



Our ref: AE/2022/127507/15-L01 & Interested Party Ref: 20033155
Your ref: TR010060

Date: 12 July 2023

Submitted via portal

APPLICATION BY NATIONAL HIGHWAYS FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE A12 CHELMSFORD TO A120 WIDENING

Please find below Deadline 8 comments from the Environment Agency in response to document **9.72 Applicant's Comments on Information received at Deadline 6** [REP7-045], submitted at Deadline 7.

We note at section REP6-106-002 of the document, the Applicant makes the following statement in relation to the topic of our consistency of approach in applying our culverting policy:

“Similar discussions in relation to culverts have been held between the Environment Agency and National Highways on the Lower Thames scheme. Initially, the Agency clearly stated that culverts on the Lower Thames scheme should be avoided. However, National Highways’ team has provided justification to the Agency that culverts are appropriate in several locations for the Lower Thames scheme, and this is a position which the Agency has since accepted.”

The Lower Thames Crossing (LTC) scheme (case reference TR010032) actually proposes the installation of just one culverted main river crossing. At the pre-application stage, alternative options for that crossing were investigated in detail with the Environment Agency. The proposed culvert length was reduced from 83m to 48m, but we have stated that this is still not acceptable. There is no evidence that the species using the river will travel through that length of culvert, breaking the continuity of the watercourse and causing permanent habitat fragmentation, a loss of WFD habitat

Mitigation measures proposed include the recreation of lost fen habitat, the removal of three pre-existing culverts within the catchment, and the reinstatement of 125m of

open watercourse. We have agreed that there will be an increase in freshwater habitat overall.

As part of the Environment Agency's Written Representation for the LTC scheme, it will be stated that the Environment Agency still opposes the culverting and does not agree with the loss of Water Framework Directive habitat. It is accepted that the proposed approach is the least damaging option. Our advice is that it is for the Applicant to make a case to the Secretary of State for Transport under Regulation 19 of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 that their proposals should be allowed.

It can be seen that the approach taken by the Environment Agency in response to the culverts proposed as part of the A12 scheme and the LTC scheme has been consistent.

The Applicant has also previously stated that the Environment Agency could not refuse flood risk activity permits (FRAPs), required under the Environmental Permitting (England and Wales) Regulation 2016 for the new and extended culverts in the event that the DCO application was permitted. It is our view that we will consider the applications for FRAPs when received and may consider it appropriate to refuse the applications on the basis that the culverting is environmentally damaging. On that issue we wish to highlight paragraph 4.41 of the Decision Letter from the Secretary of State for Energy Security and Net Zero for the Boston Alternative Energy Facility scheme (case reference EN010095) dated 5 July 2023 (our emphasis):

*4.41. In this case the Secretary of State has been required to make a decision without the certainty that the necessary licence for the LWA process will be granted. **The Secretary of State wishes to make it clear that his decision should not be seen as predetermining the EA's decision on the EPs (Environmental Permits), which must be made on their own merits.** The uncertainty in relation to the potential award of the EPs required to operate the Proposed Development is such that the Secretary of State accords it moderate negative weight in the planning balance.*