

APPLICATION FOR DEVELOPMENT CONSENT ORDER FOR M20 JUNCTION 10A BY HIGHWAYS ENGLAND

EXTRACTS FROM SECTION 8 OF THE EXAMINING AUTHORITY'S REPORT – COMPULSORY PURCHASE AND RELATED MATTERS

The Case for the Environment Agency

8.6.7 The EA strongly disagrees with the Applicant's proposed wording of 20(3)(b)¹²⁰ which states "*shall be deemed to have been given*". It should read "*shall be deemed to have been refused*". This is to reflect a change in legislation. Flood defence consents were formally issued under the Water Resources Act 1991 (WRA91) and were deemed to be given, but flood risk activity permits under the Environmental Permitting (England & Wales) Regulations 2016 have superseded flood defence consents under the WRA91. Flood risk activity permits are deemed to be refused. The Protective Provisions need to align with the change in legislation to reflect deemed refusal. For the same reasons, 22(1)(a)¹²¹ will also need to be amended to include "*or deemed to have been approved or settled*" [REP8-005 and REP8-006].

Applicant's response

8.6.10 The Applicant rejects the amendments proposed by the EA for the following reasons:

Paragraph 20(3)(b) and paragraph 22(1)(a) - Consent should be deemed to be given if no response is received from the EA. The two month response period is generous, and the Applicant cannot accept the risk of the Proposed Development being delayed due to the failure of the EA to respond. The dDCO should be considered on its own merits and not by reference to other general legislation;

Examining Authority's Conclusion

8.6.11 In respect of Part 3 of Schedule 9 of the recommended dDCO (Appendix D to this report), I have considered each area of dispute between the EA and the Applicant. In consideration of paragraphs 20(3)(b) and paragraph 22(1)(a), I consider that the appeal provisions at Schedule 6 of the Environmental Permitting (England & Wales) Regulations 2016 (the EP Regs) mean that there would not be any unreasonable risk posed to the delivery of the Proposed Development. I am therefore convinced by the arguments put forward by the EA and agree that the drafting should reflect the contemporary statutory position arising from the EP Regs.