

A12 Chelmsford to A120 widening scheme

TR010060

8.4 Statement of Common Ground with Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited

Rule 8 (1)(e)

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(Examination Procedure) Rules 2010

A12 Chelmsford to A120 widening scheme

Development Consent Order 202[]

**Statement of Common Ground with Essex Waterways Limited on behalf
of The Company of Proprietors of Chelmer and Blackwater Navigation
Limited**

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1	February 2023	Draft for Deadline 2
2	April 2023	Draft for Deadline 4
3	June 2023	Draft for Deadline 6

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STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) National Highways Company Limited and (2) Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited.

Signed.....

Philip Davie

Project Manager

on behalf of National Highways

Date: 12th June 2023

Signed.....

[NAME]

[POSITION]

on behalf of Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited

Date: [DATE]

For the submission of the Statement of Common Ground for Deadline 6, between **National Highways** and **The Company of Proprietors of Chelmer and Blackwater Navigation Limited**, updates have been made in the following sections of the document:

Location	Update made
Record of Engagement	One SoCG meeting held.
Issues agreed	Addition of 3.1.2 and 3.2.3 (both new point discussed and agreed since Deadline 4 submission).
Issues in discussion	Updates added to 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.2.7 Addition of 3.2.4a (formerly part of point 3.2.4).

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement of Common Ground ("SoCG") has been prepared in respect of the proposed A12 Chelmsford to A120 Widening Scheme ("the Application") made by National Highways Company Limited ("National Highways") to the Secretary of State for Transport ("Secretary of State") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("PA 2008").
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application documents. All documents are available in the deposit locations and/or the Planning Inspectorate website.
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared by (1) National Highways as the Applicant and (2) Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited ("EWL").
- 1.2.2 National Highways became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing National Highways made provision for all legal rights and obligations of the Highways Agency, including in respect of the Application, to be conferred upon or assumed by National Highways.
- 1.2.3 The Chelmer and Blackwater Navigation, built between 1793 and 1797, links Chelmsford with the Blackwater estuary, allowing suitably dimensioned boats to reach the centre of Chelmsford from the open sea via the sea lock at Heybridge Basin. The Chelmer & Blackwater Navigation Limited own the River Chelmer including banks, and for more than 200 years the company maintained the waterway and acted as the navigation authority. Since 2005, the day-to-day management and maintenance of the navigation is undertaken by Essex Waterways Limited (a division of the Inland Waterways Association (a registered charity). Approximately 839 square meters (0.21 acres) of their interest fall within the extents of the DCO boundary. The land is required to accommodate a new outfall / headwall from the proposed attenuation pond to the north of the river.

The River Chelmer is located between Springfield (to the south of Junction 19) and the village of Sandon (Junction 18), running along the eastern side of the A12 within the local authority area of Chelmsford.

1.2.4 It is open for the general public both on water and land (via the adjoining tow path) for recreational use.

1.3 Terminology

1.3.1 In the tables in the Issues chapter of this SoCG, “Not Agreed” indicates a final position, and “Under discussion” where these points will be the subject of on-going discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. “Agreed” indicates where the issue has been resolved.

1.3.2 It can be taken that any matters not specifically referred to in the Issues chapter of this SoCG are not of material interest or relevance to the The Company of Proprietors of Chelmer and Blackwater Navigation Limited, and therefore have not been the subject of any discussion between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to The Company of Proprietors of Chelmer and Blackwater Navigation Limited.

2 Record of Engagement

2.1.1 A summary of the meetings and correspondence that has taken place between National Highways and Essex Waterways Limited on behalf of the The Company of Proprietors of Chelmer and Blackwater Navigation Limited in relation to the Application is outlined in table 3.1

2.1.2 It is agreed that this is an accurate record of the key meetings and consultation undertaken between (1) National Highways and (2) Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited in relation to the issues addressed in this SoCG.

Table 2.1 Record of Engagement

Date	Form of correspondence	Key Topic discussed and key outcomes (the topics should align with the Issues tables)
4 th February 2022	Email from Essex Waterways Limited (EWL) to National Highways (NH)	Email from Neil Edwards to Theresa Tschainer. Requested additional information about intended works.
4 th February 2022	Email from NH to EWL	Email from Theresa Tschainer to Neil Edwards. Confirmed the proposed works involve a new attenuation pond and outfall to River Chelmer.
6 th February 2022	Email from EWL to NH	Email from Neil Edwards to Theresa Tschainer. Key concerns detailed: <ul style="list-style-type: none"> The river needs to be kept open for boat movements at all times

Date	Form of correspondence	Key Topic discussed and key outcomes (the topics should align with the Issues tables)
		<ul style="list-style-type: none"> • The towpath needs to be kept open for walkers at all times as it is a public right of way • Any siltation entering the river from the ponds needs to be minimised and arrangements need to be put in place to clear any that does arise <p>Access tracks to the river</p>
8 th February 2022	Letter from NH	Land Use Design Changes letter.
21 st February 2022	Microsoft Teams meeting between EWL and NH	<p>Roy Chandler, Andrew Goodwin, Asit Modi, Nick Dexter and Theresa Tschainer attended.</p> <p>Key topics discussed:</p> <ul style="list-style-type: none"> • Timescales • Junction 19 outfall • Water quality • Maintenance of permanent features • Access • Temporary diversion of the tow path • Requirement to keep the river open at all times for boat movement
12 th April 2022	Microsoft Teams meeting between EWL and NH	<p>Neil Edwards, Roy Chandler, Andrew Goodwin, Nuno Fernandes, Asit Modi, Theresa Tschainer and Megan Doherty attended.</p> <p>Key topics discussed:</p> <ul style="list-style-type: none"> • Byelaws • Update on programme • Access • Ongoing river maintenance and excavation works • Headwall design
1 st June 2022	Email from EWL to NH	<p>Email from Neil Edwards to Hugo Rawstorne. Clarified that byelaws made by Essex County Council concerning country parks do not apply to Navigation, confirmed that EWL are happy to discuss the disapplication of certain Navigation byelaws, a deed of easement and works agreement for the proposed drainage</p>

Date	Form of correspondence	Key Topic discussed and key outcomes (the topics should align with the Issues tables)
		discharge into the Chelmer and related works to the towpath.
1 st June 2022	Email from NH to EWL	Email from Hugo Rawstone to Neil Edwards. Link to Byelaws provided. Answers to questions attached.
14 th June 2022	Microsoft Teams meeting between EWL and NH	<p>Neil Edwards, Roy Chandler, Andrew Goodwin, Nuno Fernandes, Asit Modi, Hugo Rawstone and Laura Crumpton attended.</p> <p>Key topics discussed:</p> <ul style="list-style-type: none"> • Land ownership • Tow paths • Byelaws • DCO timeline • Latest proposals • Access • Ground levels • Statement of Common Ground (SoCG)
15 th June 2022	Email from NH to EWL	Email from Hugo Rawstone to Neil Edwards. Land registry data shared; Land plans attached; legal fees clarified. SoCG attached (correct as of 15 th June 2022). Screenshot of Streets, Rights of Way and Access Plans for the subject area.
23 rd June 2022	Email from EWL to NH	Email from Neil Edwards to Hugo Rawstone. Details of legal arrangements RE: A138 viaduct crossing attached (the original notice and Statutory Instrument) and the Notice to aid with byelaws. Also attached an extract from the Land Registry search map. Confirmed ownership. Incorrect registration of EX563273.
7 th July 2022	Microsoft Teams meeting between EWL and NH	<p>Neil Edwards, Roy Chandler, John Pomfret, Andrew Goodwin, Richard Guyatt, Sarah Phillips, Hugo Rawstone, Laura Crumpton and Asit Modi attended.</p> <p>Key topics discussed:</p> <ul style="list-style-type: none"> • Previous meeting actions • Project update

Date	Form of correspondence	Key Topic discussed and key outcomes (the topics should align with the Issues tables)
		<ul style="list-style-type: none"> • Headwall • Land ownership • Working space • Footpath • Statement of Common Ground • Byelaws • AOB
12 th July 2022	Email from NH to EWL	Email from Hugo Rawstone to Neil Edwards. Confirmed that National Highways are unable to pick up fees regarding the Land Registry tow path issue.
26 th July 2022	Letter from NH	Early Negotiations letter.
25 th July 2022	Email from NH to EWL	Email from Hugo Rawstone to Neil Edwards. Fee clarification provided.
26 th July 2022	Letter from NH	Early negotiations letter.
31 st July 2022	Email from EWL to NH	Email from Neil Edwards to Laura Crumpton. Completed early negotiations form attached. Confusion over wording in the letter and land take.
31 st July 2022	Email from NH to EWL	Email from Richard Guyatt to Neil Edwards. Draft DCO attached.
31 st July 2022	Email from EWL to NH	Email from Neil Edwards to Hugo Rawstone. Confirmed that solicitors are working on the Deed of Rectification to correctly register the towpath with Land Registry.
1 st August 2022	Email from NH to EWL	Email from Laura Crumpton to Neil Edwards. Confirmed receipt of completed form and clarified the land take will be temporary possession with permanent rights.
20 th September 2022	Letter from NH	Section 56 letter.
14 th October 2022	Microsoft Teams meeting between EWL and NH	John Pomfret, Neil Edwards, Roy Chandler, Antonia Nelson, Miguel Machado, Asit Modi, Nuno Fernandes, Hugo Rawstone and Isabel Doyle attended. Key topics discussed:

Date	Form of correspondence	Key Topic discussed and key outcomes (the topics should align with the Issues tables)
		<ul style="list-style-type: none"> • DCO/Project Update • Access • Amendment of boundary of the Boltons' property to exclude the towpath as this is owned by Essex Waterways/Navigation. • SoCG • Trees • Access for maintenance to the outfall • Towpath • Environmental Management Plan • Legal Representation and fees
14 th October 2022	Email from NH to EWL	Email from Hugo Rawstorne to John Pomfret. Rights of Way plan attached.
15 th November 2022	Email from NH to EWL	<p>Email from Hugo Rawstorne to Roy Chandler, John Pomfret, Anthony Comber and Neil Edwards.</p> <p>Provided an update that the outfall design is being progressed.</p>
7 th February 2023	Email from NH to EWL	Email from Hugo Rawstorne to Neil Edwards. Current SoCG shared with EWL for comment.
3 rd April 2023	Microsoft Teams meeting between EWL and NH – SoCG meeting	<p>John Pomfret, Asit Modi, Hugo Rawstorne and Isabel Doyle attended.</p> <p>Key topics discussed:</p> <ul style="list-style-type: none"> • Siltation • Disapplication of the acts and bye-laws • Outfall – possibility of an open ditch • Detailed design
3 rd April 2023	Email from EWL to NH	Email from John Pomfret to Hugo Rawstorne. Comments provided for SoCG.
12 th May 2023	Microsoft Teams meeting between EWL and NH – SoCG meeting	<p>John Pomfret, Andrew Goodwin, Tom Scott, Hugo Rawstorne and Isabel Doyle attended.</p> <p>Key topics discussed:</p> <ul style="list-style-type: none"> • Outfall • Change consultation.

Date	Form of correspondence	Key Topic discussed and key outcomes (the topics should align with the Issues tables)
		<ul style="list-style-type: none"> Disapplication of byelaws

2.1.3 It is agreed that this is an accurate record of the key meetings and consultation undertaken between (1) National Highways and (2) Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited in relation to the issues addressed in this SoCG.

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3 Issues

3.1 Issues agreed

Table 3.1 Issues agreed.

Ref	Issue	Doc Reference	Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited Position	National Highways Position	Status	Date
3.1.1.	Use of the towpath		The towpath is used extensively by members of the public and by EWL for access for plant to maintain waterway structures, control vegetation, undertake dredging and so on.	National Highways will work to minimise any disruption to EWL's waterway operations (parcel 1/11g)	Agreed	Apr 23
3.1.2	River operations		The river needs to be kept open for boat movements at all times	National Highways have made the commitment to keep the river open for boat movements at all times (parcel 1/14a).	Agreed	June 23
3.1.3	Temporary Possession			Subject to confirmation of Detailed Design NH will endeavour to reduce any impacts associated with temporary construction and any consequential	Agreed	June 23

Ref	Issue	Doc Reference	Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited Position	National Highways Position	Status	Date
				temporary restrictions to the towpath		

3.2 Issues in discussion

Table 3.2 Issues in discussion.

Ref	Issue	Doc Reference	Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited Position	National Highways Position	Status	Date
3.2.1.	<p>Land take along River Chelmer around Junction 19 and how it might impact temporarily and permanently on the ability of the general public to use the waterway & towpath.</p> <p>[including land parcels 1/11g and 1/11a]</p>		<p>The proposed DCO boundary affects circa 945 square meters of land owned by the The Company of Proprietors of Chelmer and Blackwater Navigation Limited. A new outfall feature will be required as part of the Scheme (due to the additional water that will run off from the A12 and impact on the river and surrounding flood mitigation areas); the outfall feature would be connected via underground pipe to the river.</p> <p>Key concerns:</p>	<p>If it is not possible to keep the towpath open, a temporary diversion would be put in place to ensure continued use/access is possible through parcel 1/11a. It is also noted that the current design is a preliminary one, considerations are being made to work around constraints and keep impact to recreational users, flora and fauna to a minimum.</p>	Under discussion	Jun 23

Ref	Issue	Doc Reference	Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited Position	National Highways Position	Status	Date
			<p>More detail on the timing of the works will be required in due course.</p> <p>More detail on the design of the headwall and the outfall will be required</p>	<p>NH will provide more detail on the timings as the Stage 5 Detailed Design develops. NH are reviewing the outfall design as part of the Stage 5 Detailed Design.</p>		
3.2.2.	Access to the towpath		<p>There is potential for adverse effects on EWL's waterway operations during the construction of the relevant works, particularly regarding access to the towpath.</p> <p>The towpath needs to be kept open for walkers at all times, loss of width would not be an option.</p>	<p>There will be a temporary diversion of PRoW 234/18 as shown in Table 8.1 of the [App 7.7] Outline Construction Traffic Management Plan (OCTMP) and also detailed in the Construction Phase Plans (Sheet 1) notes a temporary minor diversion around drainage works. Where practicable, access will be maintained. NH will use reasonable endeavours to investigate alternative temporary access to Chelmer Navigation along the pond access track.</p>	Under discussion	Jun 23

Ref	Issue	Doc Reference	Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited Position	National Highways Position	Status	Date
3.2.3.	Adverse effect on navigation due to permanent changes to the towpath		<p>EWL believes that there is potential for adverse effects on navigation during the operational phase of the Scheme, due to permanent changes to the towpath, obstruction of the navigation through the outfall structure intruding into the waterway channel.</p> <p>These concerns can be removed if the outfall is designed as a ditch with no works required to towpath ditch crossing.</p>	<p>The Scheme outfall location shown on the Drainage and Surface Water Plans - Part 2, Sheet 1 of 21 [APP-034] is indicative and informed through preliminary surface water drainage design. The proposed outfall details will be developed as part of the design development process to ensure the existing towpath will be reinstated in its current form and that the proposed outfall does not intrude upon navigation. The scheme's order limits allow for the flexibility in determining an appropriate location for the outfall to accommodate such design amendments.</p> <p>To avoid clashes with an irrigation pipe and existing Anglian Water asset, the design will be a ditch which</p>	Under discussion	Jun 23

Ref	Issue	Doc Reference	Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited Position	National Highways Position	Status	Date
				feeds down from the attenuation pond in parcel 1/11a into the existing ditch which runs under the A12 and alongside the river.		
3.2.4.	Adverse effect on siltation arising from discharge of surface water drainage from the highway – during construction		Any siltation entering the river from the ponds needs to be minimised, and arrangements put in place to clear any that does arise.	Discharges to surface water courses will follow the appropriate legislation. National Highways will gain Discharge consents from the appropriate regulator (e.g., Environment Agency or lead local flood authority) or follow the appropriate exemptions prior to discharge taking place. National Highways will take measures to control sediment runoff during construction, ensuring that best practice guidance is followed prior to discharging any water to surface water courses. .	Under discussion	Jun 23
3.2.4a	Adverse effect on siltation arising from discharge of		Any siltation entering the river from the ponds need to be minimised, and arrangements	Discharges to surface water courses will follow the appropriate legislation.		Jun 23

Ref	Issue	Doc Reference	Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited Position	National Highways Position	Status	Date
	surface water drainage from the highway – during operation		<p>put in place to clear any that does arise.</p> <p>EWL is looking for a commitment to long-term maintenance of the attenuation pond (desilting when/if necessary).</p>	<p>National Highways will gain Discharge consents from the appropriate regulator (e.g., Environment Agency or lead local flood authority) or follow the appropriate exemptions prior to discharge taking place.</p> <p>During operation the proposed attenuation ponds will intercept sediment runoff from the road and will ensure it does not affect the navigation. It is considered that the provision of an attenuation pond in parcel 1/11a will provide a reduced risk of pollution and sediment runoff to the watercourse over the existing situation.</p>		

<p>3.2.5.</p>	<p>Disapplication of the original 1793 C&BN Act and waterway byelaws identified in Schedule 10, where these conflict with the rights established by the draft DCO</p>		<p>Under Articles 55 and 56, the draft DCO also includes powers to disapply parts of the original 1793 C&BN Act and waterway byelaws identified in Schedule 10, where these conflict with the rights established by the DCO.</p> <table border="1" data-bbox="801 523 1214 979"> <tr> <td data-bbox="801 523 983 979"> <p>Chelmer and Blackwater Navigation Byelaws 1994</p> </td> <td data-bbox="983 523 1214 979"> <p>Byelaw 3 (Damage etc); Byelaw 13 (Harassment); Byelaw 27 (Obstruction of Officers); Byelaw 28 (Enforcement); and Byelaw 29 (Penalty and Defence)</p> </td> </tr> </table> <p>EWL would welcome an undertaking that any contravention of the Byelaws or disapplication of the Act will be to the minimum extent required to allow construction and operation of the works authorised by the DCO.</p>	<p>Chelmer and Blackwater Navigation Byelaws 1994</p>	<p>Byelaw 3 (Damage etc); Byelaw 13 (Harassment); Byelaw 27 (Obstruction of Officers); Byelaw 28 (Enforcement); and Byelaw 29 (Penalty and Defence)</p>	<p>National Highways will continue to discuss the proposed application of byelaws detailed in the draft DCO with the IP. The disapplication is proposed to allow National Highways to proceed with the construction of the proposed scheme without the need for further applications for consent from the IP, which may delay implementation of the authorised development.</p> <p>NH will continue to work with EWL to minimise any practical implications of temporary disapplication of the Byelaws.</p> <p>NH to provide a letter for circulation to river users around what this may mean for river users regarding construction impacts and disapplication of Byelaws.</p>	<p>Under discussion</p>	<p>Jun 23</p>
<p>Chelmer and Blackwater Navigation Byelaws 1994</p>	<p>Byelaw 3 (Damage etc); Byelaw 13 (Harassment); Byelaw 27 (Obstruction of Officers); Byelaw 28 (Enforcement); and Byelaw 29 (Penalty and Defence)</p>							

3.2.6.	Review of detailed design and construction method statements relating to works on EWL		EWL is unable at this stage to confirm that the works will not have any adverse effects on its interests.	National Highways will consult with EWL once detailed design is available. Any required Consents or Approvals will be gained from the appropriate Statutory Bodies prior to the commencement of works.	Under discussion	Apr 23
3.2.7.	Concern about outfall protruding into navigation forming an obstruction		EWL concerned about outfall protruding into the navigation on the outside of a bend representing a navigation hazard that could lead to damage to craft.	Siting of the outfall is still under discussion and these concerns will be taken into account. Any outfall design would be either set back from or flush with the bank	Under discussion	Jun 23

Acronyms

Abbreviation	Term
AOB	Any Other Business
C&BN	Chelmer and Blackwater Navigation
DCO	Development Consent Order
DMRB	Design Manual for Roads and Bridges
EWL	Essex Waterways Limited
IP	Interested Party
NH	National Highways
PRoW	Public Right of Way
RR	Relevant Representation

References

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For each of those areas that are in dispute, it would be beneficial if each party would put their estimation as to the likelihood that disagreement will remain by the end of the Annex F

F2 Examination. This should be done on a ‘Low’, ‘Medium’ and ‘High’ traffic light model. This will allow the ExA to assess those areas where oral discussions may be most beneficial.

	Low
	Medium
	High

Issue/ Matters under discussion	RAG Status Estimation National Highways	RAG Status Estimation Essex Waterways Limited on behalf of The Company of Proprietors of Chelmer and Blackwater Navigation Limited
Land take along River Chelmer around Junction 19 and how it might impact temporarily and permanently on the ability of the general public to use the waterway & towpath [including land parcel 1/11g and 1/11a]		
Access to the towpath		
Adverse effect on navigation due to permanent changes to the towpath		
Adverse effect on siltation arising from discharge of surface water drainage from the highway		
Disapplication of the original 1793 C&BN Act and waterway byelaws identified in Schedule 10, where these conflict with		

the rights established by the DCO		
Review of detailed design and construction method statements		
Concern about outfall protruding into navigation forming an obstruction		

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