

A303 Sparkford to Ilchester Dualling Scheme TR010036

9.38 Joint Note from Highways England and Somerset County Council: Maintenance of Drainage Assets

Planning Act 2008

May 2019

Volume 9.0



Infrastructure Planning

Planning Act 2008

A303 Sparkford to Ilchester Dualling Scheme

Development Consent Order 201[X]

Maintenance of Drainage Assets Joint Note

Regulation Number:	
Planning Inspectorate Scheme Reference	TR010036
Application Document Reference	9.38
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Version	Date	Status of Version
Rev A	May 2019	Deadline 7 submission

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1 Maintenance of Drainage Assets Joint Note

1.1 Introduction

- 1.1.1 This note has been prepared and agreed by the Applicant, Highways England, and Somerset County Council for submission to the Examining Authority at Deadline 7. This note sets out each party's respective positions in relation to the need for a requirement regarding maintenance of drainage features associated with the DCO scheme.

1.2 The Applicant's Position

- 1.1.2 The Applicant's position is that a requirement to secure maintenance of drainage assets is not required in the DCO. The reasons for this have been explained previously, in particular, in the Applicant's response to additional written question 3.10.17 (PD-018), which sets out that:

- (a) The Applicant is already under a statutory duty to undertake management and maintenance of drainage assets under the Floods and Water Management Act. The DCO does nothing to change that position. Failure by the Applicant to adequately maintain drainage features for which it is responsible would therefore be in breach of its statutory duties;
- (b) The Environmental Statement (which is a certified document under the DCO and so must be complied with) includes a Drainage Strategy Report (APP-060), which already sets out principles for maintenance of the drainage system forming part of the DCO scheme. The Applicant must therefore comply with these maintenance principles;
- (c) Any drainage maintenance will be dealt with by the Applicant's Operations Department and, given the long-term nature of drainage maintenance, the Applicant does not wish to be constrained in terms of its future maintenance processes.

- 1.1.3 It is important to the Applicant that it is able to maintain flexibility in its maintenance process so that any future innovation can be accommodated or maintenance can be adjusted to meet any new environmental standards. Any scheme which is approved under the DCO would also need to bind the County Council, as it will be responsible for maintenance of some drainage features. It is the Applicant's assumption that the Council would not wish to be constrained in its approach either.

- 1.1.4 Therefore, the Applicant does not agree that a requirement is needed to secure future maintenance.

- 1.1.5 Apart from disagreeing with the principle of such a requirement, the Applicant cannot agree to the wording suggested by the Council below for various reasons:

- (a) The Applicant is not aware that any off-site drainage works are required to mitigate the DCO scheme. A flood risk assessment has been carried out

(APP-059) and any identified mitigation has been incorporated into the scheme. Reference to any off-site drainage works is therefore not necessary.

- (b) Adoption of assets is not required under the DCO and therefore the second part of the draft requirement is not appropriate or necessary.
- (c) The third part of the requirement is also not necessary – the DCO already secures access rights for maintenance (article 34). This power can be transferred to a third party (e.g. the Council) in relation to the maintenance of relevant drainage assets if necessary.
- (d) Application of a local authority's standard Town and Country Planning Act (TCPA) wording does not make sense in the context as it fails to take account of the differences in scope and effect of a DCO from a TCPA permission. The Applicant is of the view that the suggested requirement is not necessary, does not make sense in the context of the DCO and does not add anything additional to that currently secured under the DCO.

1.3 Somerset County Council's Position

1.1.6 It is the Council's position that maintenance of drainage assets should be secured by requirement in the DCO.

1.1.7 The Council suggests use of the following wording:

No part of the authorised development is to commence until details of the implementation, maintenance and management of the sustainable drainage scheme(s) have been submitted to and approved in writing by the Secretary of State, in consultation with the Lead Local Flood Authority. Those details shall include:

- (a) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of any existing culverts and headwalls or removal of unused culverts where relevant);*
- (b) A management and maintenance plan for the lifetime of the development which shall include any arrangements for adoption by an appropriate public body and / or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development. This should include any interim measures for any management, repair and / or maintenance required during construction and prior to adoption.*
- (c) Where applicable the applicant must demonstrate that they have the right of access (to any third party land / property) to inspect, maintain, operate and repair any part of the approved drainage system for the lifetime of the development. This should include arrangements for the retention and maintenance of any easement requirements.*

The approved details shall be fully implemented, retained, managed and maintained in accordance with the approved details throughout the lifetime of the development.

- 1.1.8 Somerset County Council (SCC) appreciates that the Applicant is a Flood Risk Management Authority (FRMA) as per the Floods and Water Management Act. SCC is also a FRMA and understands that the role has a flood risk management function in managing their own assets or structures where the structures form part of a flood and coastal erosion management system and to reduce the risk of flooding from their activities. This is a general principle and does not specify the level of maintenance of particular assets to satisfy the duty. Whilst it is acknowledged that as the Applicant is also a FRMA this lessens the risk of poor maintenance, it is our view that details relating to maintenance should be issued for approval to the Secretary of State (in consultation with the LLFA) to ensure that the LLFA properly discharges their own duties.
- 1.1.9 Whilst it is acknowledged that the Drainage Strategy Report forms part of the Environmental Statement which is set to be certified, we do not consider it good practice to secure mitigation via a proposed set of outline principles. The wording within the Environmental Statement provides no precision in respect of when the maintenance regime is set to be commenced and for how long maintenance will be carried out. Both of these limitations could potentially make enforcement action difficult. In addition, SCC appreciates that the outline design could potentially change at the detailed design stage and therefore this may impact upon the outline maintenance regime set out in the certified document.
- 1.1.10 SCC as the LLFA does not in any way wish to constrain future maintenance processes but wishes to be a consultee to help shape the scheme.