

Date: 03 August 2023
Our ref: 444021
Your ref: TR010032



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By email only, no hard copy to follow

Dear Mr Smith

**Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing
Natural England's response to Deadline 2
Natural England User Code: 20034784**

Natural England is pleased to provide our Deadline 2 response for the Lower Thames Crossing Examination within Annex A appended to this letter.

Natural England acknowledges that the nature and scale of the project means that the ask on Interested Parties will be significant during the Examination. Given the number of documents submitted by the Applicant at Deadline 1 and the delay in these being made publicly available, we have made our best endeavours to provide helpful, constructive advice at Deadline 2.

We appreciate and fully understand the need for the Planning Inspectorate to validate all the documents prior to them being added to the Lower Thames Crossing Examination Library which may result in delays to their publication. To aid all Interested Parties going forward, we would appreciate consideration from the Examining Authority and Applicant as to whether it is appropriate for their documents to be made publicly available at the time they are submitted on the Applicant's own portal. Such an approach would help allow parties as much time as possible to review documents and provide timely, constructive comments to the Examining Authority and Applicant given the challenging Examination timetable.

Natural England hopes our Deadline 2 comments are helpful and we will continue to work collaboratively with the Applicant to try and resolve the matters provided below.

Yours sincerely

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Annex A Natural England's comments at Deadline 2.

1 Comments on the Written Representations

- 1.1.1 Natural England has not been able to review the submitted Written Representations in detail given the limited time provided but has one observation to make in relation to the Port of Tilbury Limited's submission (Examination Document REP1-274).
- 1.1.2 At paragraph 2.2.2 of the Port of Tilbury Limited's Written Representation, with respect to the construction of a conveyor linking Work No. CA5 to the CMAT within Tilbury2, they report that 'the Applicant has intimated that there is no intention to do so, whilst at the same time seeking to safeguard and maintain powers in relation to the relevant corridor of land within the draft Development Consent Order powers and limits'. Natural England is also keen for clarification on the use of a conveyor in this location, and, if it is not to be constructed, whether any other purpose is proposed for this land. Within our Written Representations (Examination Document REP1-262), we have highlighted the presence of high-quality habitats for terrestrial invertebrates within this area, that the Project should seek to safeguard through appropriate securing mechanisms. If it is the case that the project does not intend to use a conveyor, and that there is no other intended purpose for this area, then it is preferable, consistent with the avoidance principle, for this area to be removed from the Development Consent Order boundary.

2 Comments on submitted Local Impact Reports

- 2.1.1 Natural England has not been able to review these documents given the limited time to review the Deadline 1 submissions and as such has no comments to make on the Local Impact Reports.

3 Comments by Interested Parties on the Applicant's amended proposed Accompanied Site Inspection itinerary

- 3.1.1 Natural England welcomes the greater clarity on the areas to be visited within the Kent Downs Area of Outstanding Natural Beauty within the updated site inspection itinerary. Whilst not specifically referenced within the updated information, as previously recommended we would hope that viewpoint S-03 can be incorporated as part of the visit to the Park Pale area.
- 3.1.2 Natural England notes that, according to Figure 2 of the Accompanied Site Inspection Day 2 (North), our recommendation made at Deadline 1 to include the relevant section of FP200 at Bowaters has not been included by the Applicant. Natural England would reiterate our previous advice that this area should form part of the Accompanied Site Inspection.

4 Comments on Applicant's amended draft Development Consent Order

- 4.1.1 Natural England notes that at sub-paragraph 64(2) of the updated draft Development Consent Order (Examination Document REP1-043), additional text has been added which states that 'Any matter for which the consent or approval of Secretary of State is required under any provision of this Order is not subject to arbitration'.

- 4.1.2 Whilst we recognise and welcome the role of the Secretary of State as an independent decision maker, given the highly technical nature of some of the matters, we would also support the requirement for an appropriate independent authority to arbitrate and make recommendations to the Secretary of State for complex ecological and landscape matters to be included within the draft Development Consent Order.

5 Updated Statements of Common Ground (if updated)

- 5.1.1 Natural England has agreed an updated Statement of Common Ground with the Applicant and has had confirmation that they will be submitting this as part of their Deadline 2 submissions.

6 Updated Principal Areas of Disagreement (if updated)

- 6.1.1 Natural England considers that our agreed, updated Statement of Common Ground continues to represent all current areas of agreement and disagreement so do not currently feel it is appropriate for us to submit a Principal Areas of Disagreement document.

7 Applicant's submission of documents

7.1 Environmental Statement Addendum

- 7.1.1 Natural England welcomes the additional information and corrections provided by the applicant within the Environmental Statement Addendum (Examination Document REP1-181). Our comments on these are provided below.

Shorne and Ashenbank Woods Site of Special Scientific Interest

- 7.1.2 Having reviewed the information provided by the Applicant in relation to recreational impacts to the Shorne and Ashenbank Woods Site of Special Scientific Interest (SSSI) within Annex A to the Environmental Statement Addendum, we remain concerned that impacts to the SSSI are likely to result.
- 7.1.3 Annex A provides further information in relation to the proposed car park and facilities hub adjacent to the SSSI at Thong Lane and the surface upgrades to public rights of way within Ashenbank Woods. We remain concerned that the nature and scale of any impacts associated with these elements of the project have not been fully assessed, nor the requirement for any additional mitigation measures identified.
- 7.1.4 As detailed within Section 5.1.8 of our Written Representation, Natural England has previously advised the Applicant that the provision of a low-level parking facility (that is a small car park only without a cycle hub, kiosk, horsebox parking and associated development/facilities) may be acceptable in this area, as part of an integrated access management strategy for recreation using the existing public rights of way network.
- 7.1.5 It is unclear, from the information provided whether the purpose of the car park is to facilitate an increase in visitor usage of the SSSI. For example, Section A.3.6 of the Annex details that 'The new car park would be owned and managed by KCC [Kent County Council] and run on the same basis as the existing Country Park car park (i.e. pay and display). KCC have noted that the current car parks within SWCP [Shorne Woods Country Park] are at capacity and that an additional car park located at Thong

Lane would be particularly beneficial for basing cyclists and equestrian visitors’.

Conversely, Section A.4.6 suggests that the car park will largely cater for displaced visitors from other car parks, including the current car park at the Country Park stating that ‘Whilst a proportion of these visitors will be additional to the area, the majority are likely to be ‘displaced’ visitors from other locations, i.e. existing visitors to the area who have simply chosen the Thong Lane car park over destinations such as the main SWCP car park or Jeskyns Community Woodland car park for reasons of convenience (it may be closer to their home), purpose (the opportunity for connecting to wider bridleway or cycling routes) or capacity (for example the main SWCP car park is too busy and the Thong Lane car park presents a reasonable alternative)’.

7.1.6 Section A.2.14 suggests that, based upon visitor surveys referenced within the 2021-26 Shorne Woods Country Park Management Plan, the ‘majority of visitors stayed for between one and two hours’. This would suggest that, for those arriving by car, the number of vehicles using the car park on busier days would be significantly greater than the number of spaces available as there would be a regular change of vehicles through the day. However, the assessment of potential additional visitor numbers generated by the proposed Thong Lane car park has assumed that only one vehicle will occupy a given parking space per day for the 363 days of the year the facility will be open (Section A.4.4). The calculations of visitor numbers provided by the Applicant, based upon the 50 and 80% capacity of the car park, may therefore be a significant underestimate, particularly if the existing car park is at capacity. It is also unclear from the information provided what the likely use of the proposed car park by horseboxes will be and whether the increase in facilities will lead to an increase in users within the SSSI. We therefore recommend that the following clarity is provided:

- details of the likely number of vehicles that would use the Thong Lane car park each day based upon current occupancy and vehicle turnover through the day;
- greater clarity on the number of additional visitors that are likely to be accessing the SSSI facilitated by the proposed car park;
- details of the broad breakdown of activity of the car park users (walking, cycling and horse riding); and
- any mitigation measures required to ensure that any increase in recreational activity within the SSSI can be avoided or fully mitigated.

7.1.7 Without this information, Natural England is not able to provide advice to the Examining Authority on the nature and scale of any potential impacts and the scope of any avoidance and mitigation measures that may be required.

7.1.8 In addition to the proposed car park off Thong Lane, Natural England has expressed concern regarding the lack of detail provided in relation to the surface upgrades of rights of way within Ashenbank Woods to the south of the A2. For all of the upgrades (temporary and permanent) we have sought clarity on the nature of materials to be used, the scale of any surfacing proposed (including the depth of excavation and width of any surfaced areas) to understand the nature of any impacts to the SSSI and the need, or otherwise, for any mitigation measures. Unfortunately, the Addendum to the Environmental Statement does not include this information and at present we are not able to provide advice to the Examining Authority on the impacts resulting from surface upgrades within the designated site.

Acid Grassland

- 7.1.9 Natural England notes that the figure for net permanent gain (gain – loss) for acid grassland has been revised to be 3.98ha within Paragraph 8.6.267. However we believe this figure should be 3.89ha (5.03ha of permanent habitat gain – 1.14ha of habitat loss = 3.89ha of net permanent gain). Whilst Natural England has made the case for increasing the net permanent gain of acid grassland within our Written Representation, we consider that the figures should be accurate before any additional provision is made (suggested at 2ha as per our Written Representations).

Mucking Flats and Marshes Site of Special Scientific Interest

- 7.1.10 The amendment of the approximate distance from the Order Limits for Mucking Flats and Marshes SSSI to read ‘adjacent to order limits’ is welcomed (Table 8.19).

7.2 Updated outline Landscape and Ecology Management Plan

- 7.2.1 Paragraph 8.16.4 (and elsewhere) of the updated outline Landscape and Ecology Management Plan (Examination Document REP1-172) proposes additional text relating to the timing of the creation of wetland habitats at Coalhouse Fort, which ‘will be completed before the northern tunnel entrance compound is set up.’ The re-drafting here removes reference to the Gravesend Road and the Milton compounds.
- 7.2.2 Natural England understands that the package of non-breeding bird mitigation is intended to address all relevant effects of the project, whether north or south of the Thames, as far as it relates to the Thames Estuary and Marshes Special Protection Area and Ramsar site. We understand that there is inter-change of birds between the north and south banks of the river, and so in our opinion, the mitigation works proposed should be a pre-requisite wherever effects are predicted to occur (i.e. not exclusive to the northern tunnel entrance compound). We would therefore recommend the wording of the draft Development Consent Order reverts to that originally submitted by the Applicant.

7.3 Environmental Statement Appendices Appendix 7.11 – Traffic and Noise Effects on the Kent Downs Area of Outstanding Natural Beauty

- 7.3.1 Natural England notes that the updated Appendix 7.11 includes additional areas where noise and visual impacts resulting from increased traffic within the Kent Downs Area of Outstanding Natural Beauty are likely to result. For example, amongst others, the following additions have been made:

‘6.3.7 The potential for notable visual disturbance has also been identified from increased traffic on the minor road route between Cobham and Cuxton, comprising Cobhambury Road, Warren Road and Bush Road during the PM peak. Affected views would be similar to those described above for the construction phase.

6.3.8 The potential for notable visual disturbance has also been identified from increased traffic on the minor road route between the M20 and M2 motorways, comprising Boxley Road, The Street, Pilgrim’s Way and Lidsing Road during the PM peak affecting views from the surrounding AONB. Key visual receptor locations include the North Downs Way and Pilgrim’s Way, and a network of local footpaths, which cross or connect the minor road route.’

7.3.2 Although additional impacts have been identified within the Appendix, no additional mitigation measures have been included with Section 5 'Mitigation' of the updated Appendix. Natural England therefore recommends that further explanation is needed as to why the existing mitigation measures are adequate to address these additional impacts, or otherwise identify further measures to address the additional impacts which appear to have been reported within the updated Appendix.

7.4 Updated Explanatory Memorandum

7.4.1 Natural England notes that the Applicant has provided a definition of 'materially new or materially different' within the updated Explanatory Memorandum (Examination Document REP1-044). This additional text details:

'5.16 Article 2(10) is an interpretive provision applying to all references in the Order to "materially new or materially different" environmental effects. There are provisions in the draft DCO where activities are constrained to those which do not give rise to materially new or materially different environmental effects or where variations are permissible provided they do not give rise to such effects (e.g. the definition of maintenance, article 6(2), paragraph 3 of Schedule 2 to the draft DCO). The interpretive provision confirms that references to materially new or materially different environmental effects in comparison with those reported in the Environmental Statement shall not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the Environmental Statement as a result of the authorised development.

5.17 National Highways does not consider that the interpretive provision changes the meaning of "materially new or materially different"; instead, it seeks to confirm the position that references to "materially new or materially different" are not intended to prevent variations within the terms of the DCO being progressed where they would entail an environmental betterment. This interpretive provision is intended to ensure certainty and clarity on this issue in a transparent way.'

7.4.2 Whilst the clarification provided is helpful and Natural England would, in principle, be supportive of measures taken to ensure the avoidance, removal or reduction of an environmental impact at the detailed design stage, the betterment of one environmental outcome could result in a worsening of another. Given the complex, multifaceted environmental impacts arising from the Project, Natural England recommends that a more nuanced and cumulative approach needs to be taken to ensure that the avoidance, removal or reduction of one environmental impact, which presumably could result from additional mitigation measures as well as scheme alterations, does not result in a worsening or new impact for another environmental outcome. For example, the planting of a larger area, or more dense woodland, in the parkland, open setting at Park Pale is likely to increase the landscape and visual impacts for the Kent Downs Area of Outstanding Natural Beauty. We would therefore suggest that the definition of 'materially new or materially different' reflects that there should be an avoidance, removal or reduction of impact(s) for all environmental impacts detailed within the Environmental Statement for this definition to apply.

7.4.3 In addition to our concerns relating to the full suite of environmental impacts, it is also unclear as to whether the Applicant will consult stakeholders on any changes which will result in the avoidance, removal or reduction of an impact, or how the decisions will be reached and shared to ensure an open and transparent process. Given that crucially, under the revised wording, no consultation or agreement with the Secretary

of State will be required in situations meeting the definition, we recommend that the Applicant provides greater clarity on how the decision will be made, where appropriate consulted on, and shared with interested parties.

8 Comments on Applicant's submissions at Deadline 1

8.1.1 Natural England has no comments to make in relation to the Applicant's submissions at Deadline 1 other than those made in Section 7 above.

9 Comments on any information requested by the Examining Authority and received by Deadline 1

9.1.1 Natural England has no comments to make in relation to the additional information received at Deadline 1.

10 Any further information requested by the Examining Authority under Rule 17 of the EPR

10.1.1 Natural England has no comments to make in relation to this matter at present.