

A12 Chelmsford to A120 widening scheme

TR010060

9.60 Applicant's Responses to ExQ3

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A12 Chelmsford to A120 widening scheme
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Applicant's Responses to ExQ3

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1 Introduction

- 1.1.1 The Development Consent Order (DCO) application for the A12 Chelmsford to A120 widening scheme (the Scheme) was submitted by National Highways to the Secretary of State for Transport via the Planning Inspectorate on 15 August 2022 and accepted for Examination on 12 September 2022.
- 1.1.2 This document sets out the Applicant's response to Examining Authority's Third Round of Written Questions (ExQ3) [TR010060/EXAM/9.60]. The Applicant's response can be found in Section 2 of this document.
- 1.1.3 The Applicant has replicated the Examining Authority layout for Written Questions 3 for ease of reference.

2 Applicant's Responses to ExQ3

Q3.1.1

Examiner's Question

At ISH4, the Applicant referred to the SoS for Transport taking the decision on the whole application, following consultation with the SoS for Energy Security and Net Zero in relation to matters concerning the proposed gas pipeline diversion. Can the Applicant provide any evidence to confirm this position.

Applicant's Response

In July 2021 a letter was sent by the Department for Transport and the Department for Business, Energy & Industrial Strategy to the then Chief Executive of the Planning Inspectorate, Sarah Richards, outlining the decision making process that has been agreed between the respective Secretaries of State for the Department for Transport and the Department for Business, Energy & Industrial Strategy, in relation to applications for Development Consent Orders under the Planning Act 2008, for schemes that include both transport and energy elements that are significant enough to be Nationally Significant Infrastructure Projects (NSIPs) in their own right.

It has been agreed that for such applications, the Secretary of State for Transport will be the sole decision maker. The Secretary of State for Business, Energy and Industrial Strategy (BEIS) will however be consulted on the recommendations made by the Examining Authority in relation to the energy NSIP(s) and his comments will be taken into account when the Secretary of State for Transport takes the final decision.

A copy of this letter has been attached to this document (appendix A) for your convenience.

The Department for Energy Security and Net Zero (DESNZ) has confirmed via email (also attached to appendix B of this document) that this arrangement is still valid (as the DESNZ was established after the Application was submitted).

Q3.3.1**Examiner's Question**

At ISH4, ECC identified that they still had some reservations in relation to the effectiveness of proposed planting and possible bat hop-overs. Please can the Applicant provide an update on the discussions with ECC. With regards to the effectiveness of these hop-overs, is any future monitoring proposed in relation to these crossover points to ensure they are operating effectively? If not, please justify why. If yes, please explain what measures are proposed should this monitoring show that the hop-overs are not operating as expected.

Applicant's Response**Engagement with Essex County Council**

The Applicant attended a meeting with Essex County Council on 11 May 2023 to progress matters in the Statement of Common Ground, including bats. The Applicant presented a detailed breakdown of barbastelle bat activity across the proposed scheme (based on Figure 1 in the Deadline 3 Submission - Applicant's Comments on Essex County Council's Local Impact Report [REP3-021]) and potential impacts on this species, as well as potential impacts on bats in general at each location. The Applicant also provided an overview of existing and proposed new crossings within online and offline sections of the proposed scheme, specifically where there would be no change for bats, or where with appropriate mitigation these would not give rise to any impacts on bats. Other matters discussed included Biodiversity Net Gain and dormice. Essex County Council explained they were seeking additional mitigation for bats, in particular foraging and commuting barbastelle bats, and it was agreed that the Applicant would review the construction programme to determine if there were opportunities for advanced planting.

Further to the meeting, the Applicant emailed the Council (23 May 2023) with a response to the action. The approach to be taken by the Applicant is to review the baseline transect and static detector data in order to focus on the locations across the proposed scheme where there were higher levels of barbastelle bats, as any additional mitigation or advanced planting would be most beneficial in these locations. The email to the Council summarised:

1. these areas of higher barbastelle bat activity (it should be noted the levels of activity were very low compared to other bat species)
2. the Applicant's interpretation of what the records indicated (for example whether the bats were commuting along the A12 or crossing the A12)
3. The potential impacts predicted on this species (as assessed in Environmental Statement Chapter 9: Biodiversity [APP-076])
4. the mitigation proposed (as presented in Section 9.10 of Chapter 9 [APP-076]), and suggestions for detailed design planting which could be incorporated to further improve the mitigation.

Within the email of 23 May 2023, the Applicant offered a further meeting to discuss the content of the email. At the time of writing, the Applicant has not received a response from Essex County Council with respect to the content of the email or the offer of a meeting. The Applicant is being proactive in seeking a response.

Hopover planting and monitoring

It may be helpful to make the distinction between the provision of bespoke fencing which acts as a 'hopover' for bats, and tall screen planting which has multiple applications, one of which includes guiding bats to safe crossing points. Any reference to 'hopovers' for the proposed scheme refers to the latter as no bespoke bat fencing is proposed. Hopover planting has been selected for the proposed scheme as it is more in keeping with the landscape and less visually intrusive than fencing.

Mitigation to offset impacts on bats due to fragmentation of the proposed scheme comprises several different measures, with hopover planting included as part of a suite of mitigation measures. This is of benefit as it reduces the risk of mitigation being ineffective by not relying on one technique, and also caters for the preferences of different bat species. The primary mitigation measures for bats include:

- Design of landscape planting to avoid fragmentation of foraging and commuting habitats and to improve the connectivity of habitats either side of the proposed scheme
- Sympathetic design of new and modified culverts to improve their value to bats and support movement of bats across the proposed scheme
- Use of temporary lighting during construction in accordance with best practice (The Institution of Lighting Professionals Guidance Note 08/18 – Bats and Artificial Lighting in the UK (2018)).

There would be additional mitigation measures as prescribed under a European Protected Species Mitigation Licence (EPSML) for bats. A formal EPSML application would be submitted to Natural England following the grant of the DCO application (as per BI18 in the Register of Environmental Actions and Commitments (REAC) [REP4-023], with the draft EPSML application currently available within APP-140. As per REAC commitment BI22, monitoring of the bat roosts to be retained, and roosts supplied as compensation for loss of roost resource, would be conducted as part of the requirements of the EPSML.

Monitoring of new habitats and planting would be undertaken annually for the first five years as per paragraph I5.2 of Appendix I: Landscape and Ecology Management Plan, within the first iteration Environmental Management Plan [APP-193], and as committed in LV18 in the REAC [REP4-023]. Monitoring would identify any further work or remedial measures needed to deliver the landscape and habitat types committed to, and the appropriate level of mitigation. The Applicant considers that the above monitoring regime would ensure that hopover planting is successfully established and is therefore not proposing to undertake any additional monitoring of the hopovers.

Q3.3.2

Examiner's Question

Please can the Applicant provide an update on the likely timescales for issue of a Letter of No Impediment from NE with respect to bats, as referred to at ISH3 [REP5-020].

<p>Applicant's Response</p>
<p>The Applicant received the Letter of No Impediment with respect to bats from Natural England on 1 June 2023. A copy has been provided to the Examining authority within Appendix B of the Statement of Common Ground with Natural England [TR010060/EXAM/8.1], to be submitted at Deadline 6.</p>
<p>Q3.3.3</p>
<p>Examiner's Question</p>
<p>Please can the parties provide a further update on the issues that have been raised throughout the Examination to date (including those raised at ISH4 regarding disapplication of permits), in relation to the proposed use of culverts. From the Applicant, this should include a response to the EA's Deadline 5 submissions including implications for compliance with the Water Framework Directive. Should the parties not achieve an agreed position by the end of the Examination, the ExA requests that by DL8 each party provides a final position statement outlining the key matters of contention</p>
<p>Applicant's Response</p>
<p>The issues raised during examination in relation to culverts are:</p> <ul style="list-style-type: none"> • Flood risk on ordinary watercourse culverts • Biodiversity net gain (BNG) • Biodiversity (fish and eel movement, mammals) • Water Framework Directive (WFD) <p>Flood risk</p> <p>The Environment Agency stated in their submission at Deadline 2 [REP2-053] that "in respect to flood risk, we are broadly satisfied". A number of those remaining issues have subsequently been resolved (as recorded in the Statement of Common Ground between the parties submitted at Deadline 6 [TR010060/EXAM/8.2] and those outstanding do not relate to culverts on main</p>

rivers. The SoCG notes that the consenting of culverting of Ordinary Watercourses is the responsibility of Essex County Council as the Lead Local Flood Authority.

The Applicant presented the culverting proposals on ordinary watercourses through the Flood Risk Assessment [APP-162]. Essex County Council as the Lead Local Flood Authority would be the consenting authority for works on ordinary watercourses, who have not raised any concerns regarding the proposals.

Biodiversity net gain

As a Nationally Significant Infrastructure Project (NSIP), the proposed scheme is not required to provide 10% BNG. However, the proposed scheme has been assessed for BNG against Natural England's (NE) methodology (Metric 3.0) and does increase the Rivers and Streams biodiversity unit by 156% (including 0.36% for rivers). The Natural England methodology followed combines watercourses into a single 'Rivers and Streams' measure and does not differentiate between Main River and Ordinary Watercourse designations, only between ditches and other watercourses.

Biodiversity

The culverting proposals would include the following mitigation measures:

- Submerging the invert of new culverts below the bed substrate to maintain sediment conveyance (RDWE39 in the Register of Environmental Actions and Commitments (REAC) [REP4-023]).
- Introduction of sediments to replicate a pool-riffle sequence (RDWE42 in the REAC).
- Conveyance, corner and sloped culvert baffles would be included and would improve the passage of eels and reduce the impact on local flow dynamics (RDWE 39 in the REAC),
- Provision of mammal ledges on Rivenhall Brook, Domsey Brook (west), Domsey Brook (east) and Roman River (BI32 in the REAC). These would be positioned above the 1% (1 in 100) Annual Exceedance Probability event peak water level and would ensure safe routes of passage. As previously stated in REP3-009 (page 116-117), the Applicant has committed to post-construction monitoring to determine whether these ledges are used by wildlife (as committed in BI49 in the REAC).
- Mammal ledges are also proposed to be installed within a bespoke pipe for badgers (BI30 in the REAC).

While the existing culverts would be extended, the low gradient would not adversely affect flow velocities compared with the velocity of flow in the existing structures.

Environmental Statement Chapter 9: Biodiversity [APP-076] concludes no significant adverse effects on fish or riparian mammals as a result of the proposed scheme; potential effects are assessed as being a maximum of slight adverse during construction and reduce to neutral for all associated receptors during operation. Please refer to the Technical Note on the Applicant's Position on Culverts [TR010060/EXAM/9.68] submitted at Deadline 6 for an explanation of why the Applicant has proposed culverts and not clear span bridges.

Alternatives to culverts (for example clear span crossings) have been considered at all crossings; however, they were not a practicable option for the proposed scheme (Table 9.2 of Chapter 9: Biodiversity [APP-076]). Further detail regarding the specific considerations of clear span structures for Rivenhall Brook and the new Domsey Brook crossing are provided on pages 112 and 113 of the Applicant's Comments on Written Representations, in response to REP2-053-003 [REP3-009] and within the Technical Note on the Applicants Position on Culverts [TR010060/EXAM/9.68] submitted at Deadline 6.

WFD

All watercourses were assessed as receptors against likely significant effects as reported in Environmental Statement Chapter 9: Biodiversity [APP-076] and Chapter 14: Road Drainage and the Water Environment (RDWE) [APP-081] (specifically Table 14.16), and Appendix 14.3: Hydromorphology Assessment [APP-160].

In all cases the assessment concludes that there would be no change to waterbody status and there would be compliance under the WFD. Mitigation measures have been proposed to ameliorate any potential effects to waterbodies as a result of effects from the proposed crossings (RDWE commitments 39 to 42 in the REAC [APP-185]).

The Environment Agency has raised a concern that an adverse effect on fish passage would risk catchment scale deterioration in the water environment and in its submission to Deadline 5 has stated that it does not agree with the Applicant's WFD compliance assessment [REP5-031]. The Applicant considers that once the proposed mitigation measures are included as reported in the WFD assessment, the impact of the proposed scheme would not result in the deterioration of status of any WFD water body and/or deterioration of the water body at the catchment scale as the Environment Agency has suggested would be the case. Further consideration of the Applicant's opinion is provided in REP5-031-009 [TR010060/EXAM/9.61] submitted at Deadline 6.

Disapplication of permits

The Applicant acknowledges (and has previously acknowledged) that under Section 150 of the Planning Act 1980, FRAPs may not be disappplied without the consent of the Environment Agency. The Applicant has left the drafting in the dDCO while discussions have proceeded with the Environment Agency, and will update the dDCO to reflect the final position before the end of the examination.

In the event that the Secretary of State makes the DCO in its current form, that would include the culverts to which the Environment Agency has objected, the Applicant does not consider that it would then be open to the Environment Agency to act inconsistently with the Secretary of State's independent factual judgment on the issue by refusing to grant a FRAP on the basis that open span bridges should have been used instead of culverts. Those arguments would have been fully heard and rejected, and the Environment Agency would not retain the right to maintain and act upon its original opinion (*R. v Warwickshire CC Ex p. Powergen Plc* (1998) 75 P. & C.R. 89). The principle of that development would have been established by the grant of development consent.

Position statement

The Applicant will continue to liaise with the Environment Agency in relation to culverting and would be happy to provide a position statement at Deadline 8.

Q3.3.4

Examiner's Question

In REP5-020 at page 53, the Applicant refers to further information being submitted under reference C2-023. Please clarify what and where this is contained.

Applicant's Response

The response and additional information are contained within the Applicant's Deadline 5 response to the Environment Agency's responses to ExQ2 [REP5-003], see ExQ 2.18.5 starting on page 86 of that document.

The additional information referred to addresses comments from the Environment Agency regarding:

- Biodiversity net gain
- Biodiversity, including loss of riparian habitat and habitat connectivity, and severance of wildlife corridors
- Culverting proposals
- Eel passage
- Mammal ledges
- Mitigation measures and improvements to river crossings

The response condenses and clarifies the Applicant's position in relation to these matters.

Q3.3.5

Examiner's Question

In REP5-031, the EA state that they have 'repeatedly stated throughout our pre-application engagement with the Applicant that main river crossings should be as wide and light as possible, retaining a natural channel and natural bank margins.' Please can the EA provide evidence to support this statement. Please can the Applicant demonstrate how and where they have considered these comments.

Applicant's Response

Section 2 of the Statement of Common Ground between the Environment Agency and the Applicant [TR010060/EXAM/8.2] sets out the meetings that have taken place in relation to the water environment throughout the development of the proposed scheme design and environmental assessment. Open span crossings were discussed in some of these meetings including most recently those on 2 February 2023 and 5 May 2023. The comments received by the Applicant from the EA informed the mitigation measures that have been included for the crossing designs.

The comments received from the Environment Agency in response to the Scoping Opinion (Table 1.7 in Environmental Statement Appendix 5.1: Scoping opinion response table [APP-096]) and Statutory Consultation (Consultation Report Annex N: Tables evidencing regard had to consultation responses, from page 803 [APP-062]) have been considered in the development of the DCO design alongside other constraints and opportunities.

As part of the design process, the Applicant considered options for river crossings. The preferred option would not be chosen based on environmental concerns alone, but in consideration of a number of factors including whole life costs, technical complexity, embodied carbon, buildability, and health and safety of operatives. The use of clear span structures for all Main River crossings would have its own impacts in terms of carbon, material use, landscape effects and disruption and would be a disproportionate solution that would not add significant benefit or provide any greater mitigation. Moreover, it was established in *Sainsburys v First Secretary of State* [2007] EWCA Civ 1083 that where a development is determined on its own merits to be acceptable in policy terms, there is no duty upon the decision maker to consider whether a yet more acceptable alternative can be identified. This, together with the extent of the duty to consider alternatives, is discussed further in the Technical Note on Proposals for Main River Crossings submitted at Deadline 6.

Q3.5.1

Examiner's Question

We are now over two thirds through the statutory period for the Examination. The latest CA schedule [REP-019] indicates that there are still 55 objections to be resolved. The ExA is expecting real progress can be made in the remaining 8 weeks with these negotiations and can the Applicant provide some reassurance about this? A further CA hearing has been scheduled for Tuesday 27 June in view of the number of outstanding objections.

Applicant's Response

The Applicant continues to make progress with many of the landowners and has updated the Status of Negotiations Compulsory Acquisition Schedule [TR010060/EXAM/9.8] ("CA Schedule") to reflect this. Efforts have been made to secure agreement, and the Applicant has engaged and had meetings with landowners/agents and made realistic offers based on the information available.

In general, there has not been a great desire by the landowners/agents to agree figures. It has been more important for them to understand the impacts of the scheme and to focus on potential mitigation. The Applicant has worked with landowners in this regard and has offered alternative mechanisms to avoid the acquisition of land for the borrow pits, for example, and has engaged where specific by agreement arrangements or design changes have been requested by landowners.

Many of the landowners that were originally categorised as objecting, due to a relevant or written representation, have been either taking limited further action through the Examination phase and some have declined to move negotiations forward at this stage. A separate category in the CA schedule has been identified to these Interested Parties. This category is named 'Initial representation submitted, response provided, no further representations made, negotiations ongoing'.

Some parties retain an in principle objection to the Compulsory Acquisition of their land and will not take negotiations forward. However, many parties are now at a position where they are objecting only to part of the acquisition or are fully engaged in the process of negotiating terms. Many of these terms are bespoke to reflect variations in circumstance, or there remain differences in views on valuation. This is particularly common where landowners have development aspirations for their land and seek a level of compensation National highways cannot justify under the compensation code.

National Highways, as a public body, must only purchase interests by way of agreements with landowners that reflect the market value plus the appropriate compensation code provisions for disturbance and other heads of compensation, when seeking options to purchase for the land required for the proposed scheme. With this in mind, some landowners and their professional advisors see limited benefit in agreeing land acquisition by negotiation, ahead of the DCO being made and compulsory acquisition proceeding, given the more limited activity required from owners if vesting declarations are made. Others would prefer to wait and see whether the scheme proceeds.

<p>There are now 22 objections remaining in the CA Schedule and 24 within the newly added category.</p> <p>Given the extensive pre application consultation that occurred before the Applicant applied for development consent, it is inevitable that the now remaining objections will be the most intractable to resolve. Despite this the Applicant continues to engage with all the relevant affected parties and will continue to do so throughout the remainder of the examination and beyond.</p>
<p>Q3.5.2</p>
<p>Examiner's Question</p>
<p>In the reply to ExQ2 2.5.1 [REP4 –055], it is stated that the parties are “working towards a position that can be agreed.” However, the Interested Parties have a sizeable landholding which is affected, was represented at Compulsory Acquisition Hearing 2 (“CAH2”) and still maintained their objection. What is the latest position?</p>
<p>Applicant's Response</p>
<p>The parties are working towards a position that can be agreed and detailed plans have been produced to reflect this negotiated position. Comments have been received back from the landowners' representatives (18 May 2023) on this detailed plan and this is being considered by the Applicant.</p>
<p>Q3.5.3</p>
<p>Examiner's Question</p>
<p>It is noted that the colour on the updated CA schedule [REP5-019] has been amended but agreement still needs to be reached on market value. Is this realistic before the end of the Examination?</p>
<p>Applicant's Response</p>
<p>A valuation report was received from the Interested Party's solicitor on 23 May 2023 in support of the market value figure claimed. This has been reviewed and subject to a building condition report to confirm that there are no issues affecting the property that would be material to the value. Once this has been completed the Applicant is confident that the market value of the property will be</p>

agreed, subject to the findings of the building condition report. Arrangements are currently being made for an inspection of the property by a building surveyor and updates have been provided to the Interested Party's solicitors.

Q3.5.4

Examiner's Question

A further response was provided at ExQ2 2.5.7 but the Interested Party indicated at CAH2 and in their later submission at REP4-087 that the updated Management Plans showed little improvement for their property. It is difficult to see that any contribution for this property will really provide any kind of precedent for other highways schemes. The Applicant is asked to revisit their response.

Applicant's Response

The Applicant has reviewed the management plans and other documents controlling the proposed works in the vicinity of the property submitted as part of the Application, and where practicable has updated these to both add further controls and to provide greater clarity as to the measures that would be put into place.

Due to the proximity of the proposed works to the cottage there will be some disturbance during construction, including from operation of the haul road to the south of the property. The Applicant wished to save the neighbouring property, which constrains the space available for works access and requires the haul roads to be as proposed.

However, with regards to the contribution, the Applicant assumes that this is in relation to the paying fees for a surveyor to value the property. The "discretion" in discretionary purchase is limited and we have advised the Interested Party of the DfT guidance and how National Highways applies that guidance is set out in the National Highways publication 'Your property and discretionary purchase' available on the National Highways Website (<https://nationalhighways.co.uk/media/0o3jzsqz/your-property-and-discretionary-purchase.pdf>).

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 a proposed road scheme. 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 (offline property) on the grounds that the owner, or a dependant living with the owner, has a pre-existing medical condition that will be severely aggravated by the physical effects of the scheme, National Highways would reimburse reasonable surveyor's costs, legal fees and a disturbance payment in line with entitlements under the Compensation Code.

It is imperative that there is a consistent approach to the policy being applied across the country and how the legislation set out in Section 246 of the Highway Act 1980 is applied to all National Highways road schemes in England. The Applicant will continue to liaise with the Lindsays and will consider any claim they wish to make in accordance with the constraints the Applicant is placed under by the legislation and policy it must apply.

The completion of a discretionary purchase application form is relatively straightforward and can be completed by the Interested Party without the need for specialist advice. It's only if / when the application is accepted by National Highways that specialist advice would be required to value the property and submit a claim.

At present Mr and Mrs Lindsay have not put in an application.

Q3.5.5

Examiner's Question

The Applicant has said that the s.135, PA2008 will be available by the close of the Examination. Please can the Applicant provide evidence in the form of correspondence from Crown Estates to confirm this?

Applicant's Response

The Applicant continues to progress both Statement of Common Ground and Heads of Terms with the Interested Party.

It is believed that, subject to agreeing the Heads of Terms, a consent under S135 should be forthcoming before the end of Examination.

Q3.5.6
Examiner's Question
It was said at CAH2 that the Applicant would try to facilitate the position so that discussions could take place direct between the Interested Party and Cadent Gas especially since it is Cadent who will be undertaking any construction work. Has this been arranged?
Applicant's Response
<p>The Applicant has sent to the Interested Party correspondence directly from Cadent relating to the equipment in Cadent's Above Ground Installation (AGI) off Sheepcotes, confirming that it is not suitable for the traffic necessary to divert the gas main, therefore confirming that an alternative access is required.</p> <p>Additionally, this has been shared in Appendix C in this document.</p>
Q3.5.7
Examiner's Question
The Applicant explained at CAH2 that a mechanism for the landowners of the four Borrow Pits to retain possession of the land had been agreed and it is appreciated that this differs from other landholdings in view of the long-term mitigation required. However, the Applicant does say at ExQ2 2.5.12 that there is "no legal mechanism that would appropriately protect it from potential criminal liability." In view of the agreements being negotiated with the Borrow Pit landowners, this would not appear to be the case. Can the Applicant comment further? It is noted that the NFU have at REP4-093 referred to a relatively simple mechanism which includes a right of entry for the Applicant in the event of non-compliance.
Applicant's Response
The agreements being negotiated in relation to the Borrow Pits differ from what is being asked for by the NFU as no essential mitigation for the proposed scheme is being delivered as part of the Borrow Pits restoration plan, with the exception of an area of

woodland within the southern part of Borrow Pit F, as shown on Sheet 7 of 21 of the Environmental Masterplan [APP-086]. This woodland is required to compensate for the effects of nitrogen deposition on Perry's Wood Ancient Woodland. The area of land required for this woodland planting is to be retained by National Highways in line with its standard practice.

Mitigation planting is provided to integrate the proposed scheme into the landscape and provide visual screening of the mainline, side roads, drainage features, structures, technology and traffic. It is essential that this planting is owned and managed by the Applicant to ensure these objectives are met in the long-term. The indicative landscape proposals within the borrow pits have been designed to show the principles of their restoration but do not contribute to the essential mitigation for the engineering works, i.e. the mitigation for the mainline does not rely on the borrow pit restoration design to integrate the works into the landscape or screen engineering features or traffic.

As such, the Applicant requires to own all land on which essential mitigation is to be provided.

Q3.5.8

Examiner's Question

It is noted that notwithstanding the Statement of Common Ground submitted with the Brice family [REP4-041] the current position is summarised at entry 19 of the CA Schedule [REP5-019]. If agreement is not reached, then the position over the backfill required for the void becomes more questionable. It appears that this agreement is critical. Can the Applicant provide reassurance that this will be available before the end of the Examination?

Applicant's Response

The position summarised at entry 19 of the CA Schedule [REP5-019] relates to discussions with the Interested Party towards a private agreement to secure the land and rights required for the project. These are separate from the negotiations with regard to the Backfill Agreement. The reference to this agreement with the Brice Family and the Applicant is 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. This agreement was completed in April 2023 with start-up meetings now underway and is not dependant on the private agreement to secure the other land and rights sought by the project.

Q3.5.9
Examiner's Question
As indicated at both CAH1 and CAH2, the position over Colemans Quarry was not clear to a number of Interested Parties and also to the ExA. This has now been explained further with the Borrow Pits summary [REP5-015] and also the officer report to Essex County Council in respect of the planning application. The uncertainty has to some extent arisen over the delays in the grant of planning permission which was approved by Essex County Council in January. What are the reasons for delay in completing the section 106 agreement and is this likely to be finalised any time soon?
Applicant's Response
The Applicant is not party to the S106 agreement, the negotiations are with Essex County Council and Colemans's Quarry. The Applicant is in regular contact with the Brice Family, who own Coleman's Quarry, requesting updates.
The latest meeting took place on 22 May 2023 and no further update was provided. The Applicant understands the draft section 106 agreement is currently with Essex County Council's legal department and a response to the draft is awaited.
Q3.5.10
Examiner's Question
Following from the previous query at Q3.5.9 above, if it is possible to import 650,000 cubic metres from external sources, then if this contingency supply is not required at Colemans Quarry, is it not possible for these materials to be used for the Project which would reduce the requirement for the four Borrow Pits identified? The reasoning provided by the Applicant in REP5-020 is noted.
Applicant's Response
In summary, whilst it is theoretically possible to import 650,000m ³ of earthworks material to meet the general earthworks material deficit of 600,000m ³ if it is not required for Coleman's Farm Quarry, this would not reduce the need for Borrow Pits I and J or the

extent of land required for them. The land for Borrow Pit F and part of the land for Borrow Pit E would also still be required. The reasons for this are explained below.

There are also further considerations that would be required, for example, in relation to Environmental Impact Assessment (EIA) and changes to committed mitigation, to enable a change in approach to winning the general earthworks fill deficit.

Finally, there is also no certainty that the contingency for Coleman's Farm Quarry would not be required. Although it is expected that the contingency for Coleman's Farm Quarry would not be required, using import of 600,000m³ could significantly delay the delivery of the scheme and substantially increase the costs of the scheme should this material be relied upon to deliver the Scheme. Currently this import has only been included as a contingency with an anticipated low risk of occurrence, which could be mitigated should it occur, and the environmental impacts have been assessed as a worst case scenario.

Extra land required for importing the general earthworks fill deficit

As discussed in the Borrow Pits Supplementary Technical Note [REP1-011] in paragraph 4.6.16 a change in construction strategy would be required compared to that currently proposed. Importing general earthworks fill material from the market would result in the following changes:

- Changes in land requirements associated with a strategy of stockpiling material to ensure that sufficient material is available prior to the start of each earthworks season to ensure a constant supply of material during each earthworks season.
- A requirement for early procurement of land to enable stockpiling operations to commence ahead of the first earthworks season.
- Additional traffic movements on the A12 and surrounding local network because of the need to haul the earthworks material from its point of origin to its point of use.
- A requirement for disposal of unsuitable material generated from excavations on the scheme.
- Potential additional carbon impacts and other environmental impacts from haulage and double handling of the material.
- Potential impacts upon the construction programme and costs (eg from the need for doubling handling material).

Requirement for Borrow Pit I

With specific reference to the 400,000m³ general earthworks material deficit at the proposed junction 22 (proposed to be won from Borrow Pit I), there is not a suitable location to stockpile imported material adjacent to junction 22 which has sufficient space and access to the strategic or local road network. This is because there are a number of constraints at junction 22 which include the operational quarry, fishing lakes and a willow plantation.

The location at Borrow Pit I would not make a suitable temporary stockpile area because of the need to use a temporary bridge to off-road haul the general fill material over the A12 to its fill location. In addition to the costs for importing the material, the costs for the temporary bridge and double handling of the materials would be incurred. A temporary bridge is only viable for the borrow pit solution because of the reduced costs of winning the material from borrow pits.

As discussed in REP4-095-003 in Applicant's Comments on Information received at Deadline 4 [REP5-002], removing Borrow Pit I would mean significantly increasing the volume of construction traffic that passes over Coleman's bridge and the Eastway's junction. This would contradict the commitments made in the Outline Construction Traffic Management Plan (OCTMP) [REP4-033].

Therefore, the only commercially viable option for construction of the embankments at junction 22 is to use a borrow pit. For the reasons identified in the Borrow Pits Supplementary Technical Note [REP1-011] section 5, the preferred location to serve junction 22 is Borrow Pit I.

Additionally, Borrow Pit I would avoid the environmental impacts of importation.

Requirement for Borrow Pit E

Part of the land at Borrow Pit E would still be required for stockpiling and processing of imported materials for the construction of the embankments on the northern side of junction 21. As with Borrow Pit I, removing Borrow Pit E would mean significantly increasing the volume of construction traffic that passes over the existing Woodend bridge and Wellington bridge, which would contradict the commitments made in the Outline Construction Traffic Management Plan (OCTMP) [REP4-033] to reduce construction traffic over these structures for local receptors (paragraph 2.5.1).

Reducing traffic over the Woodend and/or Wellington bridges at the junction 21 location would not be practical. This is because any feasible location for a temporary bridge crossing the A12 would prevent construction of the junction 21 slip roads. Operational slip

roads at junction 21 are critical to the scheme as they are required to be operational ahead of the closure of Bury Lane. Therefore, a delay to the construction of junction 21 to facilitate a temporary bridge cannot be accommodated without delaying the Open to Traffic date.

Therefore, removing Borrow Pit E would require removal of the related commitments in the OCTMP which would have detrimental impacts on the local communities of Hatfield Peverel and Witham through adverse impacts on traffic. It would also increase scheme cost and environmental impact. In any event part of Borrow Pit E would still be required for stockpiling and processing of imported materials.

Requirement for Borrow Pit F

As described in the Borrow Pits Report [APP-278] paragraph 4.1.2, the restoration proposals include an area of woodland planting to the southern extent to offset nitrogen deposition effects on Perry's Wood in Inworth. Therefore, part of the land take for Borrow Pit F is still required for permanent works irrespective of whether the material is imported. In addition, the remaining land at Borrow Pit F would still be required for stockpiling and processing of imported materials for the construction of the embankments on the southern side of junction 21.

Requirement for Borrow Pit J

Borrow Pit J would still be required to provide 300,000m³ of granular engineering fill, as explained in paragraph 6.4.14 of the Borrow Pits Report [APP-278] and shown in Plate 2.2 of the Borrow Pits Summary Report [REP5-015]. The preferred use for the overburden of 300,000m³ from Borrow Pit J would be to restore Borrow Pit J so as to reduce the impacts on the ongoing farming business unless it is required as a contingency for Coleman's Farm Quarry backfill. Therefore the 300,000m³ of overburden from Borrow Pit J would not be available as general fill material.

Disposal of unsuitable material generated from excavations along the proposed scheme

The borrow pits provide a location to deposit unsuitable material generated from excavations along the scheme minimising the requirement to haul it outside of the proposed scheme boundary, potentially to landfill.

No allowance has been made for exporting unsuitable material as part of the proposed scheme because it is anticipated it would be used to restore the borrow pits. There is no certainty as to how this material would be disposed if exportation was required. Therefore, the environmental impacts of this could not be properly assessed.

Without borrow pits the disposal of unsuitable material becomes an expensive operation (valued at around £2.5M in the Borrow Pits Cost Information [REP3-023]) that potentially impacts local landfill capacity and would not be in accordance with the waste hierarchy.

Therefore, if borrow pits were removed from the scheme this would give rise to environmental impacts for exporting material that have not been assessed as well as additional scheme cost.

Blending the approach to winning the required general earthworks fill deficit

The Applicant explained in Written submissions of oral representations made at Hearings [REP5-020] why a 'blended approach' was not feasible. This is set out in response to Ref 6.11. The Applicant also explained why it would not be appropriate to use the fill identified for Coleman's Farm Quarry, which is a low risk contingency event, as an alternative source of material that can be relied upon to meet the needs of the wider scheme in Applicant's Comments on Information received at Deadline 4 [REP5-002] in response to [REP4-095-002].

In conclusion, whilst it is theoretically possible to import 650,000m³ of general fill material, Borrow Pits J and I would still be required, the land at Borrow Pit F would still be required and part of the land at Borrow Pit E would also be required. If borrow pits were removed from the scheme, this would require additional EIA and a change to the commitments made in the OCTMP. It would also substantially increase the cost of construction and the environmental impacts of the scheme as well as risk delay to the Open for Traffic date.

Q3.5.11

Examiner's Question

There was an original objection on behalf of the Honourable John Frederick Strutt and Lord Rayleigh's Farms at RR185 and RR186 but no further comment during the Examination. Their ownership includes Borrow Pit E and whilst an update is provided in the updated CA Schedule [REP5-019] the discussions seem to be continuing without any agreement being finalised. It is noted from REP5-019 that draft Heads of Terms were issued on 12 April and a "private position statement" will be issued soon. Is there any likelihood of a joint statement or letter of intent?

Applicant's Response

The Applicant understands that the Interested Party does not wish for Borrow Pit E land to be compulsorily acquired. The Applicant is content to progress a lease for this land and has therefore issued Heads of Terms (HoTs) for this across to the Interested Party on 12 April 2023 and an offer of a meeting to discuss the HoTs in more detail. A further offer of a meeting was issued on 4 May 2023 and a response is still awaited. The Applicant is still keen to pursue a lease but would have to use powers under the DCO if no response is received.

A private position statement was issued by the Applicant on 24 May 2023 which covers a wide range of topics, including the Borrow Pit. The Applicant believes that a lot of the Interested Party's concerns have now been resolved in the meeting held in March and through the subsequent information provided and hopes to see progress with the HoTs.

Q3.5.12

Examiner's Question

Representations have been made on behalf of Henry Siggers throughout the Examination and repeated at CAH2 and also in a subsequent submission [REP4-095]. The latest response from the Applicant at pages 80 to 84 of REP5-020 is noted but the Interested Party has been asking for a fuller explanation for some time and this is an important landholding as it includes Borrow Pit I. Reference is made in the application documents to the possibility of additional materials being taken from Pit J (App-278 at para 2.4.9). Draft Heads of Terms were submitted on 26 April but the indication is that the parties are still some way apart. Is this still the case?

Applicant's Response

No response has been received on the Draft Heads of Terms sent to the Landowner's representative on 26 April 2023. However, a further meeting was undertaken with Henry Siggers, Parkers Strategic Land and the Applicant on 19 May 2023 and detailed information regarding the profile of the restored borrow pit, potential lease area plan, borehole data, topographical plan and resending of the draft Heads of Terms were provided on 30 May 2023.

The Applicant believes that a lot of Mr Siggers concerns were answered in the May meeting and through the subsequent information provided and hopes to see progress with the HoTs.

Q3.5.13**Examiner's Question**

The owner of the fourth Borrow Pit is the Bunting family (Pit J) and their adviser raised a number of questions at CAH2. These may to some extent have been answered in the latest Borrow Pits Summary and an update is requested from both sides?

Applicant's Response

The queries raised by Mr Dent at CAH2 have been responded to in full in the Applicant's written submissions of oral representations made at Hearings 1 [REP5-021] section 6.2, 6.4, 6.9 and 6.10. These responses have been re-iterated in response REP5-037-002 [TR010060/EXAM/9.61].

By way of an update, Heads of Terms have been issued in respect of a borrow pit lease and meetings have taken place to discuss in more detail. Initial discussions with the Bunting's agents have been positive and the Applicant is hopeful that agreement can be reached on this issue.

Q3.5.14**Examiner's Question**

This objection is being maintained whilst the drafting of a legal agreement is awaited [REP4- 082]. At CAH2, it was stated in the CAH2 that agreement had been reached on 26 April. Please provide confirmation of this.

Applicant's Response

Detailed plans have been proposed and the Applicant is working with the Interested Party to agree an access licence which will address any concerns in relation to how the works are carried out and the occupation of the land. The Applicant is confident an agreement will be reached that removes the Interested Party's objection before the end of examination.

Q3.5.15

Examiner's Question

Queries were raised over the considerable redactions made to the Borrow Pits Costs Information [REP3-023] and a detailed response and legal justification has now been provided at REP5-020 with a summary [REP5-015] which contains far fewer redactions. It is noted that one of the principal aims outlined in the latest Borrow Pits Summary [REP5 -015] is to clarify the "gist" of the costs information and thereby relying upon the comments from Mr Justice Flaux in the East Staffordshire case. This refined position seems reasonable but the conclusion has to be that the "gist" of the information was not provided at an earlier stage and the redactions made to the earlier Borrow Pit Information [REP3-023] which was lodged more than two months ago on 9 March 2023 were not justified. Does the Applicant now accept this?

Applicant's Response

The Applicant's position is that the 'gist' of the information was provided in the Borrow Pits Cost Information [REP3-023].

The Borrow Pits Cost Information [REP3-023] sets out an appraisal which provides the gist of its conclusions founded upon the confidential information, explaining the cost generation exercise undertaken by the Applicant. It demonstrates what factors have been considered between the different sourcing options in the cost build up. Table 4.3 General Fill Material Rates Worksheet [REP3-023] shows several method related, land associated and statutory undertaker costs which would be incurred by using borrow pits for the proposed scheme and sets out the different options assessed.

The Applicant is satisfied that the Borrow Pits Cost Information [REP3-023] alone contains sufficient information to allow interested parties to engage to a level which is legally sufficient. The Applicant therefore does not accept that it previously failed to provide the 'gist' of the information.

Parties reading the Borrow Pit Costs Information [REP3-023] had sufficient "gist" at that time and the Applicant maintains that an appropriate level of fairness was struck between the interests of the interested and affected parties and the commercial interests of the Applicant and its potential suppliers.

In R (on the application of English) v East Staffordshire Borough Council and National Football Centre Ltd [2010] JLP 586 it was decided that an appraisal providing the gist of conclusions founded on a financial report containing highly sensitive information provided to the local authority on a confidential basis was sufficient for the decision-making process. The Applicant submits its approach in preparing the Borrow Pits Costs Information [REP3-023] is entirely consistent with that Judgment.

However, the Applicant has kept the position under review and having regard to concerns of interested and affected parties, the Borrow Pits Summary Report [REP5-015] revised the presentation of the data to show more clearly how the differing totals have been calculated and provide greater detail on the cost information previously reported without sharing commercially confidential information. This was made possible by omitting one supplier, who did not give consent for their information to be made available in the public domain. From the information provided it can clearly be seen that:

- For external import options, all land costs and borrow pit operating costs have been excluded from the estimates;
- Allowance for the reuse of unsuitable materials have been included for the restoration of borrow pits, but have not been included for offsite disposal of unsuitable material in the imported material scenario.
- For borrow pit options, dewatering and other required temporary works have been included along with other operating costs as well as lands costs.

The Applicant considers that whilst the Borrow Pits Cost Information [REP3-023] provided 'the gist', more than 'the gist' has now been provided in the Borrow Pits Summary Report [REP5-015], such that the Applicant's case in respect of the substantially increased costs of not using borrow pits has been demonstrated fully.

It has always been open to affected and interested parties to submit their own evidence in respect of the costs position, but to date, it is noted by the Applicant that no interested or affected party has sought to do so.

Q3.7.1

Examiner's Question

Historic England have again repeated their concerns and have made a further submission at REP5-036 with an expectation of some further mitigation. This was not accepted at the recent hearing and the Applicant continues to maintain this position with a lengthy explanation in the recent REP5-020 between pages 87 to 99. In view of the latest representation, can the Applicant review its position?

Applicant's Response

For the reasons expressed in previous responses, the Applicant considers their assessment of the effect of the proposed scheme on the settings of the scheduled monument of Neolithic long mortuary enclosure north of Appleford Farm and medieval moat at Marks Tey Hall to be accurate, and that the proposed mitigation, which includes landscape planting, noise bunds, and enhanced low noise surfacing (shown on sheets 11 and 18 of the Environmental Masterplan [APP-087 and REP4-015]), would result in a residual effect of slight significance on both assets.

The Applicant has consulted with Historic England on this matter and both parties agree that additional mitigation within the Order limits would not further reduce the effects of the proposed scheme on the setting of the affected assets. Historic England has requested mitigation or compensation measures outside the Order limits to offset the effects on the scheduled monuments. However the Applicant continues to maintain that such mitigation is not necessary given the assessment that the effect would already be reduced to a residual effect of slight significance.

The power to impose requirements pursuant to s120 of the Planning Act 2008 will be subject to similar constraints as to its scope as the power to impose conditions on the grant of planning permission. In other words, requirements can only be imposed where they are for a “planning purpose”, where they are reasonably related to the development proposed and where they are reasonable in all other respects (see Newbury case – [1981] A.C. 578).

Paragraph 4.9 of the NPSNN states that:

“The Examining Authority should only recommend, and the Secretary of State should only impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.”

Both the Applicant and Historic England recognise that the proposed development will cause harm to the significance of the Scheduled Monument at Appleford Farm.

There is disagreement as to the degree of harm that would be caused. The Applicant has set out in full an explanation of its assessment of the degree of harm to significance. Whilst the Applicant has appraised the extent the setting contributed to the significance of the Scheduled Monument, Historic England has not presented any such reasoned position – as a result, in contrast to the Applicant, the rationale for Historic England’s position has not been explained by reference to an assessment process which is compliant with policy or the guidance set out in GPA3. This is explained in the Applicant’s comments on responses to Q2 [REP5-003], and specifically in the responses given to Q2.11.3 and 2.11.4. The Applicant’s appraisal of the impact of the proposed scheme and its commentary on HE’s position is also provided in the Applicant’s Written Submissions of Oral Case for Issue Specific hearing 3 [REP5-020]. The Applicant considers that in the absence of a reasoned position which is founded upon an assessment process which is compliant with policy and guidance, Historic England’s position cannot safely be accepted – rather the fully reasoned and justified position of the Applicant and its expert consultants is to be preferred.

Notwithstanding the above, whilst there is a dispute regarding the degree of that harm, both the Applicant and Historic England agree that the harm is to be categorised as less than substantial harm.

As a result paragraph 5.134 of NPSNN is engaged. This provides:

“Where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.”

Great weight is to be given to the conservation of the significance of the Scheduled Monument (NPSNN paragraph 5.131).

The Applicant considers that the public benefits of the proposed development are so significant that they outweigh the harm to the significance of the Scheduled Monument even on the basis of the degree of harm identified by Historic England.

Historic England has suggested that the Applicant could either:

- a. Remove the land around the Neolithic long mortuary enclosure Scheduled Monument from intensive agricultural use; or
- b. Secure repairs to the South Barn at Marks Tey Hall.

The Applicant considers that a requirement to deliver either of these could not be imposed for a number of reasons.

Cessation of Cultivation at the Neolithic long mortuary enclosure

The cessation of cultivation of the land around the Scheduled Monument is not necessary to ensure that the proposed development is acceptable. A requirement cannot thus be imposed to deliver this (see NPSNN paragraph 4.9).

Since the Applicant does not have an interest or rights over the land in question it would not have the ability to comply with such a requirement. In these circumstances, the imposition of such a requirement would not be reasonable.

Even if it the cessation of cultivation of the land were deliverable, this would take out of production valuable agricultural land. This would leave the land with no beneficial land use. In the absence of agricultural use, the land would lie fallow and unmanaged. Fallow, unmanaged land would itself be out of character with the surrounding landscape which has been intensively farmed for many hundreds of years.

Further, since the contribution the setting makes to the significance of the Scheduled Monument is limited (see [REP5-002]), the cessation of agricultural use is unlikely to enhance the significance of the asset in any material way – certainly not to a degree which would be material to the balance that paragraph 5.134 on the NPSNN requires to be struck. As a consequence, the Applicant does not consider that it would be lawful or compliant with policy to impose a requirement to deliver Historic England's suggested cessation of agricultural use.

South Barn at Marks Tey Hall

In relation to the South Barn at Marks Tey Hall (“the Barn”), again, since the proposed development is compliant with paragraph 5.134 of NPSNN without them, these works are not necessary to ensure that the proposed development is acceptable. A requirement cannot thus be imposed to deliver this (see NPSNN paragraph 4.9). Since the Applicant does not have an interest or rights over the barn it would not have the ability to comply with such a requirement. In these circumstances, the imposition of such a requirement would not be reasonable.

Notwithstanding the above, the Applicant is happy to explore with Historic England whether designated funds may be available in the future to deliver the suggested or other heritage benefits.

Q3.8.1

Examiner’s Question

There have been a number of further submissions in relation to the proposal for the Gershwin Boulevard Bridge and it is the intention of the Examining Authority to undertake an unaccompanied site inspection in order to view the site from the other side of the existing A12. It is noted that both Essex County Council and Braintree District Council are of a settled view that there needs to be a footbridge at some location in this vicinity. Has the Applicant any further comment to add following the additional comments that have recently been made [REP5-038; REP5-053; and REP4-083]

Applicant’s Response

The Applicant supports the Examining Authority’s unaccompanied site inspection to view the proposed location for the Gershwin Boulevard bridge from the other side of the A12.

The Applicant acknowledges the concerns raised by Interested Parties throughout the examination process and has considered each concern in detail. The Applicant has summarised the matters raised relating to Gershwin Boulevard bridge and the Applicant’s position on each matter in 9.66 Gershwin Boulevard Issue Summary Note submitted at Deadline 6 [TR010060/EXAM/9.66]

Q3.8.2

Examiner’s Question

<p>Essex County Council have objected [REP5-033] to the proposed footpath alignment at Colemans Cottage Fishery on the basis that it creates a semi enclosed corridor footpath. They do not consider that this is the optimum design for a public footpath when it is created as a result of a new development. Can the Applicant give this positioning and design additional thought as this does not seem a satisfactory outcome? A further meeting was proposed for Monday 13 May and was there any progress at this?</p>
<p>Applicant's Response</p>
<p>The Applicant has considered question Q3.8.2 and Q3.8.3 together in its response reference Q3.8.3.</p>
<p>Q3.8.3</p>
<p>Examiner's Question</p>
<p>Following on from the above, reference is made to the National Planning Policy Framework which provides at paragraph 100 that: "Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails" It does not seem that the proposal at the Fisheries meets this requirement and is the Applicant able to offer any further justification?</p>
<p>Applicant's Response</p>
<p>In light of comments from and consultation with Essex County Council (ECC), Essex Local Access Forum (ELAF), and the landowners, the Applicant is proposing to remove the proposed footpath connection from the severed Footpath 121_103 to Little Braxted Lane behind the fishing ponds.</p> <p>The Applicant is now proposing to connect footpath 121_103 to footpath 121_101 via the proposed maintenance access tracks on the southern side of the A12. Footpath 121_101 crosses under the A12 via the Brain Bridge and continues to Maldon Road. This new connection would provide an enhanced public right of way for users in Witham, with the proposed Little Braxted Lane bridge acting as the diversion route for the legally closed crossing of the A12. The proposed footpath would sit on the alignment of the private means of access (PMA) shown on the revised Streets, Rights of Way and Access Plans [TR010060/APP/2.6] submitted at Deadline 6, starting on sheet 8 with 8/C continuing over 9/B on sheet 9, and on land proposed to be retained by National Highways. This new proposed alignment is a better facility by reusing the existing footpath network and connecting footpaths on a north south</p>

direction. This footpath would also enable circular walks between Whetmead Local Nature Reserve and Little Braxted Road, it will also provide a woodland walk along the A12 to the community of Witham. This footpath would accord with paragraph 5.184 of the National Network National Policy Statement and paragraph 100 of the National Planning Policy Framework as it would improve access to the countryside and connect two existing Public Rights of Way.

Q3.8.4

Examiner's Question

Several Interested Parties have referred to the need for access to bridges to be designed in accordance with the LTN1/20 Guidance but there has been no commitment from the Applicant so far. It is noted that a further meeting with Essex County Council was to take place on 4 May. What was the outcome of this?

Applicant's Response

The Applicant has had several further productive meetings with Essex County Council regarding this matter, most recently on 1 June 2023.

The Applicant has agreed to adopt the matrix approach to a requirement suggested by the Council and a table has been included within Appendix B of the Design Principles document. Considering the Examining Authority's commentary on the draft DCO, the Applicant has accepted the inclusion of the Design Principles document within Requirement 10 and as such the content of the matrix is committed to be delivered, unless otherwise agreed in writing by the SoS in consultation with Essex County Council. The Applicant accepts there may be other matters the Council may wish to include within the table, but it is understood that the Council is broadly content with the Applicant's approach to the overbridge ramps.

Further information can be found in Applicants Response to ExA commentary on the draft Development Consent Order [TR010060/EXAM/9.67] and National Highways and Essex County Council – Draft Requirements Matrix [TR010060/EXAM/9.59].

Q3.10.1

Examiner's Question

Whilst it is accepted that the Borrow Pit Report [REP5-015] provides additional detail on the overall approach to the use of borrow pits across the proposed development, in considering the benefits of borrow pits against alternative sources, the submission makes limited reference to their environmental impact, focusing principally on technical matters, risk, cost and greenhouse gas emissions. How have other matters such as loss of agricultural land, biodiversity, landscape, noise, archaeology etc been factored into the overall assessment, and how and where have these impacts been considered alongside similar impacts from other potential sources?

Applicant's Response

The Borrow Pits Report [APP-278] explains in detail the optioneering process that the Applicant has followed. Potential borrow pit locations have been developed through continuous assessment. Initially, a desk-based study identified 18 potential locations (numbered 1 to 18). These were assessed using a Red/Amber/Green (RAG) rating based on various criteria, including the following:

- The availability and potential yield of acceptable engineering fill material
- Proximity to the proposed scheme
- The perceived ease of extraction
- Potential environmental impacts
- Planning and land use constraints

On page 25 of APP-278, Table 5.4 sets out the criteria that were used which include potential environmental impacts.

Assessment of air quality, biodiversity, landscape, noise, archaeology, public rights of way, the water environment, and land use covering loss of agricultural land, for all 19 borrow pit locations has been considered (a further borrow pit was added as explained in the Borrow Pits Report [APP-278]). Further detail of this is provided in the Borrow Pit Supplementary Technical Note [REP1-011] in Appendix C – the borrow pit options RAG matrix.

The borrow pit locations identified by this optioneering process were then subject to further and more detailed assessment for the purposes of Environmental Impact Assessment (EIA). The impacts are assessed within the relevant sections of the Environmental Statement, as described in Section 2.5 of the Borrow Pits Report [APP-278]. As the borrow pits are an integral component of the planned approach to the proposed scheme construction, the Environmental Statement does not disaggregate the environmental effects of the borrow pits from other aspects of the design, such as the highway and drainage attenuation ponds, for the assessments on agricultural land, biodiversity, landscape, the water environment etc. Notwithstanding this, where it has been necessary to attribute potential significant effects and mitigation measures directly to borrow pit activities, the aspect assessments reported in the Environmental Statement have referred to these relationships.

The options to meet the earthworks volume deficit were considered in the early stages of delivery strategy development, which determined that borrow pits are necessary for delivering the proposed scheme. This was driven by balancing all the relevant factors, such as environmental impacts / cost and programme certainty, to determine the most suitable solution to meeting the proposed scheme earthworks material deficit. The EIA was then undertaken on the chosen option (borrow pits), rather than a range of options. Judgements of this nature are required when planning the delivery of a Nationally Significant Infrastructure Project.

A high-level consideration of assessing the effects between the options to meet the earthworks volume deficit is included in the Applicant's response to ExQ2 2.14.1, in the Deadline 4 Submission – Applicant's Responses to ExQ2 – Rev 2 [REP4-055], which explains the environmental impacts likely to be experienced if the alternative option of importing from external sources were to be used. This focusses on the impacts from traffic movements, which is the key difference between using borrow pits on the proposed scheme or importing the volume deficit from external sources.

At this point in the programme, it is not possible to determine what the environmental effects would be of winning material at off-site locations, because it is not possible to know where the material would be sourced from, be it a quarry, surplus from construction site, via road or a combination of road and rail. Furthermore, the environmental effects associated with winning new materials or reusing materials won from other major schemes would have been assessed as part of the consenting procedures for those

projects. Consequently, it is not appropriate for the Applicant to attempt to assess the environmental effects of obtaining material from other locations and compare them with the environmental effects associated with the borrow pits for the A12 scheme.

Q3.10.2

Examiner's Question

In relation to the costs provided for the winning of material from the borrow pits, can the Applicant confirm that all costs associated with the extraction of materials from the proposed borrow pits is included within the cost figure quoted. Does it include the cost of providing the necessary haul roads and the proposed temporary bridge across the A12 to serve Borrow Pit I.

Applicant's Response

The Applicant can confirm that all of the relevant costs associated with extracting materials from the proposed borrow pits has been included within the cost figures quoted.

These items include:

- Procuring the land required for borrow pits
- Carrying out service diversion or protection works in the borrow pit
- Temporary bridges and haul roads required for borrow pits
- Dewatering requirements
- Temporary fencing
- Temporary access and egress from the public highway
- Stripping topsoil and subsoils to the borrow pit
- Carrying out archaeological mitigation in the borrow pit

- Excavating the earthworks material
- Processing the material (if required) to ensure it meets the required specification
- Transporting the earthworks material
- Placing and compacting the earthworks material
- Restoring the borrow pits on completion of extraction
- Aggregate levy for any granular material won from borrow pits

With regard to the specific example of the necessary haul roads and temporary bridge across the A12 to serve Borrow Pit I, in the Borrow Pits Summary Report [REP5-015], Appendix A – Table 4.3, items 100.02 and 100.06 show the inclusion of the temporary bridge for Borrow Pit I and the cost attributed to providing haul roads for all of the four borrow pits.

These costs are shown in the column titled 'Borrow Pit' only and are not included within the 'Supplier' or 'Other Project' columns, because a temporary bridge and borrow pit specific haul roads would not be required for these options.

The location of the Borrow Pit I temporary bridge can be seen in the Temporary Works Plans [AS-004], Work No. T31. The location of haul roads can also be seen in the Temporary Works Plans [AS-004] under various works numbers.

Q3.12.1

Examiner's Question

At CAH2 concerns were again raised on behalf of Prested Hall over the impact on their business. The Applicant mentioned the possibility of avoiding key dates in the summer when the wedding business would be most affected. Can the Applicant confirm if/how it intends to secure this?

Applicant's Response

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.

For the purposes of construction works, the optimum period for earthworks operations generally runs from spring to autumn (depending on rainfall). It is not common practice to plan to carry out earthworks' operations in the winter months due to the uncertainty around weather conditions and higher moisture content within the ground; therefore, it is not practicable to restrict the construction works to the winter months.

The Applicant met with the interested party on 1 June 2023 and agreed the Applicant would produce a detailed brochure to share with prospective customers of the wedding venue detailing the construction proposals and mitigation measures that would be implemented during the construction phase, as well as detailed phasing as to how the access would be maintained, to enable prospective customers to better understand the potential impacts during the construction phase when booking the venue.

The Applicant believes that the construction impacts would be limited to arriving at the venue. Initially access would pass over a plant crossing (with priority over works vehicles), then via a temporary road to the new overbridge to cross over the works, ahead of the final arrangement. Other impacts are likely to be limited due to the distance of the works from the hall, the maintenance of the band of tall trees to the north of the hall and temporary features (such as earth bunds) that would be introduced to screen the works.

The Applicant would not affect access to the Interested Party's land or business during daytime hours. If there was a requirement to restrict access, this would be done overnight and not when an event such as a wedding would be taking place. The Applicant is committed by PH1 within the Register of Environmental Actions and Commitments (REAC) [REP4-023] to appoint a Community Liaison Manager who would engage with affected communities and stakeholders and communicate potential periods of disruption through the construction phase.

To provide assurance to the Interested Party, the Applicant has updated the Outline Construction Traffic Management Plan (OCTMP) [REP4-033] at Deadline 4 with the following text in Section 5.11:

"Where reasonably practicable, priority would be given to members of the public on the local road network or public right of way at a plant crossing. For example, plant crossing 11 (PC11) is for a haul road crossing the private road to Prested Hall and other residential properties. Priority would be given to users of Prested Hall and residential properties, where practicable. The Applicant

will liaise with the freeholder of Prested Hall to mitigate impacts on access, during events such as weddings, as far as is reasonably practicable.”

Q3.13.1

Examiner's Question

The Department of Transport has recently announced forthcoming guidance on 'Accounting for COVID-19 in transport modelling', with an expected release date of May 2023. At the time of drafting this question, the new guidance had yet to be published, however it is likely that it will be available before the close of the Examination. Therefore, please can the Applicant identify what the implications are for the application.

Applicant's Response

The Department for Transport (DfT)'s latest guidance on incorporating Covid-19 impacts into model forecasts was released in May 2023 and is included in its Transport Analysis Guidance Unit M4.

In parallel with the application for Development Consent, the Applicant holds regular meetings with the Department for Transport as part of the governance process around the scheme's funding approval. Following discussion around this new guidance in its May 2023 meeting with the Department, the Applicant has proposed an approach as to how to address it. This involves analysis of the traffic changes since Covid-19, and how that compares to assumptions within the traffic model. Although it would not result in any changes to the traffic model at this late stage of scheme development, the aim is to provide insights into the effects of Covid-19 on traffic flows and highlight any disparities with modelled assumptions. This methodology strikes a balance between the constraints imposed by the scheme's advanced stage and the necessity to account for the impacts of Covid-19.

This is in line with the new guidance which acknowledges that making changes to traffic models can be impractical within a project's timeline but encourages project teams to provide clear explanations and justifications for the limitations imposed by the advanced project stage. A clear documentation and justification of the chosen approach will ensure transparency and accountability in the decision-making process.

The Applicant will aim to provide a copy of this analysis at Deadline 7.

Appendix A Transport DCO's with Energy Elements



Department
for Transport



Department for
Business, Energy
& Industrial Strategy

Your Ref: TR010044 & TR010032

DATE 30 July 2021

Sarah Richards
Chief Executive
Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol, BS1 6PN

Dear Ms Richards

TRANSPORT DEVELOPMENT CONSENT ORDERS THAT INCLUDE ENERGY ELEMENTS ABOVE THE PLANNING ACT 2008 THRESHOLD

We are writing to confirm the decision making process that has been agreed by our respective Secretaries of State, in relation to applications for Development Consent Orders under the Planning Act 2008, for schemes that include both transport and energy elements that are significant enough to be Nationally Significant Infrastructure Projects (NSIPs) in their own right. This covers applications where transport is the main NSIP but where energy diversions are proposed which meet the thresholds laid out in the Planning Act 2008 to also be an NSIP.

It has been agreed that for such applications, the Secretary of State for Transport will be the sole decision maker. The Secretary of State for Business, Energy and Industrial Strategy (BEIS) will however be consulted on the recommendations made by the Examining Authority in relation to the energy NSIP(s) and his comments will be taken into account when the Secretary of State for Transport takes the final decision. The purpose of this consultation will

be to ensure the decision on the energy NSIP(s) aligns with energy policy, as the Secretary of State for BEIS is best placed to advise on this.

Both Secretaries of State reserve the right to change this position in the future or become more or less involved in decisions as may be required to ensure applications are decided in an efficient and robust way.

Yours sincerely

Natasha Kopala

Natasha Kopala
Department for Transport

Gareth Leigh

Gareth Leigh
Department for Business, Energy &
Industrial Strategy

Appendix B Correspondence relating to Energy NPS and Secretary of State Decision (DENZ)

Fernandes, Nuno

From: Harvey, Gareth (BEIS) [REDACTED]@beis.gov.uk>
Sent: 12 June 2023 14:56
To: Tracey Harvey
Cc: Fernandes, Nuno; Mckenna, John (Energy & Security - EDRD)
Subject: [EXTERNAL] RE: The Proposed A12 Chelmsford to A120 Widening Development Consent Order

Dear Tracey,

Thank you for your email. In line with previous agreements, the Department for Energy Security and Net Zero is content for the Department for Transport's Secretary of State to take the lead on this scheme and be the sole decision maker for both the proposed A12 Chelmsford to A120 Widening and the diversion of the adjacent gas pipeline. At the appropriate time, our Secretary of State will provide comments.

Kind regards

Gareth



Department for
Energy Security
& Net Zero

Gareth Harvey
Wayleave Consent Manager
Energy Infrastructure Planning
Tel: 07927580457
Gareth.harvey@beis.gov.uk
Companies House, Crown Way, Cardiff, CF14 3UZ
www.gov.uk/beis | twitter.com/beisgovuk

From: Tracey Harvey [REDACTED]@nationalhighways.co.uk>
Sent: Monday, June 12, 2023 11:57 AM
To: Harvey, Gareth (BEIS) [REDACTED]@beis.gov.uk>
Cc: Fernandes, Nuno [REDACTED]@jacobs.com>
Subject: FW: The Proposed A12 Chelmsford to A120 Widening Development Consent Order
Importance: High

Hi Gareth

As per our conversation, please see the email below.

Any problems, please let me know.

Thanks & regards

Tracey Harvey Project Manager
[A12 Chelmsford to A120 Widening Scheme](#)
Major Projects | Regional Investment Programme (East)
National Highways | Woodlands | Manton Lane | Bedford | MK41 7LW
Mobile: 07714 839564
Email: Tracey.Harvey@nationalhighways.co.uk
Web: <http://www.nationalhighways.co.uk>

From: Tracey Harvey
Sent: Friday, June 9, 2023 3:18 PM
To: Mckenna, John (Energy & Security - Energy Development & Resilience) [REDACTED] [@beis.gov.uk](mailto:[REDACTED]@beis.gov.uk)>
Cc: Fernandes, Nuno [REDACTED] [@jacobs.com](mailto:[REDACTED]@jacobs.com)>
Subject: The Proposed A12 Chelmsford to A120 Widening Development Consent Order
Importance: High

Afternoon John

I hope you are well.

National Highways have submitted an application for a development consent order, in relation to improvement works to the A12. In the context of this scheme, the diversion of a high-pressure gas pipe, operated by Cadent is required and this in itself meets the threshold to be considered a NSIP in its own right. I have enclosed a letter which sets out the position in more detail and contains a formal request in terms of how these interrelated NSIPs should be considered.

Please can you confirm via email that you are content with what has been set out. We are looking to include this on our Deadline 6 submission on Monday 12th June.

Any problems, please let me know.

Kind regards

Tracey Harvey Project Manager
[A12 Chelmsford to A120 Widening Scheme](#)
Major Projects | Regional Investment Programme (East)
National Highways | Woodlands | Manton Lane | Bedford | MK41 7LW
Mobile: 07714 839564
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National Highways Limited | General enquiries: 0300 123 5000 | National Traffic Operations Centre, 3 Ridgeway, Quinton Business Park, Birmingham B32 1AF | <https://nationalhighways.co.uk> | info@nationalhighways.co.uk

Registered in England and Wales no 9346363 | Registered Office: Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ

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Appendix C Correspondence from Cadent relating to Springfield AGI

Andrew Goodwin

Subject: FW: [EXT] RE: A12 - AIA1 and access through the Cadent compound

From: [REDACTED] <[REDACTED]@cadentgas.com>

Sent: 10 May 2023 18:04

To: Andrew Goodwin <[REDACTED]@costain.com>

Cc: [REDACTED]

Subject: RE: [EXT] RE: A12 - AIA1 and access through the Cadent compound

Importance: High

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments, unless you recognise the sender and know the content is safe. Always verify with the source if unsure.

Hi Andrew,

As promised, Cadent's official position on the matter of access to Asset Interaction Area 1 (AIA1) via the existing live and operational Springfield High-Pressure Above Ground Installation (AGI) is as follows;

Through preliminary investigations we have identified that the existing AGI access road has High-Pressure pipework traversing under it at shallow depths in multiple locations. There is also shallow ducting for electrical cables and flow and return water piping. The road itself, along with its infrastructure (such as drainage, bollards etc) was not originally designed for frequent or heavy traffic, therefore in its current state, Cadent can only accept light vehicular access through the AGI for sporadic maintenance purposes only.

To allow heavy construction vehicles to pass frequently through the AGI, significant investigations and design work is likely to establish that diverting or relocating the existing assets away from the access road will be required. Not only will assets need to be moved to a safe distance away from the access road (and this is assuming there is sufficient room within the AGI to allow diverting/relocating), the road itself will need to widen and extended, including the removal the AGI security fencing and circumnavigating the lattice tower (or temporarily dismantling and restoring the tower).

The potential extent of the works required in the AGI to allow construction traffic could well be significant, leading to extensive financial costs and delays to programme. Furthermore, the AGI apparatus would need to be accessible at all times, with any planned operation, maintenance or repair works; or emergency situations taking priority, which will intensify the access challenges. Construction movement within a live AGI can be considered extremely dangerous within the gas industry, not only because of the risks to health and safety whilst working in close proximity to High-Pressure gas assets, but also because of the significant impact on regional gas supply if an incident was to occur due to the traffic.

Due to the reasons stated above, Cadent will not allow admission through the AGI in its existing condition to gain access for diversions works associated with the A12 Road Scheme.

Kind regards,

Mike

[Redacted]

Project Delivery Engineer

Capital Delivery

Cadent

Mersey Road North, Hollinwood, Manchester, M35 9FF

[Redacted]

[Redacted]

Cadentgas.com
