

Transport Infrastructure Planning Unit

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Dear Secretary of State for Transport

**A12 Chelmsford to A120 Widening Scheme (the Project)
DCO Application (the DCO application)**

**Applicant's response to the Secretary of States first Request for Information dated 27
October 2023 (the Rfl)**

I am writing in response to the Rfl dated 27 October 2023 issued by the Secretary of State to National Highways (**the Applicant**) in relation to the Development Consent Order (**DCO**) Application for the A12 Chelmsford to A120 widening scheme.

The Rfl requests the Applicant and Interested Parties to provide a response in relation to matters identified under various sub-headings, 1-8.

In this letter the Applicant provides responses to these matters in turn, using numbered paragraphs in the Rfl for reference.

Postponed ban on the sales of petrol and diesel cars

1. Postponing the delay of new sales of petrol and diesel cars from 2030 to 2035 will not affect the air quality modelling or assessment of greenhouse gas emissions. This is because the road traffic forecasts published in Sheet 1.3.9 of DfT's TAG Databook, which were used in the development of the Emissions Factor Toolkit v11 (published by Defra) (EFT), do not currently allow for the introduction of the Zero Emissions Mandate. Therefore, the proposed delay to the ban to 2035 would not affect the traffic fleets in the TAG Databook, which in turn would not affect the fleets in EFT and consequently nor would it affect the precautionary modelling undertaken for the Project.

The Applicant, therefore, does not consider that it needs to update its carbon assessment or any other assessment that supports the DCO Application.

Tree preservation order

2. The works to be carried out within the area subject to Tree Preservation Order (TPO) 07/22 relate to the diversion of a Cadent high-pressure gas pipeline, Work No. U69. The Blue Mills Woodland TPO is included in Part 3 of Schedule 9 of the dDCO, such that it is subject to the powers in Article 47 of the dDCO, to provide powers only if a need arises to remove or trim back vegetation for access or inspection associated with the installation and maintenance of the pipeline.

The Applicant can confirm the methodology of construction at the location of the Blue Mills Woodland TPO would use trenchless techniques to install the 610mm diameter steel pipeline. Temporary sheet piled shafts would be situated within the agricultural fields either side of the Blue Mills Woodland TPO and the bore would be installed between these shafts at a depth sufficient to clear the riverbed and tree roots. The long section profile for this design which would include the proposed depth is currently ongoing however the start and end points are now confirmed to be outside of the TPO area.

To avoid any risk to the Black Poplar (identified as T2077 in the Supplementary Arboricultural Survey Report [REP3-008]) situated within the TPO area, the alignment of the pipeline has been designed to avoid this part of the TPO site. With this methodology and alignment now confirmed it is no longer anticipated that any vegetation would need to be removed for these works within the Blue Mills Woodland TPO area and that the powers are required only on a precautionary basis as described above for localised removal or trimming of vegetation that would not affect the Black Poplar.

The Applicant can confirm that the following clauses within the First Iteration Environmental Management Plan Appendix A: Register of Environmental Actions and Commitments (REAC) [REP7-015] will apply if any such works prove to be required.

LV4:

Existing vegetation within the Order Limits including temporary works areas would be retained as far as reasonably practicable. Particular attention would be given to the retention of mature vegetation including the following, which would be retained in accordance with, as a minimum, the Retained and Removed Vegetation Plans [TR010060/APP/2.14]. Vegetation to be removed is shown on the same plan.

- Ancient, veteran and notable trees (both verified and potential)
- Trees subject to tree preservation orders
- Specimen trees
- Category A and B trees
- Important hedgerows
- Ancient woodlands

All trees to be retained would be protected throughout the construction period in accordance with BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations.

Where it is necessary to remove trees subject to tree preservation orders, such as in front of Boreham House, and trees within the Chelmer and Blackwater Navigation Conservation Area, they would be replaced on completion of construction using the same or similar species to that removed as close to the location of the original as practicable, subject to consideration of species with regards to climate change and resilience to pests and disease.

LV7:

Where it would be necessary to remove vegetation within temporary works areas, such as construction compounds, utility routes, haul roads and regrading areas, this would be replaced on completion of construction using the same or similar species to that removed where practicable (subject to restrictions to planting over and around pipeline easements and consideration of species with regards to climate change and resilience to pests and disease, and landowner agreement). All land used temporarily would be restored and returned to an appropriate condition relevant to its previous use wherever practicable and appropriate, including the ripping, minor regrading and respreading of topsoil. Hedgerows, fences and walls would be reinstated to a similar style and quality to those that were removed with landowner agreement.

BI148:

The arboricultural survey confirmed that the mature black poplar within the Order Limits at Blue Mills proposed LWS qualified as a potential veteran tree. The results of the arboricultural survey will be used to inform an appropriate control, whereby a combination of route and construction methodology would be designed to minimise the impacts on the black poplar and other sensitive features in this area.

BI150:

The Cadent gas pipeline, Work No. U69, would be installed using no-dig techniques underneath the River Blackwater and the woodland subject to Tree Preservation Order 07/22 at Blue Mills proposed LWS (see Figure 1 - Woodland TPO at Blue Mills proposed LWS). The line, depth and locations of temporary works required to install the pipe including the launch and receptor pits, would be selected to minimise impacts to the woodland protected by the Tree Preservation Order, the proposed Blue Mills Local Wildlife Site, the black poplar and otter holt at grid reference TL 83264 1361, and transitional veteran trees T2045 and T2078 as identified in the Supplementary Arboricultural Survey Report [REP3- 008].

RDWE58:

The proposed gas main diversion would use trenchless techniques to take the pipes under the River Blackwater. The minimum depth under the hard bed of the main river would be 1.5m, and this depth would be maintained for 5m either side of the banks of the river before rising. The launch and reception pits would be more than 8m from the bank of the main river. These works would fall under the Environmental Permitting Regulations.

Case for Derogation under The Water Environment (Water Framework Directive) (England and Wales) Regulation 2017

3. As requested by the Examining Authority, the Applicant has provided information required to consider the application of the Article 4(7) derogation. This document, titled, "Water Environment (Water Framework Directive) Regulations 2017 Without prejudice Regulation 19 Submission" is provided without prejudice to the Applicant's case that the proposed scheme is fully compliant with the requirements of the WFD Regulations and, as such, it is not necessary for the conditions set out in regulation 19 to be considered.

The Applicant has continued to progress discussions with the Environment Agency following closure of the Examination. As a result of these, a number of changes have been proposed to the main river crossings that require changes to be made to certified drawings. The revised drawings have been provided to the Environment Agency to seek any final comments. In addition, a number of further measures have been proposed to be added to the Register of Environmental Actions and Commitments (REAC) (First Iteration EMP Appendix A REAC [REP7-016]). These have also been submitted to the Environment Agency for final comment and that version of the new, proposed measures is at Table 3 of Appendix B to the attached Regulation 19 Submission.

To ensure that the updated engineering drawings and REAC can accommodate any comments from the Environment Agency prior to certification we have sent them to the Environment Agency today, together with the Water Environment (Water Framework Directive) Regulations 2017 Without prejudice Regulation 19 Submission. Once the Environment Agency have commented we will be able to submit the revised versions of these drawings and documents to the Secretary of State.

We will submit to the Secretary of State the revised engineering drawings and the revised REAC following receipt of final comment from the Environment Agency.

As the revisions to the engineering drawings and the REAC mean that certified drawings are changing, it will be necessary for the Applicant to:

- provide the revised versions of the engineering documents and the REAC,
- update the Certified Documents Schedule, column (3), and
- Resubmit the DCO with the changed schedules and validate the revised version.

Planning Permission

4. There are several examples of this article being included in other recently made DCOs, some of which are referred to below. As such this is not novel drafting and there are multiple examples of precedent of made Orders that include this article.

Similar wording is to be found in:

- article 7 of The A47 Wansford to Sutton Development Consent Order 2023;
- article 7 of the A47 Blofield to North Burlingham Development Consent Order 2022;

- article 7 of the A47/A11 Thickthorn Junction Development Consent Order 2022;
- article 7 of the A30 Chiverton to Carland Cross Development Consent Order 2020;
- article 7 of The A428 Black Cat to Caxton Gibbet Development Consent Order 2022;
- article 6 of The A303 (Amesbury to Berwick Down) Development Consent Order 2023;
- article 6 of The Portishead Branch Line (Metrowest Phase 1) Order 2022; and
- article 7 of The A417 Missing Link Development Consent Order 2022.

This article is not intended to permit a planning permission of itself to override or displace any provisions in the Order. It provides clarification to local planning authorities that development benefiting from permission issued under the Town and Country Planning Act 1990 does not lead to a scenario where National Highways can be prosecuted for breaching the terms of the A12 Order. National Highways believes this is a useful and necessary clarification for those responsible for the planning enforcement regime and also provides National Highways with comfort and clarity.

This article permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990 that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. This ensures that a landowner does not breach section 161 of the Planning Act 2008 in carrying out certain development pursuant to a grant of planning permission, provided that development is not of itself an NSIP or part of one, or required to complete or enable the use or operation of any part of the authorised development.

This article would therefore ensure that if planning permission is granted by the local planning authority for land within the Order limits, then that party would not automatically be in breach of the A12 Order (and National Highways would not be subject to enforcement action for a breach of the A12 Order), provided that the development is not of itself an NSIP or part of one, or required to complete or enable the use or operation of any part of the authorised development.

It should also be noted that the construction period of the A12 Scheme will last several years, and land will be secured for construction on a phased basis. The area of the Order land is also substantial and during some periods of time it is possible that other development activities could potentially be carried out on land that is within A12 Order limits without inhibiting the A12 Scheme or creating additional compensation liabilities for National Highways (section 4 of the Acquisition of Land Act 1981 may well apply to a scenario where development is carried out with a view to enhancing compensation due).

The location of the A12 Scheme is a dynamic area in planning terms, where many landowners have development ambitions. It would not be appropriate for National Highways to have to object to such applications for planning permission on the basis that any uncertainty regarding overlapping developments means National Highways must object to applications for planning permission to protect the integrity of its development consent until the A12 Scheme is fully built out.

The Applicant is asked to specify whether Article 8 is required because of the existence of a particular planning permission (as indicated by paragraph 4.30 of the Explanatory Memorandum) or because of planning permissions yet to be obtained by the undertaker (as indicated in the Applicant's response to ExA question 6.0.6 in [REP2-025]), or both.

The Applicant requires Article 8 for both existing planning permissions and for anticipated planning permissions. An example would be Coleman's Farm Quarry, where the existing owner is benefiting from existing minerals consents and also has made an application for minerals consent that has been approved by Essex County Council as minerals planning authority, but the issue of permission is awaiting completion of an agreement under S106 of the Town and Country Planning Act 1990. National Highways does not know whether this new minerals consent will be issued before or after the A12 Order is made.

In particular, the Applicant is also asked to clarify whether the intention is that the article applies to planning permissions issued before the DCO would come into force, or to any planning permission, whenever issued

The intention is that the article would apply to development occurring within Order limits after the A12 Order comes into force, if the relevant development is authorised by planning permission. The clarification provided by Article 8 would apply to development carried out with the benefit of planning permission and it is not material whether that permission was issued before or after the making or coming in to force of the A12 Order.

The key issue for National Highways is the carrying out of development authorised by planning permission, not the issue of the permission. It is the development activity, not the issue of planning permission, that would give rise to the risk of enforcement action that Article 8 seeks to clarify.

The Order limits include areas of land that may be handed back to previous owners following compulsory acquisition; or comprise land over which new rights only are taken; or are taken only temporarily. In each of those scenarios National Highways would not, at least in planning terms, be able to control future development of those lands which would still be within Order limits. Article 8 again provides clarity to landowners, the local planning authorities and National Highways if development later occurs within order limits but on land no longer in the freehold ownership of National Highways.

Request for comments from all Interested Parties

New requirement 22

5. National Highways included requirement 23 of the dDCO to address Essex County Council's request during the Examination period to add a requirement setting out the details of consultation.

In light of the inclusion of requirement 23 in the dDCO, the Applicant also included requirement 22 to complement requirement 23 and provide more detail, certainty and clarity in respect of the timings and the process for the receipt of consultation responses that are needed to compile the summary report secured by requirement 23(1)(a). The proposed requirement 22 also ensures that the necessary information is received to enable the report referred to in requirement 23(1)(a) to be submitted to the Secretary of State and to ensure that the delivery of the proposed scheme is not unnecessarily delayed.

The Applicant notes that the drafting in requirement 22 can also be found in Requirement 21 of the draft Lower Thames Crossing DCO.

Request for information from the Applicant and Essex County Council (ECC)

Proposed Speed Limits

6. Since the close of examination, the Applicant has held three further workshops with ECC in relation to coming to an agreed position in relation to speed limits. ECC has previously confirmed [Appendix B of REP7-045] that it broadly accepts the speed limits proposed but would wish to see refinement to the engineering design to encourage adherence to the speed limits set out in the draft DCO.

We set out below an update on each of the three issues raised by ECC during the Examination:

- a) Main Road – ECC accepts the new 40mph speed limit between Junction 19 and the urban Boreham extents (as defined the system of street lights), which will reduce through traffic between the Duke of Wellington roundabout and Junction 19. ECC have proposed a number of engineering refinements to help secure this, which the Applicant has considered and responded to. The Applicant remains in discussion with ECC to agree reasonable measures to maximise adherence to the proposed limit.
- b) De-trunked A12. A significant number of proposed speed limits within the scope of the de-trunked A12 have been highlighted as a concern by ECC. The Applicant has assessed ECC's alternative de-trunking scheme [REP4-057] and has put forward a proposed requirement that requires the Applicant to demonstrate to the Secretary of State that the proposals are safe and serviceable, including the proposed speed limits. The Applicant and ECC continue to consider what measures are appropriate as part of the discharge of that requirement, and this consideration includes all reasonable options that could be required, up to and including a system of average speed cameras. The measures being considered could be introduced as part of detailed design and would not require an amendment to the application documents.
- c) Other areas (Braxted Road, Cranes Bridge, Inworth Road roundabout, London Road roundabout). In these areas, there are clear engineering constraints dictating the highways geometry, and/or frontages which increase the risk of

collisions on higher speed roads. These constraints are listed in [REP7-045] but include at:

- Braxted Road - the vertical geometry required to span the A12 at this location and tie-in to existing ground level both in the vicinity of the existing A12 north of the proposed A12 and before interaction with Colemans Reservoir south of the A12 governs the visibility available to drivers which requires the speed limit to be as shown in the DCO materials. Adjusting the geometry in this location would be likely to lead to unnecessary negative effects, such as the need to remove or alter Coleman's reservoir.
- Cranes Bridge - the realignment of the existing junction 23 slip road to provide a staggered crossroads between London Road and Cranes Lane governs the visibility available to drivers they drive under Cranes Bridge. These visibility constraints require the speed limit to be as shown in the DCO materials.
- Inworth Road Roundabout – the philosophy of the adoption of local standards to provide confirmation to drivers that they are leaving the strategic road network and entering residential area is well documented in the examination materials [REP3-012]. The adoption of these local road standards and local constraints, which include the cross-section of the existing Inworth Road which these works tie into, have informed the highway geometry and speed limit proposals in this location. The Applicant has previously provided a detailed response explaining why there is no need to provide to additional measures to control speed in this location [REP5-020] and remains firmly of the view that that the adopted standards of this roundabout approach are appropriate for the local context and the proposed geometry and cross-section of the road supports the proposed speed limit.
- London Road Roundabout – In order to generate sufficient separation of the roundabout to Old London Road for HGV access, as requested by Marks Tey Parish Council, the alignment on the approach from the de-trunked A12 to London Road Roundabout needs to deviate significantly to the south, between the roundabout and residential properties just north-east of the Shell garage adjacent to the existing A12. The roundabout position itself is dictated by the alignment of the proposed A12 itself making best use of the existing junction 25 arrangement, and the proximity of a listed building and other properties. This resultant horizontal alignment means that the existing 50mph speed limit on the retained de-trunked A12 is no longer appropriate in relation to both the roundabout itself and the bend on its approach. A speed limit of 30mph has therefore been proposed on this section.

If the proposed speed limit was to be increased in any of these locations, the Applicant would need to demonstrate that the risk of collisions at this speed limit is as low as reasonably practicable. As the Applicant believes the speed limits across the

draft DCO are appropriate for the nature of the road and are self-enforcing, if it was to propose a change the speed limit it would not be able to demonstrate this risk has been minimised.

Notwithstanding these constraints, the Applicant remains in discussion with ECC to try to agree what reasonable measures might be included in the detailed design of the scheme to further encourage drivers to comply with the speed limits proposed in the draft DCO.

If there remains disagreement between the Applicant and ECC, the Applicant considers that the correct mechanism for determining whether additional measures are necessary will be the Stage 2 Road Safety Audit which will be undertaken prior to construction of these works. This Road Safety Audit is an independent safety review of the proposed scheme, and the Applicant is required to consider each issue raised by the audit and either accept the recommendation of the Audit or provide evidence on record as to why each recommendation has been discounted. The Applicant has accepted ECC's request to be included as observers at the Stage 2 Road Safety Audit, and they would be able to feed their comments and observations to the auditor at that time.

Request for an update on outstanding Protective Provisions from the Applicant and Cadent Gas Limited

Cadent Gas Limited Protective Provisions

7. Agreement has not yet been finalised on the final terms of the protective provisions. The Applicant will provide a more detailed update on the current position within the next 14 days.

Request from Applicant and Brice Aggregates Limited

S106 agreement

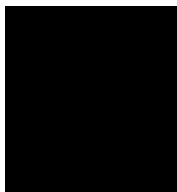
8. The S106 agreement for amended operations at Coleman's Farm Quarry is yet to be finalised. The quarry operator Brice Aggregates Limited (BAL) and Essex County Council have been finalising the agreement and BAL expect a final document to be issued for signature shortly. We have consulted with Essex County Council who have confirmed that the drafting of the agreements is ongoing, but they are unable to give a forecast date for completion of the agreement.

The two planning applications (refs ESS/51/21/BTE & ESS/98/21/BTE) relate to proposals to vary the previously approved restoration scheme and to extend the quarry area to the west towards Little Braxted Lane. These proposals have been developed by BAL in consultation with the applicant for the DCO scheme National Highways with a view to limiting impacts of the scheme on the quarry business.

Should these consents not receive permission and be implemented the proposed DCO contains all of the required powers and land to construct the A12 project.

If you have any further comments or queries, I can be contacted by email at A12chelmsfordA120wide@nationalhighways.co.uk

Yours sincerely



Phil Davie
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A12 Chelmsford to A120 Widening Scheme