



Response to:

**Consultation on Application
for a Non Material Change 1
to the A122 (Lower Thames
Crossing) Development
Consent Order 2025**

Introduction

This is Transport Action Network's (TAN) response to National Highways' first application for a Non Material Change (NMC-1) to the Development Consent Order for the Lower Thames Crossing (LTC). We **object** to the NMC-1 application, and **reject** the assertion by the Applicant this is a 'non-material change'. This is a material change to the DCO and the Environmental Statement for the reasons outlined below.

Background

The current, approved DCO requires National Highways to undertake air quality monitoring to ensure there is no Adverse Effect on Integrity (AEoI) on Epping Forest Special Area of Conservation (SAC). This was a strongly contested matter at the examination, with Natural England's last submission to the examination¹ stating:

"Natural England considers that AEoI cannot be excluded for NOx, NH3 or Ndep at Epping Forest SAC without mitigation being in place." (1.4.8)

And that:

"The Applicant's own modelling identifies increases of NOx, NH3 and Ndep on the SAC. These result from foreseeably permanent increases in annual average daily traffic (AADT) and whilst the Applicant considers that downward trends in pollutant will ultimately lead to improvements in air quality they will always be worse than the do nothing scenario." (1.4.9)

The final Statement of Common Ground between National Highways and Natural England² showed disagreement remained on the impact on the SAC, although National Highways proposed 'without prejudice' mitigation (the reduction in speed limits on the M25, with annual monitoring to ensure no AEoI)³.

The Examining Authority (ExA) concluded in their Recommendations Report⁴ that there was AEoI for the Epping Forest SAC and recommended the proposed mitigation (reduced speed limits) and monitoring:

¹ Deadline 9A Submission - Comments on Applicant's submissions at D8, Addendum to Natural England Deadline 9 response, December 2023

² [Final Agreed Statement of Common Ground between \(1\) National Highways and \(2\) Natural England v6.0](#), December 2023

³ [Without prejudice assessment of the air quality effects on European sites following Natural England advice](#), National Highways, August 2023

⁴ [Recommendations Report](#), Examining Authority, March 2024

“The ExA has found that an AEol from the Proposed Development cannot be excluded beyond reasonable scientific doubt for Epping Forest SAC. It considered however, that the ‘without prejudice’ mitigation identified by the Applicant will, with amendments to ensure that the extent and duration of controls are limited to that which is necessary at the time, ensure that there is no AEol.”

The ExA recommended the REAC include the proposed speed reduction and recommended that:

“Monitoring should commence 1 year prior to commencement of construction and remain in place for a minimum period of 4 years following commencement of operation.”

There was considerable discussion on this matter in the Secretary of State’s Decision Letter⁵ with the Secretary of State concluding:

*“The Secretary of State has therefore concluded that **taking into account the mitigation measures** it is permissible for her to give consent for the Proposed Development.”* (para 596)

The Secretary of State, in her Decision Letter, clearly understood that the monitoring was intended to compare the air pollution levels after opening with a scenario **without the LTC**, i.e. prior to start of works (SOW):

*“The Applicant submitted a ‘without prejudice’ mitigation proposal of a reduced speed limit on the M25 westbound between Junctions 27 and 26 for four years following completion of the construction phase and until the total NOx emissions with the Proposed Development fall below the total emissions at opening year **without the Proposed Development**.”* (para 590)

Changing the baseline

National Highways proposes to change the commencement of the air quality monitoring from one year **prior** to the start of works (SOW) to “no later than 6 months after” commencement of the SOW. **This is a profound change**, impacting on the establishment of a credible baseline from which impacts (AEol) can be measured and judged. If this application were approved, the impacts on the Epping Forest SAC would no longer be compared to the Do-Nothing scenario (without LTC).

⁵ [Decision Letter](#) for Lower Thames Crossing Development Consent Order, March 2025

A baseline established prior to SOW will measure the pollution levels prior to construction (the levels needed to compare with post opening levels) but will also be able to demonstrate any adverse impact of the LTC's construction phase. This would give a full picture of the impacts of LTC, i.e. the Do Nothing scenario.

The new proposed baseline, created after the SOW when construction is already underway, will not give a proper baseline and will also hide any construction impacts. When work commences on the LTC there will be huge changes to the surrounding road network, including and especially on the M25. There will inevitably be a large amount of disruption, causing congestion, queuing traffic and, consequently, higher levels of air pollution. Having a baseline set in these conditions could result in it being artificially high, hiding the true impact on the SAC once it is operational. This is not acceptable.

The Applicant accepts "the need for a preoperational baseline to be put in place", yet then proposes to move the goalposts so that air quality is only measured after construction has commenced. This would be a baseline with an altered state to the current 'Do Nothing' reality. In its NMC-1 Supporting Statement the Applicant asserts that this change (establishing a baseline *after* SOW) will establish a "*robust pre-operational baseline*". This is clearly wrong, it is not robust, and will mask the full air quality impacts of the LTC on the Epping Forest SAC.

The Applicant has not given a reason for this material change to the DCO and the Environment Statement. We strongly suspect that this is due to the Applicant's wish to start work on the scheme as soon as possible without having done the required monitoring first, i.e. cutting corners. The Applicant's desire for speed does not trump the requirements in the Habitats Directive. In any case, funding is not in place to pay for the Lower Thames Crossing's construction, so there is no need to hurry and leave the monitoring until after the start of works.

Material change to the DCO

We strongly disagree with the Applicant's conclusion that this is a non-material change to the DCO. We believe 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, as per the Planning Act 2008: Guidance on Changes to Development Consent Orders 2015.

Conclusion

We believe the first application to amend the DCO (NMC-1) should not be considered a 'non-material change', and should be rejected. The air quality monitoring should be commenced a year before construction starts so that a robust preconstruction baseline ("without the Proposed Development", as per the Decision Letter) can be established. Whether or not there is AEoI can only be assessed against the Do-Minimum scenario (i.e. the pollution levels before construction starts).

TAN would also like to reserve our position until we have seen the responses from other consultees, such as Natural England and the relevant local authorities.

23 October 2025

Rebecca Lush

Transport Action Network

Transport Action Network provides free support to people and groups pressing for more sustainable transport in their area and opposing cuts to bus and rail services, damaging road schemes and large unsustainable developments

254 Upper Shoreham Road, Shoreham-by-Sea, West Sussex, BN43 6BF

Not-for-profit company limited by guarantee, registered in England and Wales: 12100114