



# Department for Transport

Kayla Marks  
Head of the Transport Infrastructure Planning Unit  
Department for Transport  
c/o Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

Enquiries:

E-mail: [TRANSPORTINFRASTRUCTURE@dft.gov.uk](mailto:TRANSPORTINFRASTRUCTURE@dft.gov.uk)

Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)

Dr Tim Wright  
A122 Lower Thames Crossing  
National Highways  
Bridge House  
1 Walnut Tree Close  
Guildford  
Surrey, GU1 4LZ

4 November 2025

Dear Dr Wright,

## **PLANNING ACT 2008**

### **APPLICATIONS FOR TWO NON-MATERIAL CHANGES TO THE A122 (LOWER THAMES CROSSING) DEVELOPMENT CONSENT ORDER 2025**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to inform you that consideration has been given to the two non-material change applications ("the Applications") submitted by National Highways ("the Applicant") on 17 September 2025 seeking amendments to the A122 (Lower Thames Crossing) Order 2025 (S.I. 2025/462) ("the 2025 Order"). The Applications were made under paragraph 2 of Schedule 6 to the Planning Act 2008 ("PA2008"). This letter is the notification of the Secretary of State's decisions in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) ("the 2011 Regulations").
2. The 2025 Order, granted on 25 March 2025, authorises the construction and operation of the A122 (Lower Thames Crossing), a new road connecting Kent and Essex through a tunnel under the River Thames, and associated development. A Development Consent (Correction) Order 2025 (S.I. 2025/1014) was made on 11 September 2025 to address correctable errors in the 2025 Order.

3. The 25 March 2025 decision letter sets out the details of the Development and the main reasons and considerations on which the decision to grant the 2025 Order is based, including relevant information about the participation of the public.
4. Both non-material change applications are considered within this letter. The Applications comprised:

Non-Material Change Application 1 (“NMC-1”)

5. The Applicant is seeking changes to the wording in paragraph 26(4) (Amendments to be made to the Code of Construction Practice and the REAC) of Part 3 of Schedule 2 to the 2025 Order with the intention of changing the timing of the air quality monitoring requirement so that it would commence no later than six months after the commencement of construction rather than one year before; removing the obligation to consult Natural England on the design of the enforcement technology and infrastructure; and clarifying the process for implementing and removing the requirement for mitigation.
6. The mitigation commitment inserted into the register of environmental actions and commitments contained in the Code of Construction Practice by paragraph 26(4) of Part 3 of Schedule 2 to the 2025 Order is in relation to a 60mph speed limit imposed if it is required at the time in the westbound direction of the M25 between junctions 26 and 27 and to implement air quality monitoring in this location. This commitment was to ensure that there is no Adverse Effect on Integrity (“AEoI”) on Epping Forest Special Area of Conservation (“SAC”) as a consequence of operational traffic emissions leading to increases in nitrogen deposition, NO<sub>x</sub> and NH<sub>3</sub>.

Non-Material Change Application 2 (“NMC-2”)

7. Article 65 (Financial arrangements for the Kent Downs National Landscape) of the 2025 Order introduced a requirement for a financial contribution to be made available by the Applicant for the benefit of the Kent Downs National Landscape Unit (“KDNL Unit”) having regard to the amended duty under section 85 of the Countryside and Rights of Way Act 2000. Paragraph (2) of Article 65 requires that agreement to the financial contribution, to be made between the undertaker, Natural England and the KDNL Unit, is to be made before commencement of the authorised development or the tunnel being open for use, whichever is the earlier.
8. The Applicant’s proposed modification will limit the restriction on commencement to development located south of the River Thames, allowing the Applicant to commence works on other parts of the Development while discussions with the KDNL Unit and Natural England continue.

## **Summary of Secretary of State’s Decision**

9. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make two non-material changes to the 2025 Order as corrected to authorise the changes detailed in Applications NMC-1 and NMC-2.

## **Consideration of the Materiality of the Proposed Changes**

10. The Secretary of State has considered whether the Applications are for material or non-material changes. In doing so, she has had regard to paragraph 2(2) of Schedule 6 to the PA2008 which requires the Secretary of State to consider the effect of the changes on the 2025 Order as originally made.
11. There is no statutory definition in the PA2008 or the 2011 Regulations of what constitutes a 'material' or 'non-material' change for the purposes of Schedule 6 to the PA2008 and Part 1 of the 2011 Regulations.
12. The former Department for Communities and Local Government's Planning Act 2008: Guidance on Changes to Development Consent Orders (December 2015) ("the Change Guidance") makes the following points:
  - Given the range of infrastructure projects that are consented through the PA2008, and the variety of changes that could possibly be proposed for a single project, the Change Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material and such decisions will inevitably depend on the circumstances of the specific case.
  - Certain characteristics may indicate that a change is more likely to be material. As a starting point, the guidance suggests that, as a result of the proposed change, a requirement to update an Environmental Statement ("ES") to take account of new or materially different significant effects on the environment, the authorisation of compulsory acquisition powers over additional land, the need for a new Habitats Regulation Assessment ("HRA"), and the level of the potential impact on local people are examples of characteristics which would make a change more likely to be material.
  - Although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
13. The Secretary of State has considered the changes proposed by the Applicant against the four matters listed in the second bullet point in paragraph 12.

(a) Environmental Statement
14. The Secretary of State has considered whether the Applications would give rise to any materially new or materially different likely significant effects when compared to the effects set out in the ES submitted in support of the application for the 2025 Order.
15. The Secretary of State notes that the Transport Action Network ("TAN") has raised concerns with the proposed change to the commencement of air quality monitoring from "one year prior to commencement of construction" to "no later than six months after commencement of construction". TAN considers that air quality monitoring should commence before construction so that a robust pre-construction baseline can be established. It states that "the proposed changes to the establishment of

the baseline and monitoring regime will significantly change the establishment of the baseline, distort the intentions of the mitigation and monitoring regime, and will constitute 'likely significant effects on the environment' within an SAC, and require an update to the Environmental Statement", and that such a change should not be considered a non-material change to the 2025 Order.

16. The Secretary of State has considered all relevant information provided by the Applicant, the responses of consultees regarding the materiality of the proposed change and the Applicant's response to these representations. While she notes the concerns raised by TAN, the Secretary of State agrees with the Applicant that the proposed amendment does not affect the obligation as it still requires that the mitigation be put in place unless National Highways demonstrates, in consultation with Natural England and to her satisfaction, that it was not required to prevent an AEoI on Epping Forest SAC. She also agrees with the Applicant's conclusion that there will not be any materially new or materially different likely significant effects from either non-material change application when compared to the effects set out in the ES submitted in support of the development authorised by the 2025 Order. The Secretary of State specifically notes the response from the Applicant that Chapter 8 [REP4-148, REP4-150 and REP4-152] and Appendix G [APP-536] of the Transport Assessment have demonstrated that construction works would have no material impact on traffic flows across the construction period on the M25 between junctions 26 and 27 and consequently will have no measurable impact on air quality in this area. She therefore concludes that undertaking air quality monitoring after the start of construction sets a sufficient baseline ahead of operational works, does not materially change the baseline for the speed mitigation requirement nor require an update to the ES. The Secretary of State also notes that the proposed change would not alter the external appearance or height of the development, nor result in any additional impacts to the environment, again concluding in this regard that there is no requirement to update the ES. As there are no new significant environmental impacts as a result of the proposed changes, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

(b) Habitats Regulations Assessment ("HRA")

17. The Secretary of State has considered her obligations as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Applications if she has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network. The Secretary of State has considered the information submitted in the Applications and the comments of consultees and is

satisfied that the proposals do not alter the conclusions set out in the Applicant's ES for the 2025 Order. The Secretary of State is also satisfied that the proposed changes do not alter the Secretary of State's conclusion set out in paragraphs 594 and 595 of the 25 March 2025 decision letter that the Development does not lead to a likely significant effect on any protected sites or their qualifying features, and therefore she considers that there is no need for a new HRA.

(c) Compulsory Acquisition

18. In respect of compulsory acquisition, the Secretary of State notes that neither change sought through the Applications would authorise the compulsory acquisition of land, interests in or rights over land that was not authorised in the 2025 Order. The Secretary of State is therefore satisfied that these matters do not raise any issues of materiality in relation to the proposed changes.

(d) Impacts on local people

19. The Secretary of State notes that the Applicant is of the view that there will be no change in impact on local people as a result of the proposed changes. The Secretary of State agrees with the Applicant and is content that, given no change is anticipated to the impacts already assessed in the ES for the 2025 Order, the potential impacts on local people and businesses are no greater than those that arise from the Development permitted by the 2025 Order.
20. For the reasons explained in the paragraphs above and the absence of any additional circumstances that might indicate materiality, the Secretary of State is satisfied that the change sought by the Applicant is not material and should therefore be dealt with under the procedure for non-material changes.

## **Consultation**

21. Under regulation 7(3) of the 2011 Regulations, on 5 September 2025 the Applicant requested the Secretary of State's consent for a limited consultation exercise. The Applicant set out the parties it proposed to consult on the Applications, the reasons why those parties should be consulted exclusively, and the reasons why other parties identified in regulation 7(2) of the 2011 Regulations need not be consulted.
22. On 12 September 2025, the Secretary of State confirmed that she had considered the Applicant's request and was content that the Applicant's proposed consultee list accurately represented those which should be consulted, with the exception of relevant parish councils. The Secretary of State disagreed that relevant local authorities are sufficient to represent local interests. With the inclusion of relevant parish councils, the Secretary of State agreed that the Applicant had demonstrated that no other consultees should be directly affected, either because the proposed amendments will not affect their interests or because their interests relate to a different part of the scheme. The Secretary of State accordingly gave written consent on 12 September 2025 for a limited consultation exercise, under regulation 7(3).
23. The Applicant publicised the Applications in accordance with regulation 6 of the 2011 Regulations and on 17 September 2025 consulted the persons agreed by the

Secretary of State in her letter of 12 September 2025 in the prescribed manner. The deadline for the receipt of representations on the Applications was 23 October 2025.

24. The Applications were made available on the Planning Inspectorate's website on 18 September 2025, so there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate.
25. The Secretary of State has considered the representations received in response to the consultation and the Applicant's response and does not consider that any further information needs to be provided by the Applicant or that further consultation of those already consulted is necessary.

## **Consultation responses**

26. A total of nine responses were received and published on the Planning Inspectorate's website following the consultation period for both Applications. The Applicant provided a response to the representations received, which was also published on the Planning Inspectorate's website.

### NMC-1 considerations

27. The Secretary of State's consideration of the representations submitted in relation to NMC-1 by Interested Parties is summarised below.
28. Of the nine consultation responses, seven provided comments in relation to NMC-1. The Secretary of State notes that the Environment Agency has no objection and Essex County Council responded with no comment.

### *Clarification on duty to consult Natural England to remove the mitigation*

29. The Secretary of State notes that Natural England was generally content with the Applicant's proposed changes under NMC-1. The Secretary of State also notes Natural England's comment that proposed amendments (under the Applicant's reference NMC-1-d) make it unclear on whom the duty to consult Natural England should fall, should the Applicant consider that the speed limit measures are no longer required.
30. The Applicant's revised wording of the requirement stipulates that the Secretary of State may determine, upon receipt of a written request from National Highways and following consultation with Natural England, that the speed limit measures are no longer required at or after the point of commencement of operation to prevent AEol. This request would be made on the basis of pre-operation monitoring and any additional assessment undertaken by National Highways.
31. Natural England suggested amendments to this wording so that the written request from National Highways is informed by and agreed through consultation with Natural England. The Secretary of State also notes the Applicant's response to the representations received, in which, whilst they do not consider Natural England's proposed wording is required, they do not object to it. The Secretary of State agrees with Natural England's rationale and with their amended wording so that the duty to consult Natural England should fall on National Highways and that this

should be completed in advance of any written request to the Secretary of State that speed limit measures are no longer required.

32. The Secretary of State notes the concern from Epping Town Council regarding the proposed changes within NMC-1 to remove the obligation to consult Natural England on the design of the enforcement technology and infrastructure. However, she recognises the Applicant's rationale that the relevant technology is already in situ on the relevant section of the M25. This means that there is no need for additional equipment and therefore the requirement to consult Natural England on the design of the technology is redundant, a position on which Natural England is content.
33. Epping Town Council also raises concern over the removal of the requirement for mitigation set out within NMC-1. The Secretary of State notes that the rationale for and circumstances under which the removal would occur are set out in the 2025 Order. The changes proposed under NMC-1 are limited to clarifying that the Secretary of State will be the decision-making authority for any removal and that the onus is on National Highways to demonstrate that the mitigation is not required, rather than Natural England giving direction. The changes proposed by Natural England further clarify their role in removing the mitigation. The Applicant's response to the representations received also confirms that the speed limit mitigation would only be removed in the event that National Highways demonstrated that it was not required to prevent an AEoI on Epping Forest SAC.
34. The Secretary of State notes that in addition to its representation about whether the proposed change to the commencement of air quality monitoring is material (considered in paragraph 16), TAN has also raised concerns with the substance of the proposal. It considers that the proposal is "a profound change, impacting on the establishment of a credible baseline from which impacts (AEoI) can be measured and judged", which would mean that "the impacts on the Epping Forest SAC would no longer be compared to the Do-Nothing scenario". It adds that a baseline set during construction works "is not robust, and will mask the full air quality impacts of the [Lower Thames Crossing] on the Epping Forest SAC".
35. The Secretary of State notes the Applicant's justification for this change as set out in Table 1 to their Supporting Statement. The Applicant highlights that the commitment is to ensure that there is no AEoI on Epping Forest SAC during the operational phase of the Development. The Applicant therefore considers that starting air quality monitoring no later than six months after the commencement of construction would allow it to establish a pre-operational baseline.
36. The Secretary of State also notes the Applicant's response to the representations received. It highlights that the construction impacts of traffic on the M25 were assessed as part of the application, which demonstrated that the construction works have no material impact on traffic flows across the whole construction period on the M25 between junctions 26 and 27, and consequently will have no measurable impact on air quality in this area. The Applicant therefore concludes that monitoring undertaken from six months following commencement of construction, up until operation, will provide a robust baseline and will be

undertaken over a sufficient period of time to feed into the process for determining whether the mitigation can be removed when the Development is operational.

37. The Secretary of State has had regard to paragraph 5.59 of her HRA, as appended to the Decision Letter for the 2025 Order, which highlights Natural England's acceptance that impacts would occur from operational emissions only and there would no impact from construction traffic. Paragraph 5.59 adds that the Examining Authority agreed with this position for both alone and in combination impacts.
38. The Secretary of State agrees with the Applicant that the purpose of the commitment is to address AEoI that may arise during the operational phase of the Development. Paragraph 5.75 of the HRA refers to the agreement between the Applicant and Natural England in their final Statement of Common Ground that the commitment to deliver an operational speed reduction westbound (between junctions 27 and 26) would reduce traffic air emissions sufficiently to exclude AEoI. The Secretary of State notes that the reference to operational impacts forms the basis of the Examining Authority's recommended wording for the commitment, to ensure that monitoring is undertaken so that "NO<sub>x</sub> and NH<sub>3</sub> are no higher than pre-operational levels" (paragraph 23.6.18 of its Report).
39. As referenced in paragraph 29 above, the Secretary of State notes that Natural England is generally content with the proposed wording on NMC-1, in particular referencing the proposed changes to the air quality monitoring requirements.
40. The Secretary of State concludes that in ensuring there is no AEoI on Epping Forest SAC, the commitment was put in place to ensure NO<sub>x</sub> and NH<sub>3</sub> levels are not higher than pre-operational values. Given the conclusions in the HRA and the Examining Authority's Report that there would be no impact from construction traffic, the Secretary of State considers that starting monitoring no later than six months after commencement of construction would not provide an inappropriate baseline for this commitment.

*Requirement for additional locations for mitigation*

41. The Secretary of State notes the response from Shorne Parish Council which raises whether similar technology and variable speed restrictions to those imposed in the westbound direction of the M25 between junctions 26 and 27 could be funded and deployed in their parish. This is raised on the grounds of additional local traffic and the close proximity of the expanded number of carriageways to Sites of Special Scientific Interest and Ancient Woodland sites.
42. The Secretary of State notes the justification of this mitigation measure as described in paragraph 26(4) of Part 3 of Schedule 2 to the 2025 Order is to mitigate in-combination air quality effects on Epping Forest SAC along part of the M25. The HRA did not identify any additional locations where similar mitigation would be required and so does not consider it necessary to locations within Shorne Parish Council.

NMC-2: considerations

43. The Secretary of State's consideration of the representations submitted in relation to NMC-2 by Interested Parties is summarised below.



44. Of the nine consultation responses, seven provided comments in relation to NMC-2. The Secretary of State notes the KDNL Unit response which highlights the progress that is being made with the Applicant in reaching an agreement on the financial contribution to be made available to the KDNL Unit. The KDNL Unit confirms no objection to NMC-2.
45. The Secretary of State also notes that the Environment Agency has no objection; Essex County Council responded with no comments; and Shorne Parish Council confirmed that they have no concerns, provided the KDNL Unit are satisfied and there will not be a disproportionate delay in agreeing and providing the proposed funding.
46. Natural England supports NMC-2 and does not consider that the proposed change would represent any material change to the environmental commitment secured through the 2025 Order. Natural England highlighted that it allows time for formal arbitration to be used, if needed, to finalise arrangements and ensure commitments are delivered in accordance with the 2025 Order. The Secretary of State notes that Kent County Council has no objection, also acknowledging that the amendment would allow the parties more time to reach an agreement.

#### Considerations relating to both NMCs

47. The Secretary of State notes a response from Jackie Thacker who raised concerns around the justification of the Development, including investing in the Lower Thames Crossing compared to improving the existing strategic and local road networks. While the Secretary of State notes the Party's comments, she does not consider them relevant to the Applications. The full rationale behind the granting of the 2025 Order is set out in the decision letter dated 25 March 2025.

## **General Considerations**

### Equality Act 2010

48. The Equality Act 2010 includes a public-sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
49. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010, and is satisfied that there is no evidence that granting the changes will affect adversely the achievement of those objectives.

### Human Rights Act 1998

50. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the proposed changes to the 2025 Order. The Secretary of State considers that the grant of the Application would not contravene any human rights as enacted into UK law by the Human Rights Act 1998.

### Natural Environment and Rural Communities Act 2006

51. In making a decision on the Applications for the proposed changes to the 2025 Order, the Secretary of State has had regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021. The Secretary of State notes that there will be no new environmental effects as a result of the Applications, and as such considers that no further action regarding the conservation and enhancement of biodiversity is required.

### **The Secretary of State's overall conclusions and decisions**

52. The Secretary of State has considered the nature and effect of the proposed changes, noting that it would generate no materially new or materially different likely significant environmental effects from those already assessed. She is satisfied that the conclusions of the ES submitted in support of the application for the 2025 Order remain unchanged, and notes that no new powers of compulsory acquisition are sought.

53. The Secretary of State is content that none of the specific indicators referred to in the Change Guidance, or other relevant considerations, suggest that the changes sought by the Applicant are a material change and is satisfied that the proposed changes requested by the Applicant are not material changes to the 2025 Order.

54. The Secretary of State has considered the Application, the matters set out in the Change Guidance and the consultation responses received. For the reasons set out in this letter, she is content that NMC-1 and NMC-2 as proposed by the Applicant and, in respect of NMC-1 with the addition of the specific amendment proposed by Natural England in relation to the Applicant's duty to consult Natural England, are appropriate. The Secretary of State has therefore decided under paragraph 2(1) of Schedule 6 to the PA2008 to make two non-material changes to the 2025 Order so as to authorise the changes sought by the Applicant.

### **Challenge to the decisions**

55. The circumstances in which the Secretary of State's decisions may be challenged are set out in the note attached to the Annex to this letter.

## **Notification of decisions**

56. The Secretary of State's decisions on this Application are being notified as required by regulation 8 of the 2011 Regulations.

Yours faithfully,

**Kayla Marks**

## ANNEX

### LEGAL CHALLENGES RELATING TO DECISIONS MAKING CHANGES TO DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the PA2008 to make a change to an Order granting development consent, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order making the change is published. The A122 (Lower Thames Crossing) Development Consent (Amendment) Order 2025 and the A122 (Lower Thames Crossing) Development Consent (Amendment) (No. 2) Order 2025 are being published on the Planning Inspectorate website at the following address:

- <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR010032>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decisions to make the Orders referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).