

CORRECTION NOTICE

THE A46 NEWARK BYPASS DEVELOPMENT CONSENT ORDER 2025 (S.I. 2025 No. 1090)

SCHEDULE 4 TO THE PLANNING ACT 2008 CORRECTION OF ERRORS IN DEVELOPMENT CONSENT DECISIONS

9 January 2026

The Secretary of State received a request dated 12 November 2025 (“the request”) from National Highways Limited (“the Applicant”) for the correction of errors and omissions in the A46 Newark Bypass Development Consent Order 2025 (“the Order”), under paragraph 1(5)(a) of Schedule 4 to the Planning Act 2008 (“the Act”).

In accordance with paragraph 1(7) of Schedule 4 to the Act, on 27 November 2025, the Secretary of State notified each relevant local planning authority of the request for corrections and additionally notified Nottinghamshire County Council.

The request has been considered and the Secretary of State has made the following decision on corrections to the Order.

Corrections to Articles

Article 2 (Interpretation)

In article 2(1), in the definition of “cycle track”, after “of the 1980 Act”, insert “save that all cycle tracks in this Order provide for a right of way on foot”.

Secretary of State’s rationale: The request explains that all the cycle tracks within the Order provide for a right on way on foot and that this had been the position throughout the promotion of the application and requests “and for the purposes of this Order includes a right of way on foot” be inserted. The Secretary of State agrees that the current drafting of the definition does not make the intention clear and so is a correctable error, but does not believe that the proposed correction achieves this objective. Instead, to achieve the objective, “, save that all cycle tracks in this Order provide for a right of way on foot” has been inserted after “of the 1980 Act”.

Insert a new paragraph (10):

“(10) References to any statutory body includes a body’s successor or replacement body that may from time to time be primarily responsible for the functions duties and responsibilities currently exercised by that statutory body over the authorised development.”

Secretary of State’s rationale: The Secretary of State noted in her decision letter dated 1 October 2025 (“the decision letter”) that most of the Development Consent Orders (“DCOs”) for applications promoted by the Applicant do not include this provision and that there was limited justification for its inclusion in the Applicant’s Explanatory Memorandum (“the EM”). She also notes that the justification given in the request for

the correction is limited to an assertion that the omission of the provision “could result in confusion”. The Secretary of State however accepts that there is a slight risk of confusion and so accepts that the omission of paragraph (10) is a correctable error.

Article 7 (Application of the 1990 Act)

Replace article 7(3), which provides a definition of the “temporary works”, with:

“(3) In this article, “the temporary works” means—

(a) those works described for Work Nos. 10 to 11, 21, 25, 28, 47, 59, 65, 68, 85, 92, 106 and 126 to 128 in Schedule 1; or

(b) temporary works carried out as part of “other associated development” in connection with the Work Nos. in Schedule 1.”

Secretary of State’s rationale: The Applicant considers the definition in the Order produces unintended consequences in circumstances where the temporary works extend beyond those listed and proposes that paragraph (3) be deleted in its entirety.

As was outlined in the decision letter, the Secretary of State inserted the definition to provide appropriate clarity as to the scope of the power that was lacking in the draft DCO. Removing it would reinstate that lack of clarity that she sought to address. However, the Secretary of State agrees that the definition is too narrow and unintentionally excludes any temporary works carried out as part of the further associated development in connection with the Work Numbers in Schedule 1 (Authorised Development). Rather than removing paragraph (3), she has corrected this error by substituting a revised definition additionally referring to “temporary works carried out as part of “other associated development” in connection with the Work Nos. in Schedule 1”.

Article 45 (Felling or lopping of trees and removal of hedgerows)

In article 45(2):

- in sub-paragraph (a) after “tree or shrub”, insert “and”;
- in sub-paragraph (b) for “; and”, substitute “.”; and
- omit sub-paragraph (c).

Secretary of State’s rationale: In respect of paragraph (2)(c), whilst the Secretary of State notes that the text that the Applicant seeks to remove has been proposed by it for a number of its previous DCO applications, she agrees that the paragraph should be corrected as there is some potential for it to create unintended ambiguity over whether the Applicant must comply with the legislation cited or only “take steps to avoid” breaching the legislation. She also agrees to the consequential corrections to sub-paragraph (a) and (b).

Corrections to Schedules

Schedule 1 (Authorised Development)

The Applicant proposes the following corrections to Schedule 1:

- In Work No. 42 for “Micklebarrow Hill”, substitute “Kelham Road”;
- In Work No. 109, after “A1133” omit “Newark Road”;
- In Work No. 122 for “Micklebarrow Hill”, substitute “Main Road”;
- In Work No. 124 for “Micklebarrow Hill”, substitute “Main Road”;
- In Work No. U26, after “A1133” omit “Newark Road”;
- In Work No. U29 for “Micklebarrow Hill north-east”, substitute “Main Road”;
- In Work No. U31 for “Micklebarrow Hill north-east”, substitute “Main Road”;
- In Work No. U32 for “Micklebarrow Hill north-east”, substitute “Main Road”; and
- In Work No. U33 for “Micklebarrow Hill north-east”, substitute “Main Road”.

Secretary of State’s rationale: to correct geographical / typographical errors.

Schedule 2 (Requirements)

In paragraph 5(8) (construction hours), replace “subparagraph 16(4)” with “subparagraph 5(7)”.

Secretary of State’s rationale: to correct a cross-referencing error.

In paragraph 9(3) (archaeology and built heritage) replace “Archaeological Mitigation Strategy” with “archaeological mitigation strategy”.

Secretary of State’s rationale: to correct typographical errors.

Proposed corrections not made

Article 2

To insert a new paragraph (11):

“(11) For the purposes of this Order, references to “days” are to be construed as references to calendar days unless otherwise specified”

The Applicant considers that the paragraph provides helpful clarification on the interpretation of the terms used in the Order, and its omission could result in confusion.

Secretary of State’s rationale: the proposed correction is unnecessary as there is no risk of confusion and no correctable error within the meaning of Schedule 4 to the Act. “Day” simply means a period of 24 hours running from the start of the day and includes a Saturday, Sunday or Bank Holiday unless stated otherwise, as is the case in paragraph 26 (further information) of Part 2 of Schedule 2 where “business day” is defined and used.

Article 8 (Planning Permission)

In paragraph (1) to insert “and does not prevent the remainder of the authorised development from being implemented” after “does not constitute a breach of the terms of this Order”.

The Applicant’s request states that the additional text would provide additional clarity that the implications of the judgment in *Hillside Parks Ltd v Snowdonia National Park*

Authority [2022 UKSC 30] do not apply to the Order and that carrying out a planning permission would not sterilise the remainder of the Order and prevent development from being carried out pursuant to it. The request also noted that this form of drafting was accepted in the A122 (Lower Thames Crossing) Development Consent Order 2025.

Secretary of State's rationale: None of the explanation now provided by the Applicant was included in its EM. Indeed, as was stated in the decision letter, the Secretary of State removed this additional text due to the lack of justification for it in the EM and the precedent cited therein (article 7 of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022) not including the text concerned. This contrasts with the EM accompanying the draft Order for the Lower Thames Crossing where a full explanation was provided.

The Secretary of State also notes the 50-year period involved in the Hillside case and the lack of explanation why the risk of sterilization raised by the Applicant might materialise in the context of the authorised development, construction of which is predicted to be completed by 2028/29. A scheme like Lower Thames Crossing, where the scale and duration of construction is exceptional, is not a precedent for including provision of the type sought in all DCOs. The Secretary of State does not consider the absence of the additional text to constitute a correctable error within the meaning of Schedule 4 to the Act.

Article 13 (Application of the 1991 Act)

The Applicant proposes the following corrections to article 13, which provides the parameters for works that would require a street works permit from the local authority under the New Roads and Street Works Act 1991 ("the 1991 Act"):

- To insert references to sections 54, 55, 57 and 66 of the 1991 Act and consequential footnotes into paragraph (3);
- To substitute a new paragraph (4):

"(4) Where:

(a) the undertaker proposes to introduce a restriction on the use, alteration or diversion of a street of a temporary nature under the powers conferred by article 18 (temporary alteration, diversion, prohibition and restriction of the use of streets); and

(b) no street works permit is required for any associated works, the provisions of the 1991 Act mentioned in paragraph (5) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) as if the restriction on the use, alteration or diversion constitutes street works within the meaning of that Act."

- To insert new paragraphs (8) and (9) and a consequential footnote:

"(8) A highway authority may not control by way of a street works permit the timing of any works executed under the powers of this Order.

(9) In this article, "street works permit" means a permit issued under an order made under section 33A(a) of the 2004 Act."

The Applicant states that the corrections sought are necessary given it originally sought to disapply the local highway authority's street works permit scheme but that this disapplication was rejected by the Secretary of State on granting of the Order. Ordinarily where a permit scheme is in place, regulation 36 of the Traffic Management Permit Scheme (England) Regulations 2007 disapplies sections 54, 55, 56, 57 and 66 of the 1991 Act, but the Applicant considers that article 13(3) to (5) are inconsistent with those Regulations and would require it to follow two duplicative and overlapping procedures.

Secretary of State's rationale:

The Secretary of State notes that the drafting which the Applicant now seeks to correct stems from changes made to the draft order by the Applicant at Deadline 5 of the Examination (see REP5-003 and REP5-045, section 6 (summary of proposed changes to draft DCO Rev 6 submitted at Deadline 5 from the draft DCO submitted at Deadline 4), row 1) and described as being agreed with Nottinghamshire County Council. These were not drafting changes recommended by the Examining Authority or made by the Secretary of State on the granting of the Order. Indeed, the only amendment made to article 13 by the Secretary of State was the removal of the ex-paragraph (8), which the Applicant does not seek to restore. The Secretary of State further notes that the corrections sought would make the Order inconsistent with the vast majority of previous DCOs promoted by the Applicant and that there is no comparison to demonstrate why the Order requires a different drafting approach to those DCOs.

The Secretary of State does not consider the extensive drafting that the Applicant seeks to amend to constitute a correctable error within the meaning of Schedule 4 to the Act.

Corrections to Footnotes

The Applicant's request proposed corrections to the footnotes for article 45.

Secretary of State's rationale: Footnotes are not an operational part of the Order text and it is standard drafting practice that they should not be amended or modified by a subsequent instrument. It is considered that the same approach should be adopted in respect of requests for corrections and therefore it is not considered that these constitute correctable errors within the meaning of the Act.

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118(4) of the Act, a decision under paragraph 1 of Schedule 4 to correct an error in an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order making the correction is published. The A46 Newark Bypass Development Consent Order 2025 (as corrected) is to be published on the Planning Inspectorate website at the following address:

A46 Newark Bypass - Project information

(<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR010065>)

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Correction Order referred to in this notice is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).