



Meeting note

Project name	A1 Birtley to Coalhouse
File reference	TR010031
Status	Final
Author	The Planning Inspectorate
Date	28 February 2019
Meeting with	Highways England
Venue	Temple Quay House
Meeting objectives	Project update meeting
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

The Planning Inspectorate provided comments on the draft application documents provided, these comments can be seen in the table below. The Applicant provided an overview response in respect of those comments and noted that documents, such as the Explanatory Memorandum, given their draft form were still evolving and at submission would incorporate more information. The discussion noted the way other applicants had handled providing land interests in Consultation Report Annexes.

The Inspectorate noted the inclusion of Work Number 5 in the draft Development Consent Order (DCO) which included the option to build out one of two bridge construction designs. The Inspectorate queried whether the DCO had been drafted to reflect the provision of an 'option' noting the provisions in the made M20 Junction 10a DCO in respect of Article 3 and the respective compulsory acquisition articles/powers. The Applicant agreed to provide an update to the Inspectorate on this matter prior to submission of the application.

The Applicant noted that work was still on-going in respect of identifying any Special Category Land. The Applicant agreed to provide an update to the Inspectorate on this matter prior to submission of the application.

The Applicant provided an overview on engagement with stakeholders such as Network Rail and Historic England. The Inspectorate noted the expectation that any Protective Provisions would not be left blank on submission of an application. The Applicant agreed to provide an update to the Inspectorate on these matters prior to the submission of the application.

The Inspectorate noted that the anticipated submission date was likely within the next few months and discussed logistics for submission of an application.

Comments on draft documents, February 2019

These queries relate solely to matters raised by the draft documents, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration.

Draft Consultation Report

<i>Q No.</i>	<i>Section</i>	<i>Extract from Document</i>	<i>Question/Comment</i>
1	Annexes		It is noted that many annexes are not supplied. Consideration should be given to the handling of any Annex that might contain or identify Land Interests.

Works Plans

<i>Q No.</i>	<i>Section</i>	<i>Extract from Document</i>	<i>Question/Comment</i>
1	Sheet 3	<i>Areas within the red line boundary</i>	There are areas, such as that shown on sheet 3 to the north of Work 17, where it is not clear what work, if any, is proposed to be carried out

Book of Reference

<i>Q No.</i>	<i>Section</i>	<i>Extract from Document</i>	<i>Question/Comment</i>
1	Opening Section		As noted in the covering letter, introductory text will be included. The Inspectorate would wish for the opening text to include a mechanism by which to cross-refer each plot of land back to the principal land use powers sought in the draft DCO.

Statement of Reasons

<i>Q No.</i>	<i>Section</i>	<i>Extract from Document</i>	<i>Question/Comment</i>
1	Annex B		The structure of this annex is helpful, but it will need to be populated

2	2.4 Alternatives	It is expected that the uncertainty in all respect, but in particular of land take, for the options will be resolved before submission.
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Draft Development Consent Order and Explanatory Memorandum

	Article	Comments
1.		<p>The Applicant will be asked to maintain a list of all plans and other documents that will require Secretary of State certification (including plan/ document references), updated throughout the examination process, and supplied to the Examining authority before the close of the examination.</p> <p>The application DCO and any subsequent versions of the submitted to the examination:</p> <ul style="list-style-type: none"> • should be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes. • should be accompanied by a document explaining the changes made– see e.g. Document explaining changes made to DCO for Deadline 5 in the A19 (Testo’s Junction) DCO examination <p>The examination timetable will usually provide a deadline for receipt of the Applicant’s final or preferred version of the DCO. That version should be supported by a report of the outcome of validating it through the Publishing section of the legislation.gov.uk website</p>
2.		<p>The applicant should ensure that the draft DCO follows guidance and practice for Statutory Instrument (SI) drafting (for example avoiding “<i>shall/ should</i>”) and is in the SI template when submitted – see Advice Note 13. The applicant should also follow best practice drafting guidance in Advice Note 15. The DCO (and any subsequent revisions) should be in the form required by the statutory instrument template (see Planning Inspectorate AN13) and validated as such using the current SI template, including detailed footnotes to all statutory references.</p>
3.		<p>The Explanatory Memorandum (EM) should state whether each Article is based on a model provision or precedent Article. It would also be helpful if the EM clarified whether the drafting change is minor and has been made where in the applicant’s view the model provision is unclear or does not follow standard/ modern SI drafting practice. Where a model provision or precedent Article is substantially changed the EM should clearly explain how that alters the effect. Particularly where an Article is novel, the power on which each article is based should be identified.</p> <p>The EM should explain the purpose and effect of each provision (explaining, for example, why it is considered necessary). See Advice Note 13.</p>
4.		<p>Notwithstanding that drafting precedent has been set by previous DCOs or other orders, whether or not a particular provision in this DCO is appropriate, necessary and justified will be for the Examining</p>

	Article	Comments
		Authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and Interested Parties.
5.		<p>"commence" - it will be necessary for the applicant to justify the flexibility created by this 'carve out' clarifying any impacts of the exempted works so that the ExA can consider whether their impacts need to be controlled by requirement. Note also that in York Potash Harbour Facilities Order the Secretary of State changed the drafting approach and didn't extend the 'exemption' to site clearance or diversion etc of services:</p> <p><i>"45. In article 2(1) (interpretation) the Secretary of State is replacing the definition of "commence" with substantive provisions in article 3 (development consent, etc., granted by the Order) to make clear that certain of the works referred to in that definition may be carried out once the Order comes into force and are not subject to prior approval under the requirements or the DML. However, he does not consider that it is appropriate that this exemption should extend to site clearance or the diversion and laying of services as these operations may have impacts that should be subject to mitigation measures that would be secured through the requirements."</i></p>
6.		"maintain" - notwithstanding precedent in other DCOs the applicant must still justify the scope of this definition within the context of this particular draft DCO and development.
7.	Article 3 – <i>development consent etc., granted by the Order</i>	Notwithstanding other precedents, the EM should explain further the effect of and necessity for Article 3(2). How much land (and how far from the DCO boundary) might be affected by the provision? What enactments are likely to be engaged?
8.	Article 4 – <i>maintenance of the authorised development</i>	Although this would be a matter for examination the applicant should consider whether the limitation to the extent of maintenance authorised in this Article 4 (and via the definition) should apply to maintenance authorised elsewhere in the DCO.
9.	Article 6 – <i>planning permission</i>	Notwithstanding precedent, this article requires further justification. Why would the applicant need to secure planning permission for development within the Order limits? Why would development required to complete or enable use/operation of the authorised development not have been authorised through the DCO?
10.	Article 11 – <i>power to alter</i>	Notwithstanding precedents, the applicant should still provide full justification for the wide power to alter layout etc. of <u>any</u> street.

	Article	Comments
	<i>layout etc. of streets</i>	Has text in draft Explanatory Memorandum been copied from another project without updated references?
11.	Article 12 – <i>street works</i>	Notwithstanding precedent, the applicant should explain why the wide power is necessary in this particular case. How do the works within streets identified in Schedule 1 (and authorised through article 3 (1)) relate to the works authorised through articles 11 and 12?
12.	Article 15 – <i>temporary stopping up and restriction of use of streets</i>	Notwithstanding the precedents, it will be for the ExA to consider depending on the facts of this particular DCO application whether it is necessary/ appropriate to authorise the use of streets as temporary working sites. Further justification in the EM would be helpful.
13.	Article 17 – <i>access to works</i>	Why is this power necessary?
14.	Article 21 – <i>protective works to buildings</i>	Notwithstanding drafting precedent in other DCOs, the EM should explain why this power is necessary in the circumstances of this particular NSIP.
15.	Article 22 – <i>authority to survey and investigate land</i>	Notwithstanding drafting precedent in other DCOs, the EM should explain why this power is necessary in the circumstances of this particular NSIP.
16.	Article 26 – <i>compulsory acquisition of rights</i>	<p>Full justification should be provided for the power to impose restrictive covenants. The applicant should note paragraph 26 of Advice Note 15: “Before deciding whether or not the power is justified the Secretary of State will need to consider issues such as proportionality; the risk that the use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose restrictive covenants”.</p> <p>Note also the Secretary of State’s decision (paragraph 62 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO) “to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used”.</p>

	Article	Comments
17.	Article 37 – <i>felling or lopping of trees and removal of hedgerows</i>	Notwithstanding precedents, this article still requires justification in the circumstances of this particular NSIP.
18.	Article 42 – <i>defence to proceedings in respect of statutory nuisance</i>	The applicant should explain why this article is necessary in the circumstances of this NSIP.
19.	Schedule 1 - <i>authorised development</i>	The DCO does not describe any associated development. The Applicant should confirm in the Explanatory Memorandum if they consider all works to be integral to the NSIP.
20.	Schedule 1 – articulation of works	Work no 5.
21.	Schedule 11 – Protective Provisions	Currently not completed, to be completed on submission of application.
22.	Explanatory Memorandum	Will the Explanatory Memorandum or another document clearly indicate how the scheme relates to the provisions of PA2008 s22 – currently it contains statements which state the area of development is greater than 12.5ha.

HRA Report

Point no.	Report reference¹	Extract from draft HRA Report	Question/Comment
1	'Size and scale' box	<i>'The Northumbria Coast Special Protected Area (SPA) and Ramsar wetland (hereafter the 'European site') is situated >13km from the Scheme in a straight line. The European site is located c. 23km downstream of the Scheme, via the River Team and River Tyne.'</i>	<p>Suggest amending wording here (and throughout the report) to acknowledge that these are two European sites rather than one.</p> <p>It appears that the boundaries of the Northumbria Coast SPA and Ramsar site are coincident, but for the avoidance of doubt, suggest this is confirmed here.</p>
2	'Emissions' box and 'Other' box	<p><i>'The following enhancement measures which would benefit ecological resources have been incorporated into the Scheme design and delivery:</i></p> <p>[summarised]:</p> <ul style="list-style-type: none"> <i>• Outfalls would be fitted with oil interceptors;</i> <i>• Provision of attenuation pond to capture surface run-off;</i> <i>• A Construction Environmental Management Plan (CEMP).'</i> 	<p>The Report identifies a hydrological link between the Proposed Development and the European sites. The Applicant states that due to the distance from the European sites (23km downstream) and high dilution rate of any pollutants, no impacts to the European sites are anticipated.</p> <p>Accordingly, the Report presents information on measures which are not intended to avoid impacts on European sites; but are enhancement measures proposed to provide benefits to ecological features.</p> <ul style="list-style-type: none"> • The Report explains that in the absence of the CEMP, the SPA would not be significantly impacted. It should be confirmed whether this is also the case in relation to the proposed oil interceptors and the attenuation pond, and whether this applies to all European sites considered (not just the SPA). • Suggest adding cross references to explain how each measure is secured, either through the draft DCO or other legal mechanism.

¹ The Applicant's draft HRA report does not contain paragraph numbers and there is an error with the page numbering. As such, references in this column relate to the boxes in the draft HRA report.

Point no.	Report reference¹	Extract from draft HRA Report	Question/Comment
3	'Excavation requirements' box	<i>'Results from the GI [Ground Investigation] were not available at the time of writing'.</i>	The HRA report should reflect the results of the GI if this is completed prior to submission of the application.
4	'Name of European Site and its EU Code' Box	<i>'A review of publicly available information from the MAGIC website has identified that no European Sites are present within 10km of the Scheme.</i> <i>No European Sites have been identified within 30km of the Scheme where bats are noted as one of the qualifying species'.</i>	What search area has been applied in respect of hydrologically linked European sites? The HRA Report should clarify this point and explain (in relation to the extent of the likely impacts) why each of the search areas have been selected.
5	'European Site Conservation objectives' box	<i>'Qualifying Features:</i> <ul style="list-style-type: none"> <i>• A148 Purple sandpiper (Non-breeding)</i> <i>• A169 Ruddy turnstone (Non-breeding)</i> <i>• A195 Little tern (Breeding)'.</i> 	<p>The Conservation Objectives for the Northumbria Coast SPA (version 3, 29 January 2016) also list breeding arctic tern as an additional qualifying feature.</p> <p>This feature should be added to the 'European Site Conservation objectives' box and considered in the HRA report and matrices as if it is formally classified.</p>
6	'European Site Conservation objectives' box	<i>'Information on European Site conservation objectives are not readily available for the Ramsar site. However as this covers the same geographical area; it is considered that the objectives for the SPA (detailed below) are also applicable to the Ramsar site.</i>	Suggest including some further justification to support this approach. Has it been agreed with Natural England (NE)?
7	'Assessment Criteria' box	<i>'Upgrade works to the A1 between Scotswood and North Brunton are also proposed, to commence in March 2020...no effects in combination with this Scheme are anticipated'.</i>	<p>The potential for in-combination effects from the Proposed Development together with the upgrade works to the A1 between Scotswood and North Brunton is very briefly considered.</p> <p>Suggest providing some further explanation regarding the methodology used to assess in-combination effects and to explain how the conclusions have been reached. Advise confirming whether there any other plans or</p>

Point no.	Report reference¹	Extract from draft HRA Report	Question/Comment
			projects which could potentially result in in-combination effects; has this been agreed with relevant consultation bodies including NE?
8	'Outcome of screening stage' box	<i>'Outcome of screening stage: Not likely to be significant effects'.</i>	Need to provide evidence of consultation and any agreement with NE, in particular regarding the European sites and potential impacts considered in the assessment, and the conclusions of the assessment. Such evidence should be appended to the HRA Report and/or through cross reference to a signed Statement of Common Ground (SoCG), where available. This may reduce the need for the Examining Authority to ask questions in this regard.
9	Figure 2	n/a	Durham Coast Special Area of Conservation (SAC) is shown on Figure 2 but otherwise not mentioned in the report. To avoid confusion, suggest including confirmation of why Durham Coast SAC has been scoped out of consideration in the HRA.
10	Figure 2	n/a	Due to the overlapping designations, it is difficult to work out from Figure 2 which areas of land are covered by which designation. Consider whether this could be split across different figures to make it clearer?
11	n/a	n/a	The HRA report should include a brief explanation of why impacts from decommissioning have not been considered.
12	n/a	n/a	Screening matrices in accordance with PINS Advice Note 10 should be provided for each European site screened into the assessment.

Supplementary Comments

Development Consent Order

Q No.	Section	Extract from Document	Question/Comment
1	A14	<i>Classification of roads A14(3)</i>	Arguably paragraph (3) has the effect of disapplying PA2008 s153 which provides a procedure for changing a DCO. Notwithstanding precedent, this Article will require justification and clarification against which PA2008 s120 power this article is made and if necessary provide further justification as to why it is necessary or expedient to give full effect to any other provision of the DCO.
2	A20	<i>Discharge of water</i>	Homes and Communities Agency now renamed Homes England.
3	A34 and A35	<i>Statutory Undertakers</i>	Articles 34 and 35 authorise Compulsory Acquisition of or interference with Statutory Undertakers apparatus which means that S127 and 138 are engaged. The Statement of Reasons states that none of the land to be acquired for the scheme is statutory undertakers land for the purposes of s127. The applicant will be aware that where a representation is made by a statutory undertaker under s127 of the PA2008 and has not been withdrawn, the Secretary of State will be unable to authorise Article 34 unless satisfied of specified matters set out in s127. The Secretary of State will also be unable to authorise (through Article 35) removal or repositioning of apparatus unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with s138 of the PA2008. The EM should provide justification for these articles.
4	A37	<i>Felling or lopping of trees and removal of hedgerows</i>	This is a general power which effectively disappplies the provision of the Hedgerow Regulations. There is no Schedule which identifies the hedgerows which may need to be removed. Advice in AN 15 states that articles such as these should include a Schedule and a plan to specifically identify the hedgerows to be removed (whether in whole or in part). Alternatively, the Article within the DCO could be drafted to include powers for general removal of hedgerows (if they cannot be

			specifically identified) but drafted to require later consent of the local authority.
5	A39	<i>Scheduled Monuments</i>	Is this Article purporting to grant consent under the Ancient Monuments and Archaeological Areas Act 1979? The Applicant should explain why this article is required, noting in particular PA2008 s33(1) and s33(1)(f): <i>to the extent that the development relates to land in England, consent under section 2(3) or 3 of the Ancient Monuments and Archaeological Areas Act 1979</i> ; and the Infrastructure Planning (Decisions) Regulations 2010/Regulation 3(3).
6	Schedule 1	<i>Work No. 5a</i>	The DCO must identify any consequential effects of seeking to authorise one of two options and must contain controls as necessary to avoid unintended consequences.
7	Schedule 1	<i>further development within the Order limits etc</i>	The works listed in paragraphs (a) to (v) are extensive. Notwithstanding that there is precedent in other highways DCOs, the applicant should provide as much justification as possible that all the works are necessary.
8	Schedule 2	<i>Schedule 2 Part 2</i>	The applicant should provide more explanation in respect of Schedule 2 Part 2 – Anticipatory steps towards compliance with any requirement.
9	General	<i>Special Category Land</i>	If special category land is affected the applicant will need to provide the necessary justification in due course to allow the Secretary of State to be satisfied of certain matters under s131/132. Is there intended to be a separate article that discharges the special category land of rights.