



Transport Infrastructure Planning Unit

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24<sup>th</sup> November 2023

Dear Secretary of State for Transport

**A12 Chelmsford to A120 Widening Scheme (the Project)  
DCO Application  
Secretary of State's Request for Information dated 20<sup>th</sup> November**

Please find following our responses to your consultation request (items 7/8 and 9) dated 20<sup>th</sup> November 2023.

Additionally, the Applicant has provided comments on the responses by Interested Parties to your consultation of the 27<sup>th</sup> October (item 11) as an update relating to Cadent Gas Ltd Protective Provisions.

**Responses to Consultation of 20th November**

**7 & 8 - Archaeological Mitigation Strategy**

The data accrued during the palaeolithic investigation in 2021, along with other data-sets, such as bespoke geotechnical investigations, which can be used to inform the mitigation strategy, have been reviewed and used to produce a deposit model. This deposit model can be used on a number of levels:

1. To determine where deposits dating to the palaeolithic era, and which have the potential to be of archaeological or geoarchaeological importance, are located.
2. In conjunction with the mainline and offline design of the proposed Scheme to determine areas where these deposits may be subject to construction impact.
3. To inform detailed design in order to remove areas of Palaeolithic significance, if and where possible.
4. To design appropriate mitigation strategies where construction impact is impossible to avoid.

The deposit model is now complete and the work outlined in points 1 and 2 is now in its early stages. Once these outputs have been produced, the data-set will be shared with the Planning

Archaeologists for Essex County Council, Colchester City Council and Historic England for their review and comment. Upon conclusion of this review where possible, the potential for offline design modifications will be discussed with the relevant engineering team, this discussion will largely focus on Borrow Pits which are already considered to have significant potential. Subject to this review a detailed mitigation strategy will be determined in areas where construction impact is unavoidable.

The Archaeological Mitigation Strategy (AMS) has been revised to reflect the above and a copy of that revised AMS (both clean and tracked change) has been submitted alongside this letter.

## **9 – Environment Agency**

The Applicant has been notified by the Environment Agency that it has agreed that the proposed Scheme, with the revised engineering drawings listed below and the revisions to the Register of Actions and Commitments (REAC), will not lead to deterioration and thus is in compliance with the environmental objectives of the Anglian River Basin Management Plan. We attach an email from the Environment Agency dated 24 November 2023 (sent on behalf of the Environment Agency by the Catchment Coordinator, Suffolk, Environment Programme Team, at 3.39 PM) confirming this. On this basis, the Environment Agency no longer considers that this is a matter requiring a Regulation 19 justification.

Accordingly, when the Secretary of State considers the discharge of the general duty under regulation 33 of the Water Environment (Water Framework Directive) Regulations 2017 (the WFD Regulations) to have regard to the approved river basin management plan and any supplementary plan, the conclusion can be reached that the proposed Scheme is in compliance with the Anglian River Basin Management Plan and as such no derogation case is required to be made. There is no supplementary plan to consider. Both the Applicant and the Environment Agency consider there will be no need to consider the provisions of regulation 19 of the WFD Regulations.

Should the Secretary of State take an alternative approach to the discharge of the general duty under regulation 33 of the WFD Regulations then the Applicant's case for the application of the regulation 19 tests is as set out in the Without Prejudice Regulation 19 Submission submitted in response to the Secretary of State consultation of 27 October 2023.

Please note that under separate cover an updated REAC, both clean and tracked versions, as well as the following revised drawings, is being provided.

Version P03 of 2.12 Structures Engineering Drawings and Sections includes changes to the following drawings:

- Brain Bridge (HE551497-JAC-LDC-SCHW-DR-S-0011)
- Rivenhall Brook (HE551497-JAC-LDC-SCHW-DR-S-0015)
- Ashmans Bridge (HE551497-JAC-LDC-SCHW-DR-S-0018)
- Domsey Brook Underbridge (HE551497-JAC-LDC-SCHW-DR-S-0023)
- Domsey Brook East (HE551497-JAC-LDC-SCHW-DR-S-0026)
- Roman River (HE551497-JAC-LDC-SCHW-DR-S-0030)

The Applicant is aware that Schedule 12 of the Draft DCO will require updating to reflect this most recent version of the Structures Engineering Drawings and Sections. The Applicant intends to provide updated drafting for this change in response to the Secretary of State's consultation letter of 20<sup>th</sup> November 2023 due on 1<sup>st</sup> December 2023.

## **11- Comments on Interested Parties Responses to the Consultation of 20th October**

### **Braintree District Council**

The Applicant notes Braintree District Council's response to the Secretary of State's request for comments on the proposed requirement 22 of the draft DCO. It should be noted that this requirement was introduced alongside Requirement 23, which was requested by the Local Highway Authority, Essex County Council.

The Applicant has engaged extensively with the Local Planning Authorities (LPA's) throughout the pre-application and Examination stages.

The Applicant's programme requires a rapid discharge of Requirements as soon as is practicable post the Secretary of State's decision. This is essential to facilitate a prompt start of the works, in particular in relation to:

- utility diversions, to enable the Applicant to be able to utilise the 2024 construction season efficiently; and
- environmental mitigation works to be constructed and established as soon as is practicable, and within the appropriate seasons.

The Applicant has already engaged with the Local Planning Authorities, the Local Highway Authority and the Environment Agency on a programme for discharge of requirements. To support the consultees some of the consultation materials that relate to the requirement discharge have already been issued for their first review, with others to follow shortly. As materials are approved internally by the Applicant they are being released to consultees to give as much time for consideration by the relevant body ahead of the Secretary of State's decision. The intention has been to, where practicable, have all relevant matters consulted upon on ahead of the Secretary of State's decision.

This process has been followed in order to relieve much of the pressure on the consultees post the Secretary of State's decision when Requirement 22 process would be used. In light of this early engagement, the consultation period of 28 days described in Requirement 22 should be more than adequate to enable consultees to engage with the proposals as part of the requirement discharge process.

A 28-day time frame for providing responses to consultation has precedent in numerous made DCOs, indeed many of these have a shorter timeframe. Please refer to:

- The A47 Wansford to Sutton Development Consent Order 2023 (Schedule 2, Requirement 18);
- The A57 Link Roads Development Consent Order 2022 (Schedule 2 Requirement 14);
- The A47/A11 Thickthorn Junction Development Consent Order 2022 (Schedule 2, Requirement 17);

- The A47 North Tuddenham to Easton Development Consent Order 2022 (Schedule 2, Requirement 19);
- The A47 Blofield to North Burlingham Development Consent Order 2022 (Schedule 2, Requirement 18);
- The M54 to M6 Link Road Development Consent Order 2022 (Schedule 2, Requirement 13); ;
- The A63 (Castle Street Improvement, Hull) Development Consent Order 2020 (Schedule 2, Requirement 18); and
- The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 (Schedule 2, Requirement 13). .

A 28-day timeframe provides both the Applicant and the Local Planning Authority with certainty over the timescales for discharging requirements and helps to foster good working relations. Addressing Braintree District Council's second point concerning the ability to extend the time period upon request, the Applicant would like to draw their attention to the extension provisions already included in requirement 22(1). This provides that where a request for an extension has been made, consent for an extension will not be unreasonably withheld. This commitment to provide extensions is an additional commitment not contained in many recently made DCOs. For example, it is absent from The M25 Junction 28 Development Consent Order 2022, The A63 (Castle Street Improvement, Hull) Development Consent Order 2020, The A47 North Tuddenham to Easton Development Consent Order 2022, the A57 Link Roads Development Consent Order 2022, and The A47 Wansford to Sutton Development Consent Order 2023.

## **DWD Property & Planning**

The Applicant believes there is no need for the additional changes to requirement 22, as are requested by the landowner. The suggested changes have a potentially far-reaching consequence in terms of the process for discharge of requirements, as well as the time that would be taken for the process set out in requirement 22.

The letter of assurance previously provided to the interested party provides sufficient protection for the interested party, and the amendment of requirement 22 is, therefore, unnecessary.

## **Essex County Council**

### Discharge of Requirements

The Applicant notes that Essex County Council (The Council) repeats its request to be the discharging body for a number of requirements instead of the Secretary of State, as proposed by the Applicant and as preceded in the vast majority of National Highways made Development Consent Orders. The Applicant has consistently maintained that the Secretary of State is the appropriate body to approve matters required under the requirements, for the reasons explained in the Applicant's Response to the ExA's dDCO [AS-103] and its written submission of oral case for Issue Specific Hearing 5 [REP7-043].

The Council has proposed that a new requirement be included in the DCO providing that approval by the Council must not be unreasonably withheld, allowing for deemed consent in the event that no response is provided within 28 days, and relying on resolution of disputes by arbitration under Article 62 of the DCO if an approval cannot be reached. However, this proposal does not address the many reasons why the Applicant is of the view that discharge by the Council is not appropriate, as set out in its previous submissions, referred to above. For ease of reference, these reasons are repeated below:

- a) The Secretary of State is the appropriate discharging authority for requirements given the scheme's national network status and in line with the tested and accepted approach for national network DCOs, which have been approved by the Secretary of State. It is the Applicant's view that ECC seeking a role as discharging authority diverges from established and tested DCO provisions.
- b) The Secretary of State's internal team deals with National Highways schemes across the whole of England and is experienced in dealing with a wide variety of circumstances.
- c) The request by ECC to share responsibility with the Secretary of State for the discharge of certain requirements is both inappropriate and impractical. It would result in a 'double approval' process, which would unnecessarily lengthen the time taken to discharge requirements. The Secretary of State's role as discharging authority is well-established in National Highways DCOs and there are no exceptional circumstances which justify any deviation from that for this scheme.
- d) The Applicant does not agree that it is appropriate to have more than one discharging body for separate elements of the proposed scheme and feels strongly that this creates a risk of conflict. The Applicant does not consider that it is practical to split the scheme into elements to be approved at the local level and at the Secretary of State level. The various elements of the scheme are intrinsically linked and the separation suggested is artificial and impractical. The scheme has been designed as a whole and changes to one part will have consequences for another. Changes cannot be made to the local highway sections without considering the impact of those on the trunk road sections and vice versa. It is therefore artificial and unhelpful to attempt to separate out elements of the scheme for differing methods of discharge under requirements.
- e) The Applicant does not consider it practical, helpful or reasonable to have two discharging authorities for a DCO, especially given that the underpinnings of the DCO regime include an objective of reducing the number of consenting authorities from which a single scheme needs to obtain consents. The DCO regime streamlines consenting in part to help to prevent conflicts between the requirements of different authorities, not to create new ones.
- f) As the Secretary of State is the decision maker for the application seeking development consent it is appropriate that they are also the decision maker in discharging requirements. The Secretary of State will have the benefit of consultation responses from various parties depending on the requirement. In this way the local authorities are able to input and potentially influence the Secretary of State's decision in the discharge of requirements on matters related to their function.

## Speed Limits

The Applicant has considered the Council's response to the Secretary of State's first consultation letter of 27th October 2023. The Applicant is pleased that the Council welcomes the Applicant's continued engagement but must provide clarification on a number of points raised in this letter from ECC.

The Council states that the Applicant has recently provided rationale for the proposed speed limits which includes the vertical geometry and cross-sectional arrangements of the proposed roads, but these details are not apparent on the General Arrangement drawings. The Applicant included as part of the DCO submission in December 2022 Engineering Section Drawings including details of vertical and horizontal geometry and typical sections. At key locations throughout examination, including the Inworth Road roundabout area, the Applicant shared preliminary design models with the Council. Further to this, all relevant detailed design models on local roads will be shared to the Council as part of the Stage 2 Road Safety Audit.

The Applicant does not accept that rationale has not been provided throughout examination for these proposed speed limits. At Deadline 7 a summary of discussions to date was provided [Appendix B of REP7-045], and as described by the Applicant and the Council further discussion has taken place to elaborate on these rationales.

The Applicant was pleased to read in the Council's response to the Secretary of State's first consultation letter that the Council re-emphasised the importance of the Road Safety Audit process. The Applicant shares this view and in its response to the first consultation letter clarified that whilst it views the proposed speed limits and associated geometry as appropriate and in accordance with the relevant standards, should the independent Road Safety Audit identify problems, reasonable alternatives will be considered at all stages of the process.

As stated in its response to the Secretary of State's first consultation letter, the Applicant remains open to further development of mitigation measures to increase adherence to posted speed limits, but considers that the provision of ringfenced funds for further mitigation measures would be inappropriate.

### The Council's Proposed Changes to the Applicant's DCO

The Applicant has already provided responses to ECC's proposed wording of requirements in the Applicant's Comments on Information received at Deadline 7 [REP8-014].

## **Lewis Trevellyan**

One of the objectives of the scheme is to remove direct access from the A12 and to enable access and egress to and from the A12 via new and/or improved compliant junctions in accordance with modern standards and the scheme's proposed operational concept. This is to improve the safety of the road.

Introducing new junctions for a business such as the petrol filling station and coffee restaurant would be contrary to this objective and potentially introduce additional hazards to road users. This would be compounded by the proximity to the proposed junction 22 northbound merge slip which would be very close to any new access.

## Ron Ellison

The Applicant is continuing to liaise with the relevant landowner regarding the effect of A12 scheme on the landowner's retained land.

There are existing statutory processes that may be relied upon by the landowner in relation to material detriment and injurious affection to retained land. The Applicant believes that nothing further is required to be included in the Order in this regard.

## Rosemary Woodgate

The Applicant is firmly of the belief that all of the pertinent points raised in the letter have all been raised and responded to in the Examination. To assist the Secretary of State we provide the table below, identifying those points raised in the letter and where the responses that have already been provided can be found in the Examination documentation.

During the Examination the Applicant produced two reports on the location of the Gershwin Boulevard Bridge as well as responding to representations. The reports are:

REP3-011 - 9.26 Technical Note Gershwin Boulevard Bridge  
REP6-094 – 9.66 Gershwin Boulevard Issue Summary Note

Issue Raised	Response given in Examination Reference	Comment (where required)
Properties sit within a noise important area	REP5-035-005 (REP6-090) REP5-038-004 (REP6-090) REP5-053-003 (REP6-090)	-
That a bridge be built which will necessitate the removal of all of the trees between residents and the A12	RR-131-001 (REP1-002) Response to Q2.13.2 (REP4-055) AS-047-001 (REP4-056) REP4-083-006 (REP5-002) AS-050-003 (REP5-002) AS-055-001 (REP5-002) AS-058-002 (REP5-002) AS-059-006 (REP5-002)	-
Proposed bridge directly follows the route of an existing public right of way	REP1-051 (REP1-002) REP5-053-002 (REP6-090) Response to Q2.13.2 (REP4-055)	-

Issue Raised	Response given in Examination Reference	Comment (where required)
	REP3-046-002 (REP4-056) REP4-083-003 (REP5-002) AS-057-002 (REP5-002) AS-059-002 (REP5-002) ISH3 Ref 4.4 (REP5-020) REP5-038-005 (REP6-090) REP5-053-002 (REP6-090) REP6-111-002 (REP7-045)	
Residents have suggested an alternative nearby location for the bridge	ISH1 Ref 109, 110 (REP3-012) REP3-038-001 (REP4-056) REP4-047-001 (REP4-056) REP3-080-001 (REP4-056) AS-044-006 (REP4-056) REP4-083-007 (REP5-002) AS-051-003 (REP5-002) AS-058-001 (REP5-002) AS-058-002 (REP5-002) AS-059-003 (REP5-002) ISH3 Ref 4 (REP5-020) ISH3 Ref 4.1 (REP5-020) REP5-038-006 (REP6-090) REP5-053-002 (REP6-090) REP6-111-002 (REP7-045) AS-113-001 (REP7-045) REP7-066-002 (REP8-014)	-
Gershwin Boulevard Bridge would be 50m from resident properties	Response to Q2.13.2 (REP4-055) AS-058-002 (REP5-002) AS-059-004 (REP5-002) REP5-038-007 (REP6-090)	-



Issue Raised	Response given in Examination Reference	Comment (where required)
If moved to the alternative location it would be 100m from the nearest property	Response to Q2.13.2 (REP4-055) AS-059-004 (REP5-002) REP5-038-007 (REP6-090)	-
Alternative location of the bridge is on the other side of an existing line of trees...shield the aforementioned 'noise important area'	RR-131-001 (REP1-002) REP4-083-006 (REP5-002) REP5-053-003 (REP6-090)	-
<p>9.66 Gershwin Boulevard Issue Summary Note'.</p> <p>The applicant summarised their conclusions in 7.1.6 with just 3 points.</p> <p>...the applicant routinely cuts tunnels and build bridges, ...in this instance, creating a footpath, buying a parcel of land and rerouting a public right of way is too daunting to tackle</p>	ISH3 Ref 4.2 (REP5-020) REP6-111-002 (REP7-045) AS-113-001 (REP7-045)	-
It should also be noted that the applicant was told on more than one occasion that they didn't have to move the bridge as much as 300m, but they have not corrected that	N/A	The Applicant has assessed the alternative location for Gershwin Boulevard bridge, as presented in REP3-046, which is approximately 300m west of the location proposed as part of the Applicant's design for the proposed Scheme. Whilst the Applicant is not aware of further alternatives presented that are east of this alternative location suggested by Interested Parties, the Applicant does not see any location between the design of the proposed Scheme and the alternative location in REP3-046

Issue Raised	Response given in Examination Reference	Comment (where required)
		<p>where the visual impact would be lessened.</p> <p>The Applicant's proposal minimises the diversion to the existing PROW from each point where it is stopped up either side of the A12, and relocating the bridge west of this location would extend the diversion required.</p>
<p>Delaying the ban on the sale of petrol and diesel vehicles will only serve to prolong the issue more</p>	<p>N/A</p>	<p>The Applicant has considered the delay to the ban on sales of petrol and diesel cars to 2035 and has provided a response to the Secretary of State stating that updates to the carbon assessment or any other assessment that supports the DCO application is not required.</p> <p>The composition within the traffic stream between electric and petrol / diesel powered vehicles is not considered in the noise prediction methodology.</p> <p>Road traffic noise is typically comprised of three sources:</p> <ul style="list-style-type: none"> <li>• Engine and transmission noise</li> <li>• Road noise (interaction between the tyres and the road surface)</li> <li>• Aerodynamic noise</li> </ul> <p>The noise from an electric vehicle compared with that of a petrol / diesel vehicle would only be noticeably different within the first of these, i.e. engine and transmission noise. This is because an electric vehicle still has tyres that generate noise with the interaction of the road surface, and the vehicle itself would still generate aerodynamic noise. At speeds above 40 mph, which is the situation on the A12,</p>

Issue Raised	Response given in Examination Reference	Comment (where required)
		<p>the most dominant of these three noise sources are road and aerodynamic noise, and there is very little contribution from engine and transmission noise. Therefore, the Applicant considers that the delay to the ban on the sale of petrol and diesel vehicles would not affect the noise from the A12 and not alter the conclusions of the Environmental Statement in this area.</p> <p>Of greater significance to Ms Woodgate and her neighbours would be the introduction of the enhanced low noise surfacing proposed as part of the scheme.</p>
<p>A huge difference between the noise we hear during winter when the trees are bare and in summer</p>	<p>REP4-083-006 (REP5-002) AS-055-001 (REP5-002) AS-059-005 (REP5-002)</p>	<p>-</p>
<p>DEFRA's 'Noise Action Plan: Roads - Environmental Noise (England) Regulations 2005 - 2 July 2019'</p> <p>In light of this, surely the residents in this situation should be afforded more protection from road pollution, not less.</p>	<p>REP5-035-005 (REP6-090) REP5-038-004 (REP6-090) REP5-053-003 (REP6-090)</p>	<p>The impact on Noise Important Areas is also considered in Table 12.33 of the Applicant's Environmental Statement – Chapter 12: Noise and Vibration [APP-079].</p> <p>The identification of Noise Important Areas (NIA) was undertaken using strategic noise mapping undertaken by DEFRA. The noise maps produced by DEFRA are high level and should be for strategic use only. When an environmental impact assessment is undertaken a noise model would often be produced, as has been undertaken for the proposed Scheme. In producing the noise model for the proposed Scheme, the Applicant has used input parameters of finer detail and</p>

Issue Raised	Response given in Examination Reference	Comment (where required)
		<p>which are often more up to date than the DEFRA strategic maps. It is from this noise model, the subsequent calculations and the environmental impact assessment that decisions are taken on effects of the Scheme and any mitigation. There is no policy or guidance that suggests the properties within an NIA should be treated any differently to those outside of an NIA when undertaking an environmental impact assessment.</p>

### **Update relating to Cadent Gas Limited Protective Provisions**

This response is provided jointly by National Highways and Cadent:

National Highways and Cadent are in constructive dialogue to resolve the remaining issues between them. Some issues have been resolved since the Secretary of State issued his first consultation letter on 27 October, however there remain some outstanding points. Good progress has been made over recent days and further dialogue is planned over the coming weeks. We will provide a further update as and when agreement is reached, or in any event by Friday 8 December.

If you have any further comments or queries, I can be contacted by email at [A12chelmsfordA120wide@nationalhighways.co.uk](mailto:A12chelmsfordA120wide@nationalhighways.co.uk)

Yours sincerely



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