, but PH submitted that they had received no detail on that either.</p>	<p>The Applicant agreed at CAH2 to provide information on journey times to Prested Hall and will make this available for the next meeting with Prested Hall.</p> <p>The Applicant confirmed that these details, and a specialist, would be available for the next meeting.</p>

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8.9	<p><i>Prested Hall (PH)</i> <i>Michael Harman (MH) of Holmes & Hills Solicitors</i></p>	<p>PH noted that weddings are booked months or years in advanced the business is being impacted now, particularly their wedding business, as couples are choosing to book alternative locations due to the works proposals. PH had hoped that at their March meeting NH would provide some comfort that could be passed on to potential guests, but this did not happen. PH have had verbal offers but nothing tangible to reassure prospective wedding clients. NH said they were less able to work around weekday bookings and not able to minimise or avoid works during peak wedding season (April to September).</p> <p>Concerns around lack of lighting for reconfigured access arrangements.</p>	<p>The Applicant does not accept that its scheme proposal is already leading to business loss. If in due course the Interested Party can demonstrate pre acquisition loss caused by the A12 scheme then the Interested Party can include a suitably evidenced claim when seeking compensation, in accordance with the provisions of the compensation code.</p> <p>The Applicant committed to provide more information on the works programme. The earthworks season typically is from March/April through to September/October, dependent upon the weather in each year. This unfortunately aligns with the wedding season. There is only so much that can be accommodated within the construction programme, but the Applicant will consider what may be practical.</p> <p>The Applicant agreed in the onsite meeting that a high level phasing for the works around Prested Hall with estimated durations would be produced and presented to Prested hall and this will be available for the next meeting. This would give certainty to Prested Hall on the impacts and mitigations of the works and time scales.</p> <p>Regarding lighting, the existing Prested Hall access road, and junction 24 which serves it is unlit. The applicant is proposing to light the Feering East roundabout which is in the vicinity of the proposed Prested Hall access road for safety reasons, whilst proposing that the replacement Prested Hall access road remains unlit. The Applicant will discuss this proposed arrangement at a meeting with Prested Hall following CAH2.</p>

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8.10	<p><i>Royal London and Edmundson Electrical Ltd (RL/EEL)</i></p> <p><i>Nick Mansell (NM) of Pinsent Masons</i></p>	<p>NM submitted that his main reason for attendance was to make it clear to the ExA that there has been limited engagement from NH in recent months. He provided a brief update that he requested be taken into account at ISH3 and ISH4 in addition to this CAH2.</p> <p>RL/EEL maintain their objections and remain willing to keep engaging with the Applicant.</p> <p><i>The ExA noted that RL/EEL have put in a number of detailed submissions that the ExA has read and taken a note of. They asked RL/EEL whether they received any comfort from the Applicant's responses at ExQ2.</i></p> <p>NM stated they received a degree of comfort, but noted there was no consideration of one of their alternatives, but there was for the other two. They would like to hear from the Applicant on that point.</p>	<p>The Applicant was surprised to hear the comment about a lack of engagement. Since the last hearing, there has been a number of meetings both on site and via teams, and the HoTs are progressing well. The Applicant hopes that the HoTs can be agreed shortly, and remain ready to engage in constructive dialogue.</p> <p>The Applicant has responded to all of the suggested alternative proposals previously, and this has been summarised in the Applicant's comments on the response to 2.5.14 in the Applicant's Comments on Others' Responses to ExQ2 [Applicant Reference TR010060/EXAM/9.52].</p> <p>Should access be required via the A12 this would require traffic management and single lane running on the A12, which for safety reasons and to avoid traffic weaving would need to extend into the exit slip road, reducing its capacity. This would consequentially cause disruption to J19 and for vehicles entering the industrial estate.</p> <p>It is not practicable to access the diversionary works via the Cadent site due to the gas pipelines and infrastructure as well as cable that are at shallow depth and could not take the loading of construction vehicles.</p> <p>Any further commitments that are required regarding traffic management, the Applicant is happy to include in the OCTMP to be submitted at Deadline 6. This provides sufficient time for further discussions as to what is required. This is a certified document so the commitments will be secured in the DCO.</p>

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8.11	<p><i>Royal London and Edmundson Electrical Ltd (RL/EEL)</i></p> <p><i>Nick Mansell (NM) of Pinsent Masons</i></p>	<p>1) RL/EEL submit that there is insufficient explanation for the CA that is not supported by evidence. They requested that the work on optioneering is shared. NM asserted that NH have not been forthcoming in providing information, although on April 21st ERL/EEL received draft HoTs which were welcomed.</p>	<p>More information on the options for gas diversions can be provided. It needs to be diverted due to southbound merge widening. There is a gas main there. It has to be installed on one side or the other. The limits of deviation describe that widening.</p> <p>Further information on the gas main diversion can be provided to the Interested Party, but in summary, it needs to be diverted due to the works to widen the southbound entry slip road at J19. Highway construction works are required including the road construction, drainage, communications and other associated infrastructure which may affect both the safe operation and maintenance of the gas main and the highway.</p> <p>As the gas main is a 600mm diameter high pressure main it is not feasible to simply take it out of service any replace it on its existing alignment. Even if it were access to the area between the Cadent installation and the A12 would still be required. The new pipeline needs to be installed adjacent to the existing main (likely drilled under the A12 from the southbound side) before being tested and then connections made to the existing. The limit of deviation around Work No. U2 (on Sheet 1 of the Works Plans – Utility Diversions [AS-003]) accounts for this parallel diversion of the main.</p>
8.12	<p><i>Royal London and Edmundson Electrical Ltd (RL/EEL)</i></p> <p><i>Nick Mansell (NM) of Pinsent Masons</i></p>	<p>2) In its current form, RL/EEL submit that the dDCO puts no protection in place for their respective positions. NM referenced REP3-077 which summarises their position on this, as first stated at ISH2.</p>	<p>We responded at REP4-056 (9.42 Applicant's Comments on Information received at Deadline 3 - Rev 1) to say:</p> <ul style="list-style-type: none"> • The Applicant will look to reach agreement with the Affected Parties regarding only access being required over the relevant forecourt and parking area plots without the Applicant taking exclusive possession. • It is not necessary for the Order to be amended nor for there to be a requirement imposed in this regard.

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			<ul style="list-style-type: none"> The affected parties would have a remedy in compensation if exclusive possession was sought and it is in all parties' interest conclude an agreement on this issue."
8.13	<p><i>Royal London and Edmundson Electrical Ltd (RL/EEL)</i></p> <p><i>Nick Mansell (NM) of Pinsent Masons</i></p>	<p>3) RL/EEL believe the ExA should hear from Cadent on access and alternative access as it is Cadent who will be carrying out this work. NM referenced REP4-094 paragraph 2.6 that reiterates this request in full.</p> <p><i>The ExA supported the idea of having some direct dialogue between RL/EEL and Cadent. They asked the Applicant whether it would be possible for a meeting to be set up with NH, Cadent, Mr Mansell and RL/EEL.</i></p>	<p>The Applicant is unable to make that commitment on Cadent's behalf but will discuss it with them. The Applicant also noted the ExA's direction that RL/EEL should be involved in those discussions with Cadent, and will contact Cadent to try to facilitate that conversation.</p>
8.14	<p><i>The Bolton Family / Hammond Estates / Gearston Ltd ("the Boltons")</i></p> <p><i>Andrew Peart (AP)</i></p>	<p>AP stated that no justification or evidence has been put forward for what is proposed.</p> <p>AP then argued that the Applicant has not produced sufficient evidence to justify and discharge the statutory burden. The Boltons note that in TRO-10060/EXM/9.24 at page 86 HE asserts</p>	<p>The Examining Authority heard two somewhat contrasting submissions that there was no evidence, and that there was insufficient evidence. The Applicant rejects that entirely. The Applicant submitted technical notes on drainage [REP1-010] and ecology mitigation at REP3-010 which includes specific detail on why 1/11A and 2/12G were selected. At REP2-051 the Boltons raised concerns and the Applicant provided further detail at REP3-009. The Applicant does not recognise the submission that there is no evidence. Further detail is set out below.</p>

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		<p>that its statement of reasons and statement for the scheme justify CA. They submitted that this is a high level assertion.</p> <p>The Boltions maintain their position that a more limited right of the entire land will suffice, therefore a CA is unjustified. AP submitted that the burden is on NH to prove that they have met the statutory requirements, and not on the Boltions to disprove it.</p> <p>AP notes that the Boltions and their agents have been frustrated by NH's failure to provide information either in a timely manner, or in some cases, at all.</p> <p>The Boltions do not believe that NH have proven that other alternatives would not be acceptable.</p> <p>AP further submitted that NH's proposals fail to take account of existing land uses carried out by the Boltions on their land.</p> <p>The Boltions emphasised the severe impact this is having on their existing land duties and on future development prospects as outlined at paragraph 2.5 and 2.6 of their Deadline 4 representations.</p> <p>AP noted the ExA's prior comment regarding funding. They submitted that funding needs to be present for deliberation,</p>	<p>Summary</p> <p>The Applicant responded to the points raised at the hearing at Deadline 2 in its responses to the Interested Parties' relevant representations [REP1-002, RR-050, p 431]. It relies on those responses and further relies on its written submissions following the first compulsory acquisition hearings, at which the case for compulsory acquisition was set out, by reference to the Applicant's Statement of Reasons [APP-042] and Case for the Scheme [APP-249] to explain the compelling need for compulsory acquisition powers. The Applicant has made its case for the compulsory powers sought, including justifications for the interference with human rights. The Applicant will continue to liaise with the Affected Parties and will look to provide suitable access to retained land.</p> <p>Additionally, the Applicant has committed to minimising impacts on the car boot sale in paragraph 2.2.7 of the Outline Construction Traffic Management plan [REP2-003].</p> <p>As stated in REP2-051-003 [REP3-009] the Applicant has worked with the Interested Party for over two years leading up to the submission of the application to understand the use of the land and make changes to the Order Limits and location of mitigation to minimise the impact of the scheme at the request of the Interested Party. The changes are explained in more detail in Relevant Representation response RR-050-003 and RR-050-006 and [REP1-002].</p> <p>Drainage</p> <p>As stated in RR-050-006 [REP1-002], a drainage technical note was produced for the surface water drainage design proposals in the vicinity of junction 19 which was shared with interested parties in June 2022 (prior to the application). This note has submitted at Deadline 1 (Junction 19 Surface Water Drainage Design Technical Note [REP1-010]). This note provided the detail</p>

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		<p>and that NH cannot present a compelling case for acquiring land if it is not delivered.</p> <p>The ExA asked PA whether he had any thoughts on whether the update on the status of negotiation and objection within REP4-065 was an accurate summary.</p> <p>AP submitted that there had been some recent discussions, but that the Bolton's position remains exactly the same – they are frustrated.</p>	<p>information on the drainage design development process for the proposed scheme in the vicinity of junction 19, including design considerations and constraints in arriving at the requirements for the proposed attenuation ponds, their preferred site locations and associated land take.</p> <p>Several meetings and discussions have taken place with the Interested Party since November 2019 with regards to the proposed scheme drainage proposals in the vicinity of junction 19. The Applicant's drainage team have discussed the Applicant's surface water drainage proposals and design rationale for requirements for attenuation ponds with the landowners and their representatives. Refinements to the drainage design have been undertaken subsequent to such discussions and where feasible the impact to the extent of land take and existing land use has been minimised (eg the attenuation ponds S1-OU1 and S1-OU7A have been positioned to minimise the impact on the current use of land for the Chelmsford car-boot sale site). Therefore, the surface water drainage proposals and associated land take are considered appropriate to deliver the proposed scheme. It is essential that the proposed scheme is appropriately drained and kept free of surface water. There is a compelling need for the proposed works and the land required to facilitate those works.</p> <p>Ecology Mitigation</p> <p>As stated in REP2-051-004 within the Applicant's Response to Written Representations [REP3-009] Plot 1/11a fulfils the general design principles. Its location at the far southwest end of the proposed scheme maximises the distribution of reptile habitat along the length of the proposed scheme. The areas of land selected are discrete from other areas affected by construction, however, are appropriately located so that upon implementation of the wider landscaping scheme in accordance with the Environmental Masterplan [APP-086, APP-087, REP4-015], the receptor areas would become part of a series of stepping stones of reptile habitat through the landscape, connected by the verge of the proposed scheme and associated infrastructure such as planting</p>

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			<p>around attenuation ponds. Both mitigation areas within plot 1/11a are within arable habitat which is currently of negligible potential for reptiles and so there is potential to greatly increase the suitability of these habitats ready to receive animals from the translocation without risking effects on existing populations. Lastly, as shown on Figure 14.4 [APP-242], the mitigation areas are outside of the modelled fluvial flood extents. Therefore, the Applicant considers that there is no better alternative location with respect to reptile mitigation.</p> <p>As stated in the Plot 2/12g is immediately adjacent to reptile survey Site 18 (Appendix 9.9 Reptile Survey Report [APP-133]), an area of road verge which surveys have identified as a 'key reptile site', as defined by professional guidance (Froglife, 1999).</p> <p>Its location is therefore optimal for the preservation of an important population of reptiles within the local area. As per Chapter 3 Assessment of Alternatives in the Environmental Statement [APP-070], following consultation with the landowner the footprint of the attenuation pond adjacent to this mitigation area was reconfigured, allowing enough space to relocate the ecological mitigation area into its immediate surroundings, and thereby reducing the overall land required in this area. The Applicant considers that there is no better alternative location with respect to reptile mitigation.</p> <p><u>Alternative options</u></p> <p>As stated in the Technical Note on Ecological Mitigation [REP3-010], paragraph 5.25 of the National Policy Statement on National Networks (NNNPS) requires that development should avoid significant harm to biodiversity and conservation interests, including through appropriate mitigation and consideration of alternatives. The Applicant also has a duty to comply with relevant legislation, namely the Wildlife and Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992.</p>

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			<p>The Technical Note on Ecological Mitigation [REP3-010], provides information of the alternatives assessed by the Applicant. At a scheme wide level paragraph 4.4.1 explains how an alternative technique for mitigation of reptiles, displacement, would be inappropriate in all but localised areas of site clearance. This method would force reptiles into adjacent habitats which would be unable to support the increased number of individual animals and would therefore be ineffective at maintaining the integrity of the resource of reptiles through effective the extent and frequency of reptile numbers which would affect the level of impact as defined by LA 108 (DMRB, 2020).</p> <p>Further alternatives, strategic landscape scale and offsite mitigation, are discussed within Section 4.5 of the Technical Note on Ecological Mitigation [REP3-010]. Strategic landscape scale mitigation was specifically raised as an alternative within the representation by Gately Legal on behalf of David and Stephen Bolton [REP2-051]. The Applicants response within REP3-009 explains that there is no mechanism locally for landscape scale mitigation (as is available for great crested newts), and that due to the fact mitigation licences are not available for grass snakes, common lizards and slow worms it would be impossible for National Highways to discharge its legal responsibilities with respect to reptiles without trapping and translocating to prevent killing and injury of animals which would be an offence under the Wildlife and Countryside Act (1981).</p> <p>Lastly, the Technical Note on Ecological Mitigation [REP3-010] summarises the relevant information from Chapter 3 Assessment of Alternatives of the Environmental Statement [APP-070] where it is relevant to each of the plots proposed for ecological mitigation. It explains how the design of the mitigation areas evolved in response to consultation with landowners. Of relevance to the Bolton family is information in paragraphs 5.1.3 to 5.1.10 in relation to Plots 1/11a and 2/12g.</p>

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			<p>The Bolton family also submitted proposals for an alternative location for ecological mitigation within REP2-051. The Applicant provided a response within pages 97 to 99 of the Applicants Response to Written Representations [REP3-009], explaining why the proposed mitigation area is not in accordance with the design principle relating to flood plain as stated in bullet point 6 of Section 4.4 of Technical Note on Ecological Mitigation [REP3-010]. A significant proportion of the proposed alternative location is within the modelled fluvial flood extents of the Boreham Brook, as shown by the Applicant's fluvial flood model shown on Sheet 2 of 11 of Figure 14.4 of the Environmental Statement [APP-242]. For this reason alone, the proposed location does not therefore satisfy the criteria as outlined in the general design principles (informed by Natural England's Standing Advice) to constitute a suitable reptile receptor site.</p> <p>In addition, the location of the proposed alternative location does not coincide with the ditches in which water voles have been most recently recorded. It is therefore considered that siting the mitigation as shown in the proposed alternative location may prevent the Applicant mitigating construction effects on water vole if required to enable construction of the attenuation ponds within Plot 1/11a or in the absence of this requirement, it would prevent delivery of enhancements with respect to water vole, in compliance with paragraph 5.33 of the NNNPS which requires the Applicant to maximise opportunities for building in beneficial biodiversity features as part of good design. The Applicant notes comments made by the Environment Agency (with respect to culverts across the scheme, however it is relevant here), within paragraph 1.3.8 of REP2-053, in which they state 'water vole have been almost driven to extinction in Essex by alien invasive mink, but populations are recovering and there is an advanced mink eradication programme throughout East Anglia. It is likely that water voles will spread back across their previous range where habitat allows.' This is consistent with the view of the Applicant, and it is the view of the Applicant that in the absence of being required for mitigation, the water vole habitats proposed within Plot 1/11a (and Plot 8/45b which is outside</p>

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			<p>of the Bolton family's ownership) would provide significant enhancements for this species.</p> <p>A further benefit to the Applicant's proposed location for the mitigation areas within Plot 1/11a is the proximity to the attenuation ponds. Grassland planting around these ponds would function as habitat for reptiles thereby increasing the availability of suitable habitat for the species by having them in areas contiguous with the ecology mitigation areas.</p> <p>The Applicant's position is therefore that there is no better alternative to the locations proposed in the DCO. However, the Applicant is willing to continue to engage with the Bolton family and their representatives, and will give full consideration to any further alternatives they which to propose.</p> <p><u>Evidence</u></p> <p>The Applicant has undertaken reptile surveys in order to establish the baseline with respect to reptiles. Surveys reports have been submitted into the examination, reference APP-133, REP2-028 and REP2-034.</p> <p>Section 2 of the Technical Note on Ecological Mitigation [REP3-010] summarises the results of the three reports. This in combination with the calculations on habitat loss within Chapter 9 Biodiversity [APP-076] based on the Biodiversity Net Gain calculations within the 3.0 metric calculation [REP3-022] provide the evidence for the need to mitigate the presence of reptiles within the Order Limits. This information is summarised within Section 3 of the Technical Note on Ecological Mitigation [REP3-010] for ease of reference.</p> <p><u>Extent of land take</u></p> <p>Section 3 of the Technical Note on Ecological Mitigation [REP3-010] also provides the total area of land which the Applicant proposes to acquire for the purpose of reptile mitigation. A balance has been struck between ensuring an</p>

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			adequate area of habitat to ensure the favourable conservation status has been achieved, and minimising land take. The proposed mitigation solution will provide 48.67ha of high quality habitat compared to the 154.5ha of low to moderate habitat being lost. However, through locating the mitigation areas where there will be connectivity with other planting being delivered as part of the proposed scheme, following construction and maturation of grassland around attenuation ponds and along the new road verges, there will be a series of habitat parcels forming stepping stones across the landscape, connected by suitable habitat.
8.15	<i>ExA</i>	The ExA noted that we have heard significant objections, particularly from borrow pit owners. They emphasised the need to make progress with these negotiations, otherwise the ExA will have to look carefully at the issues that have been raised. The Inspector requested reassurance on that point.	The Applicant noted the request to provide this information at the earliest opportunity. The Applicant takes on board the points that have been made and recognises the timescales and pressures that exist. The Applicant is working hard to reach agreement with the affected landowners and will continue to do so.