

A303 Amesbury to Berwick Down Road– TR010025

Response by ICOMOS-UK

to the Secretary of State’s request of 14.9.22 for Interested Parties’ views on

National Highways’ comments on the

Report of the 2022 UNESCO/ICOMOS/ICCROM Advisory Mission

Context

1. The following sets out the context within which ICOMOS-UK has reviewed the Response of National Highways (NH) to the 2022 UNESCO/ICOMOS/ICCROM Advisory Mission:

World Heritage Committee decision, 2021:

2. At the last meeting of the UNESCO World Heritage Committee in 2021, the Committee decision concluded as follows:
 - Finally requests the State Party to submit to the World Heritage Centre, by 1 February 2022, an updated report on the state of conservation of the property and the implementation of the above, for examination by the World Heritage Committee at its 45th session, with a view to considering the inscription of the property on the List of World Heritage in Danger if the A303 route upgrade scheme is not modified to deliver the best available outcome for the OUV of the property.

The Committee decision also included the following:

- Considers ...that the approved A303 improvement scheme is a potential threat to the property, which - if implemented - could have deleterious effects on its inherent characteristics, notably to its integrity;
 - Notes furthermore the State Party’s commitment to ongoing engagement with the Committee, the World Heritage Centre, and ICOMOS, but also considers that it is unclear what might be achieved by further engagement unless and until the design is fundamentally amended.
3. Notwithstanding this clear decision that the current project is a potential threat to the property, and that further engagement would need to be based on amendment designs, the State Party requested an Advisory Mission to the property even though no alterations had been made by NH to the Scheme since consideration by the World Heritage Committee in 2021.

Advisory Mission 2022

4. The joint UNESCO/ICOMOS/ICCROM Advisory Mission was undertaken on 19-21 April 2022. The Mission report stated that :
- Additional weight should be afforded to avoiding impact on the property, in view of its ‘Outstanding Universal Value’ and the obligations of the State Party under the World Heritage Convention. The Mission considers that the appropriate ‘test’ is not whether there is a net benefit to OUV, but rather how any adverse impact on OUV can be avoided.
 - An alternative route, which re-routes the A303 completely around the WHS, and enables the complete closure of the existing section of the A303 within the WHS, would provide the best option for minimizing any negative impact and enhancing positive benefits to the OUV of the property. A tunnel beneath the entire length of the WHS would provide the next best option for the OUV of the inscribed property.
 - Insofar as such a tunnel is not feasible, then the alternative should be to extend the underground section of the Scheme at least to the western boundary, with areas to be excavated subject to comprehensive archaeological investigation, salvage, and mitigation.
5. The Mission report recommended that:
- The Scheme should not proceed in its current form and a solution is needed that does not impact adversely on the OUV of the WHS;
 - The State Party should revisit alternative surface road options to consider whether one of them might be adapted to remove through traffic from the WHS, thereby minimizing adverse impacts on the OUV of the property, while also responding to the other complex demands and needs;
 - The responsible State Party authority should await the Decision of the World Heritage Committee at its 45th session before re-determining the Scheme’s Development Consent Order application.

Examining Authority

6. The current scheme was the subject of a statutory examination before the Examining Authority (ExA) carried out by a panel of five inspectors between 2 April and 2 October 2019. The Panel unanimously recommended in January 2021 that the DCO should not be granted on the grounds that the: scheme would have a “significantly adverse effect” on the OUV of the WHS, including its integrity and authenticity and the totality of the adverse impacts of the proposed scheme would strongly outweigh its overall benefits bringing “considerable harm to both landscape character and visual amenity”

High Court Judgement

7. The High Court in July 2021 quashed the DCO consent order that had been issued for the National Highways scheme by the SST in November 2020 on two grounds:

- The Secretary of State failed to give adequate and intelligible reasons as to (1) the significance of each of the affected heritage assets (2) the impact upon each asset and (3) the weight to be given to that impact.
 - The scheme proposed would cause significant planning harm ... and the grant of consent *depends* upon its adverse impacts being outweighed by need and other benefits (as in para. 5.134 of the NPSNN).
8. The Judgment considered (para 268) that ‘alternative sites or options ... are an obviously material consideration’ which must be taken into account’ ,
 9. The Judgment also noted that ‘the SST did not have the benefit of the Panel’s views on the relative merits of the extended tunnel options compared to the proposed scheme’. Thus, NH needed to provide further details on viable alternative in relation to which might deliver the best protection for the OUV of the property, including outside the DCO area.
 10. The Judgement also made it clear (para 283) that it is not adequate to claim that the scheme is merely ‘acceptable’.

International obligations of the World Heritage Convention

11. The obligations of the World Heritage Convention have not been domesticated in UK Law but that does not mean that they should not be respected.

ICOMOS-UK’s views on National Highways’ response to the Mission Report

12. NH has set out its response to the Mission report under two headings: Findings and Recommendations and our views maintain those headings.

NH Comments on Findings of the Mission

Obligations of the World Heritage Convention

13. NH comments that ‘as has been established by the High Court in its decision on the judicial review of the Secretary of State for Transport’s (SoS’s) decision (to grant consent for the DCO Scheme in November 2020), granting the DCO in accordance with the NPSNN would not put the UK in breach of the World Heritage Convention’.
14. We do not agree with this conclusion. What the High Court Judgment concluded was that as the Convention has not been domesticated in UK Law, it did not consider that any legal international obligations were at stake in relation to the DCO decision and thus section 104(4) of the 2008 Act did not apply.
15. Although the UK has chosen not to domesticate the Convention in UK Law, the obligations of the Convention remain even though they are not part of UK law. These are that:
 - Article 4 of the Convention sets out that ‘Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all

it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain’.

- Article 6 of the Convention text states that protection of heritage that has been seen to demonstrate OUV, ‘constitutes a World Heritage for whose protection it is the duty of the international community as a whole to co-operate’.

16. Thus, whether all that a State Party can do to the utmost of its own resources, and whether all the assistance and cooperation obtained, are sufficient to maintain OUV, will be matters for the World Heritage Committee to decide, in accordance with the Operational Guidelines for the Implementation of the World Heritage Convention.
17. It will also be for the World Heritage Committee to determine whether the Scheme protects the OUV of the property or has adverse impacts. The Committee has the power to enact the Convention in terms of inscribing properties on the List, inscribing properties on the WH List in Danger and de-listing properties. In making such decisions, they are not giving advice to States Parties.
18. In the recent case of Liverpool, the Committee decided that what had been done was insufficient for the property to retain its OUV.

Alternative Tunnel options

19. The Mission noted that ‘no further consideration or analysis of alternatives has been offered by National Highways. Such alternatives would need to be considered in order to explore fully the available opportunities to avoid impacts on OUV’
20. Since the Mission Report was written, NH have given consideration to two alternatives, a longer tunnel and a cut and cover tunnel extension to the DCO scheme, but did not recommend either.
21. We do not know whether the details of these two options have been forwarded to UNESCO and thus whether the UNESCO World Heritage Centre and ICOMOS has had the opportunity to comment on them.
22. These options are commented on further below under Recommendations.

Status of the Recommendations of the Mission and the World Heritage Committee

23. The Mission report underscores that ‘the findings and recommendations of this 2022 Advisory Mission report and the forthcoming Decision of the World Heritage Committee at its 45th session are directly relevant to consideration by the State Party authority for the re-determination of the Scheme’s Development Consent Order application’.
24. NH disputes this by saying that the views of the World Heritage Committee should be treated as those of a consultee.

25. In our view, this is incorrect. The Committee's decisions reflect their assessment as to whether actions by States Parties are in line with the Convention. And, as set out above, if they consider they are not, the Committee can take action.
26. NH further states that 'the views of the Mission should be treated as those of a separate consultee - and it is worth noting in this respect that the Mission itself notes on page 12 of the Report that it has an advisory role only, and further that it does not speak on behalf of ICOMOS/ICCROM/UNESCO nor the WHC'.
27. We agree that the Advisory mission was providing advice as such advice was requested by the SP when it requested the Advisory Mission. Such missions allow discussion and informed dialogue with States Parties to alert them to potential problem with projects that need addressing if OUV is not to be undermined.

NH Comments on Substantive Mission Recommendations in Table 2

28. Our response to the NH comments is considered in two parts: first relating to substantive recommendation on the overall parameters of the Scheme, and secondly to supplementary recommendations that relate to the implementation of an agreed Scheme.

Substantive recommendations

29. The key recommendations of the Mission are that the current Scheme should not proceed and that alternatives need to be considered in order to explore fully the available opportunities to avoid impacts on OUV, and that an alternative route outside the WHS would provide the best option while a tunnel beneath the entire length of the WHS would provide the next best option.
30. In line with the Mission recommendations, NH has now considered two tunnel options, one fully underground and a second cut and cover extension to the DCO scheme's bored tunnel, and have evaluated these in some details to allow a substantive decision to be made.
31. In our view, as set out in our August 2022 response, it is clear that a longer underground tunnel offers the potential for a scheme with minor adverse impact on OUV, but only if the current proposal is modified, in terms of the precise arrangement at the western boundary in relation to the location of the portal and the new roundabout, and in response to issues of integrity at the eastern end that have previously been identified. A cut and cover extension to the DCO Scheme would only compound the adverse impact of the DCO scheme as a result of further excavations and the loss of even more archaeological evidence.
32. We note that it appears that the Mission team has not so far been offered the opportunity to comment on the longer tunnel proposal put forward by NH. This proposal needs to be considered by the WHC and the Advisory Bodies, on the basis of full details being submitted, as requested by the Mission.

33. NH has not undertaken any further work on options outside the property. The NH maintains that adequate works was carried out in the early stages of the project and while impact on OUV was considered during the early stages, it states that ‘Heritage Impact Assessment (HIA) on all the landscape under consideration is not appropriate at this early stage’.

34. We do not agree with this assertion. We call attention to our submission of August 2022 in para 22-28, which in summary stated that a Southern Route should have been explored to a similar level as the proposed tunnel option so as to allow a similar robust decision to be made. Such a process is required in ICOMOS Guidance on Impact Assessment for Cultural Heritage Property, has now been included formally in the Operational Guidelines and is also an established part of EIAs, as acknowledged in the High Court ruling which referred to a breach both in relation to the World Heritage Convention and common law.

35. The NH’s response has compared the longer tunnel option with the DCO Scheme. Perhaps the most crucial aspect of NH’s response is how they have assessed these options in relation to impact on the OUV of the property. They have used the same methodology as before, and drawn the conclusion that:

Current A303	Highly Negative Impact on OUV
DCO Scheme	Slightly beneficial - in comparison to current A303
Longer bored tunnel	Moderate beneficial – in comparison to the current A303.

36. NH then further considers whether the difference between moderate and slight benefits can be justified and concludes that they cannot, as the additional cost over and above the DCO Scheme would not deliver meaningful additional benefits to the WHS.

37. We consider that this NH methodology is fundamentally flawed. First, of all what is needed is an assessment of impact on OUV, not merely a comparison with the current situation. Second, consideration needs to be given to what is reversible and what is irreversible, and thirdly consideration should be taken of the views of the ExO, the World Heritage Committee, the Court Judgement and the Mission, all of which have stated that the current DCO Scheme has highly adverse impacts on OUV.

38. Thus the basis of NH’s assessment cannot be considered sound, and particularly their persistence in stating that the DCO Scheme is slightly beneficial in relation to the current A303. It may be beneficial in some respects compared with the A303 scheme but what needs to be established is its impact on OUV: that it does harm OUV has been clearly stated by ExO, the World Heritage Committee, the Court Judgement, and the Mission and furthermore, the former SoS has agreed with this finding.

39. As also set out in our August 2022 Report, the conclusion on impact on OUV should in our view be set out as follows:

Current A303	Adverse, but reversible, impact on OUV, esp. visual integrity
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DCO Scheme	Highly adverse, irreversible impact on OUV
Cut and cover scheme	Highly adverse, irreversible impact on OUV
Longer Bored Tunnel	Potential for minor adverse impact on OUV, if Scheme modified at the eastern and western ends.

40. Using this assessment, in our views the longer underground tunnel, if modified at both ends, could have the potential to deliver a scheme that has a minor adverse impact on OUV, as opposed to the DCO Scheme that has highly adverse, and irreversible impacts on OUV. Thus the additional benefits of a longer tunnel, between minor adverse and highly adverse in impacts on OUV, are far greater than the difference between minor and moderate benefits to the status quo, as set out by NH, which take no account of the highly adverse, irreversible impact on OUV that arises from the DCO Scheme.
41. Nevertheless, as the NH sets out, such a longer tunnel brings higher costs.
42. What remains unknown is whether or not a surface road scheme, or a hybrid surface/tunnel scheme, outside the WH property exists that has no impact on OUV and could be delivered at much lower cost than the longer tunnel. This is the missing link that has not been adequately explored, as requested by the Committee, the Court Judgment and the Mission.
43. In this respect, we consider that not everything has been done to the utmost of the State Party's resources to determine whether an option exists which does not impact adversely on OUV, and is less costly than the current scheme,

Supplementary Mission Recommendations

44. Most of the remaining Mission recommendations relate to the implementation of an agreed Scheme.
45. We have no detailed comments on these at this stage. We consider that an amended scheme that does not impact adversely on OUV needs to be first approved by the World Heritage Committee and then revised and modified to satisfy the entire suite of Mission recommendations, with the relevance of each of these recommendations depending on how the scheme was modified.

Recommendation in the Next Session of the Committee

46. The mission recommended that the Decision of the World Heritage Committee at its 45th session needed to be known before any revised scheme was determined.
47. NH indicates that this might cause a delay. We consider that the overall project has been much delayed by the absence of necessary consideration being given to appropriate options outside the property. If such work had been undertaken at the early stages of the Scheme, this would have streamlined the whole decision-making processes and years could have been saved.

Conclusions

48. The mission report's key conclusion was that the DCO Scheme should not proceed in its current form, and that further work was needed on alternative options relating to a route outside the property and to longer tunnels.
49. NH has given no commitment that it will not proceed with the current DCO Scheme.
50. No land route options have been explored by NH to allow understanding as to whether a route outside the property exists that would have no impact on OUV and would cost less than a longer tunnel.
51. Although NH has undertaken work on exploring longer tunnel options, in our view NH's justification that this work is sufficient to justify the current DCO Scheme, is fundamentally flawed. The NH's evaluation of benefits arising from the longer tunnel scheme, compared to the DCO Scheme, is based on a flawed assessment of impact on of the DCO Scheme, which considers benefits in comparison to the status quo rather than impact on OUV, and is not supported by the ExA, the WH Committee, and the Mission as it is not a true reflection of the major negative impact of the DCO scheme on OUV.
52. If properly assessed for its impact on OUV, in our view the longer bored tunnel scheme (if modified at its western and eastern ends) has the potential to provide minor adverse impacts on OUV, compared to the major, irreversible impact on OUV for the current DCO Scheme. Full details would need to be provided of the longer bored tunnel scheme, including necessary modifications, for review by the WHC and the Advisory Bodies.
53. It has thus not been demonstrated there are no other viable alternatives exist that would better achieve the aim of conserving and enhancing the WHS – the need for which is also set out in the Court Judgment.
54. Further, we consider that not everything has been done to the utmost of the State Party's resources to determine whether an option exists that does not impact adversely on OUV, and is less costly than the current scheme,
55. We do not support NH's interpretation of the role of the WH committee as a mere consultee. The Committee's decisions reflect their assessment as to whether actions by States Parties are in line with the Convention. And, as set out above, if they consider they are not, the Committee can take action. We support the Mission's view that 'the findings and recommendations of this 2022 Advisory Mission report and the forthcoming Decision of the World Heritage Committee at its 45th session are directly relevant to consideration by the State Party authority for the re-determination of the Scheme's Development Consent Order application'.
56. We also do not support NH's view that the decision to grant consent for the DCO Scheme in November 2020 would not put the UK in breach of the World Heritage Convention. What the High Court Judgment concluded was that as the Convention has not been domesticated in UK

Law, it did not consider that any legal international obligations were at stake in relation to the DCO decision, and thus section 104(4) of the 2008 Act did not apply.

57. Although the UK has chosen not to domesticate the Convention in UK Law, its obligations to the Convention still remain. Thus while a decision might not contravene UK law, the Committee could still decide that it contravenes the Convention.
58. Although it will be unfortunate if the 45th meeting of the Committee is not held before mid 2023, this delay is slight compared to the time lost as a result of all options not having been satisfactorily considered at the early stages of this project. In our view, it is essential that the Committee provides its views before any determination is made, rather than after when things might be impossible to reverse.

3rd October 2022