



The Planning Inspectorate

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Mr Chris Girdham
Director of Planning
Peter Brett Associates LLP
16 Brewhouse Yard,
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Your Ref:

Our Ref: EN010060

Date: 07 March 2014

Dear Mr Girdham,

Further to our meeting on 21 February 2014 and on the basis of the draft documents provided to us, please see our comments attached. The comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) or by the Secretary of State on any submitted application.

Best regards

Jeff

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Introduction

The majority of the comments below are on minor technical matters. We urge all applicants to ensure the accuracy of references to documents, and we have sought to highlight those that appear unclear at present.

1.0 **Draft plans**

- 1.1 In general, the plans appear clear at this stage subject to the clarifications below.
- 1.2 The cross hatching technique, used to illustrate Works 3A and 3B on Works Plan Fig 2 (sheet 1) may appear confusing given the use of black and white colour. The plans may benefit from being coloured, to aid in differentiating between the two works.
- 1.3 Works no. 7 (site access) does not appear to be labelled on both sheets of Works Plan Fig 2. This is also applicable to Works no. 5.
- 1.4 The lines used to differentiate between the Order limits and the Limits of Deviation may benefit from being of different thicknesses to ensure clarity. Care should be taken when doing so however so as not to falsely describe the Limits of Deviation being applied for.
- 1.5 Generally, when submitting an application for a Development Consent Order, The Infrastructure Planning (Applications: Prescribed Forms And Procedures) Regulations 2009 ('the APFP regulations') should be followed.
- 1.6 In addition to this, the Planning Inspectorate's Advice Note Six: 'Preparation and submission of application documents' should also be considered.
- 1.7 Plans should identify siting of the project through making geographical details clearer.
- 1.8 If the application for a Development Consent Order proposes to include provision authorising the compulsory acquisition of land, then that land to which it is proposed to exercise powers of compulsory acquisition or any right to use land, should be compiled in accordance with Annex C to the DCLG Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land. Regard, generally, should be given to all statutory guidance issued by DCLG.
- 1.9 For ease of reference, it would prove useful if each of the works are made reference to on the land plans. This would allow for the land plans to be used without the DCO.

2.0 **Draft Consultation Report**

2.1 We note that the draft consultation report remains partially complete, with the accounts and summaries of statutory consultation activities and the non-statutory consultation carried out in 2014 still outstanding. We would therefore request a second copy of the draft Consultation Report containing the missing sections so that we can provide our comments on these. We have been copied into a range of correspondence following the close of the statutory consultation. In addition please see the note from the meeting held on 21 February 2014 which will be published on the project page of the Planning Portal shortly. The Consultation Report could usefully set out the extent to which regard has been made to comments received.

Structure and breaking down of sections

2.2 Overall, the structure of the report is clearly laid out and has kept to the requirements set out within both statutory and non-statutory guidance. The separate strands of consultation are clearly defined.

2.3 Paragraph 2.4.3 of the draft Consultation Report refers to 'Official Guidance' and lists DCLG Guidance and Advice Notes. It may be helpful in this section to clarify that statutory and non-statutory guidance was followed, as Guidance issued by DCLG, is statutory guidance which applicants must follow, whereas Advice Notes published by the Planning Inspectorate are non-statutory.

2.4 It may be clearer if each of the following sections are not broken-up, and each kept under one section:

- 3.5.20 p.42: '...documentation is set out in Table 3.5' and '3.5.21 Table 3.6'
- 3.5.25 p.43: 'The comments received, the PPL response and how this informed the published documentation is set out in' '3.5.26 Table 3.7 and' '3.5.27 Table 3.8'

Information missing from the Consultation Report

2.5 As outlined above, the summaries and accounts of statutory consultation exercises as well as accounts of non-statutory consultation carried out in 2014 are still missing from this report. It would no doubt prove useful if said additions were provided to us, in order to provide more comprehensive advice at that later stage.

2.6 We appreciate a full list of the appendices being provided, however, we would advise that copies of these documents were also submitted to us for review.

2.7 With regard to section 3.5.77 - p.72 - to the Consultation Report, the account of any re-consultation activities undertaken should be provided in full.

2.8 We note from sections 2.2.1 and 2.3.1 that the standardised project descriptions are yet to be inserted. We advise that these should be consistent with the project descriptions contained within the Environmental Statement and DCO.

2.9 It would be helpful to provide a list of abbreviations at the beginning of the report, as well as the outstanding Glossary.

Errors within the Consultation Report

2.10 Paragraph 3.5.8 of the Consultation Report refers to section 47 of the Planning Act 2008 (as amended) ('PA 2008') and states:

'Section 47(3) of the PA 2008 requires that applicants' consult with people living in the vicinity of the proposed development (the local community) and that they must outline their strategy for consultation in a Statement of Community Consultation (SoCC)'

This actually refers to Section 47 (1) of the Planning Act:

S47 Duty to consult local community.

- (1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.

Section 47(3) of the Planning Act refers to the deadlines which apply to the local authorities in response to consultation:

- (2) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents

2.11 With regard to the notice required under section 48 PA 2008, paragraph 3.5.57 of the report states: *'in line with statutory requirements the notice was published in a successive week in local newspaper the Diss Express'* – Chapter 4 of the APFP Regulations states that the notice must be published in a local newspaper for at least 2 weeks.

- (3) The applicant must publish a notice, which must include the matters prescribed by paragraph (3) of this regulation, of the proposed application—
 - (a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development would be situated.

2.12 Section 3.5.63 of the Consultation Report states: 'As set out in Figure 2.1 section 42 consultation with prescribed consultees comprises: [...] Section 42 (c) Land interests

Section 42 (c) PA 2008 refers to 'the Greater London Authority if the land is in Greater London'. Section 3.5.63 of the Consultation Report should therefore refer to section 42 (d) PA 2008: 'each person who is within one or more of the categories set out in section 44'.

2.13 We note that on p.80 of the Consultation Report, Table 4.1 *'May 2013 local community consultation – comments on the proposal based on exhibition information – master and sub-themes and PPL response'* – does not contain a Summary of Contents section, compared to Table 4.6 Non-statutory technical consultation - master and sub-themes of comments received and PPL response page 93

2.14 Paragraphs 3.5.58 and 3.5.66 refer to 'section 0'. Please ensure that correct referencing is provided here and throughout the report.

2.15 Sentences to be completed:

- 3.3.6 P.27: *'The letter recipients are set out...'*
- 3.3.9 P.30: *'...can be found in section Error reference source not found'*
- 3.5.45 P.63: *'this is discussed in 3.5.35 to Error reference source not found'*

Compliance Table

2.16 In reviewing the draft Consultation Report, we prepared a compliance table in order to consider the report against statutory and non-statutory guidance. We have included a copy of this for your information and ease of reference:

Content of the Consultation Report

Legislation/Advice Note/Guidance	Paragraph/Page No	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's comments
PINS Advice Note 14	P.3	<i>'Explanatory text should set the scene and provide an overview narrative... It would assist if a quick reference guide in bullet point form is included'</i>	Yes	Applicant has not provided reference guide in bullet point form as advised although reference is made to this in the Executive Summary

Statement of Community Consultation ('SoCC') – s47 PA2008.

Legislation/Advice Note/Guidance	Paragraph/Page No	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's comments
PA 2008	Section 47 (1) (6)	<i>'Duty to prepare a SoCC under S47 (1) and to publish it under S47 (6)'</i>	Yes	Details of the SoCC provided at 3.5.32 - 3.5.33. 3.5.31 and tables 3.9 and 3.10 give details of how/where

				the SOCC was published.
PA 2008	Section 47 (2)	<i>'Duty to consult each local authority on a SoCC under S47 PA 2008'</i>	Yes	Paras 3.5.23 - 3.5.30: details of formal consultation with MDSC and SCC. See also table 3.7.
DCLG guidance on Pre-application process.	Paragraph 14 p.6	<i>'Produce a Statement of Community Consultation, in consultation with the local authorities, which describes how the applicant proposes to consult the local community about their project and then carry out consultation in accordance with that statement'</i>	Partially	Copy of SoCC to be included in appendices, has not been included. The report does outline content of the SoCC, see paras 3.5.32 and 3.5.33.
DCLG guidance on Pre-application process.	Paragraph 14 p.6	<i>'Make the SoCC available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land where the development is proposed (required by s47 PA 2008 and Regulations)'</i>	Yes	Para 3.5.31 Publication of the SoCC

PINS Advice Note 14	P.4	<i>'Where more than one SOCC was prepared...the updated SOCC(s) should be included together with a narrative about why the SOCC was reviewed and updated'</i>	Yes	PPL had discussions with SCC and MSDC but SoCC did not change: para 3.5.30 'the approach set out in the draft SoCC remains valid'
PINS Advice Note 14	P.4	<i>'Copies of the published SOCC as it appeared in local press should be provided along with [...] which local newspapers it was published in and when'</i>	Yes	Copy of SoCC should be in Appendices which have not yet been provided - details of local papers and dates published provided in Table 3.9 p.57
PINS Advice Note 14	P.4	<i>'It would be helpful to provide a summary of the rationale behind the SoCC methodology'</i>	Yes	P.41 Consultation Plan and SoCC Rationale
<u>Statutory Publicity (S48)</u>				
Legislation/Advice Note/Guidance	Paragraph/Page No	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's comments
PA 2008	Section 48	<i>'Duty to publicise under section 48 PA 2008'</i>	Yes	Para 3.5.57 contains details of the publication of the notice under S48

APFP Regulations	APFP Regulations 2009 Chapter 4	<i>'The applicant must publish a notice....(a) for at least 2 successive weeks in one or more local newspapers circulating the vicinity in which the proposed development would be situated (b) once in a national newspaper (c) once in the London Gazette'</i>	Partially	3.5.57 states: <i>'in line with statutory requirements the notice was published in a successive week in local newspaper the Diss Express'</i> - at least two successive weeks are required
PINS Advice Note 14	P.4	<i>'A copy of the S48 notice as it appeared in the local and national newspapers, together with a description of where the notice was published and confirmation of the time period given for responses should be included in the report'</i>	Incomplete	S48 notice to be included in appendices (p.3), table 3.13 lists where the S48 notice was published but distribution figures are still to be inserted. Details of time period given for responses para: 3.5.60 (i)
PINS Advice Note 14	P.4	<i>'Applicants should also provide confirmation that the S48 notice was sent to the prescribed consultees at the same time the notice was</i>		S48 was published 26/09/13, was sent to consultees 25/09/13 - assume this was next day delivery as in Para 3.5.73?

		<i>published'</i>		
PINS Advice Note 14	P.4	<i>'A description of the consultation material used and how the prescribed consultees were able to access it would also be useful. The S48 publicity is best dealt with as a separate section within the report'</i>	Yes	Para 3.5.60 contains description of the consultation material used, separates S48 consultation from the rest of the Report
<u>Consultation with the prescribed consultees (S42)</u>				
Legislation/Advice Note/Guidance	Paragraph/Page Number	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PA 2008	Section 46	<i>'Duty to notify PINS of the proposed application on or before commencing consultation under S42'</i>	Yes	See paras 3.5.76 and 3.5.73, PINS and consultees received consultation information 2nd/3rd October 2013
PA 2008	Section 42 (a)	<i>'Duty to consult prescribed consultees, under S42 (a) PA 2008'</i>	Yes	Account of consultation with statutory consultees still pending, however, reference has been made to this, see Table 2.1. List of prescribed consultees

				under S42 (a) will be provided as appendix 3.R
PA 2008	Section 42 (b)	<i>'Duty to consult each local authority that is within section 43, under section 42 (b) of the Act'</i>	Yes	See 3.5.65 details of local authorities with reference to S42(b)
PA 2008	Section 45	<i>'Notification of the deadline for receipt of responses under S45 (1) of the Act. This deadline must not be earlier than 28 days under section 45 (2) PA 2008</i>	Yes	Paras 3.5.23 and 3.5.60
PA 2008	Section 42 (d)	<i>Duty to consult each person within one or more of the categories set out in S44 PA 2008</i>	Yes	Page 67 S42 Consultation, Para 3.5.63 lists groups who were consulted under S44 including S42 (d) Land Interests, further references to S44 Paras 3.5.67 - 3.5.69
PA 2008	Section 42	<i>Duty to consult the Marine Management Organisation under s42 (1) (aa) of the Act, in any case where the proposed development would effect (1) (2) (a) waters in or adjacent</i>	N/A	N/A

		<i>to England up to the seaward limits of the territorial sea</i>		
PINS Advice Note 14	P.3	<i>This includes prescribed statutory bodies, local authorities consulted under S43 of the Act and those with an interest in the land consulted under S44 PA 2008. These separate strands of prescribed consultees should be clearly identified</i>	Yes	Para 3.5.63 Strands of consultation identified
PINS Advice Note 14	P.3	<i>'The applicant should include a full list of the prescribed consultees as part of the consultation report. If the prescribed consultees have been consulted on multiple occasions, perhaps at different phases of the consultation, then this should be explained. If the applicant's list of prescribed consultees varies in any</i>	Yes	Full list of prescribed consultees to be provided as appendix 3.R, see paras 3.5.64 - 3.70

		<i>way from the list of organisations set out in schedule 1 of the APFP Regulations 2009 then this should be robustly justified'.</i>		
PINS Advice Note 14	P.3	<i>'The list of organisations in schedule 1 of the APFP should be followed in terms of the order in which the consultees are presented.'</i>	No	Unable to confirm as appendix not supplied
PINS Advice Note 14	P.3	<i>'A short description of how S43 PA 2008 has been applied in order to identify the relevant local authorities should be included. This could be supported by a map showing the site and identifying the boundaries of the relevant local authorities'</i>	Yes	See para 3.5.65 and Figure 3.4
PINS Advice Note 14	P.3	<i>'It is important that those with an interest in the land consulted under S44 of the Act are identified as a distinct element of the</i>	Yes	Description of S44 consultation outlined in 3.5.67 - 3.5.69

		<i>wider S42 consultation'</i>		
PINS Advice Note 14	P.3	<i>'Where compulsory acquisition forms part of the draft DCO the consultees who are also included in the Book of Reference for compulsory acquisition purposes should be highlighted in the consolidated list of prescribed consultees'</i>	No	Unable to confirm as appendix containing list of prescribed consultees not supplied. Paras 3.5.67 and 3.5.68 make reference to checks being made

Non Statutory 'informal' consultation

Legislation/Advice Note Guidance	Paragraph/Page Number	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PINS Advice Note 14	P.4	<i>'Applicants may have been engaged in non-statutory consultation, for example, high level consultation with statutory bodies may have been undertaken when identifying options and in advance of formal consultation under the provisions of the Act'.</i>	Yes	Section 3.3 Non Statutory Consultation 2013, paras 3.5.15 - 3.3.17 Technical Consultation

PINS Advice Note 14	P.4	<i>'Any consultation not carried out under the provisions of the Act should be clearly indicated and identified separately in the report from the statutory consultation. This does not necessarily mean that informal consultation has less weight than consultation carried out under the Act, but identifying statutory and non-statutory consultation separately will assist when it comes to determining compliance with statutory requirements.'</i>	Yes	Section 3.3, para 3.3.1 Non Statutory Consultation (2013) 'Whilst this stage of consultation is termed 'non-statutory' the applicant has had regard to the responses received'
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EIA Regulations Consultation

Legislation/Advice Note Guidance	Paragraph/Page Number	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
EIA Regulations 2009	Regulation 11	<i>'Notice of Preliminary Environmental Information under Regulation 11 of the Infrastructure Planning (Environmental Impact Assessment)</i>	Yes	Para 3.4.16 S48 Notice sent to all S42 consultees 25/09/13

		<i>Regulations 2009'</i>		
DCLG guidance on Pre-application process.	Paragraph 14	<i>'Applicants are required to [...] identify whether the project requires an environmental impact assessment; where it does, confirm that they will be submitting an environmental statement along with the application, or that they will be seeking a screening opinion ahead of submitting the application'</i>	Yes	Page 12 Table 2.2
PINS Advice Note 14	P.5	<i>Applicants may wish to draw attention to consultation responses received under the EIA process, but any reference to this consultation should be kept separate from the statutory consultation carried out under the provisions of the Planning Act 2008'</i>	Yes	EIA consultation carried out and kept separate but account of responses not provided. Table 4.1 p.80 states EIA findings will be supplied in the ES
<u>Technical Consultation</u>				

Legislation/Advice Note Guidance	Paragraph/Page No	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
DCLG guidance on Pre-application process.	Paragraph 21	<i>'Applicants will often need detailed technical input from expert bodies to assist with identifying and mitigating the social, environmental, design and economic impacts of projects, and other important matters. Applicants are therefore advised to discuss and agree a timetable with consultees for the provision of such inputs'</i>	Partially	Table 2.2 Non statutory consultation with technical consultees, para 3.3.15 p.33 account of technical consultation - no reference to timetable agreed
<u>Responses to Statutory Consultation</u>				
Legislation/Advice Note Guidance	Paragraph/Page Number	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PA 2008	Section 49	<i>'Duty to take account of responses to consultation under section 49 of the Act'</i>	Yes	Account of responses supplied (non-statutory) – Table 4.1. Need to supply this for statutory consultation

PA 2008	Section 47	<i>'Duty to have regard to the responses under S47 (5) of the Act'</i>	No	Account of responses not supplied - reference made in 4.3.2 and table 4.7
PINS Advice Note 14	P.5	<i>'If the level of response was significant it may be appropriate to group responses under headline issues'</i>	No	Account of responses not supplied 4.3.2 - 4.3.4 'Consultation responses to be analysed by theme and fully appended'
PINS Advice Note 14	P.5	<i>'Care must be taken to ensure that in doing this the responses are not presented in a misleading way or out of context from the original views of the consultee'.</i>	No	Responses not supplied
PINS Advice Note 14	P.5	<i>'Where this approach (issues led) has been adopted it should be clearly identified and explained in the main body of the report, including any safeguards and cross checking that took place to ensure that the responses were grouped appropriately'.</i>	Yes	P.108 - describes how responses will be provided in the report but refers to 'themes' not 'issues'
<u>Summary of Responses</u>				

Legislation/Advice Note/Guidance	Paragraph/Page No	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PINS Advice Note 14	P.5	<i>'A list of the individual responses received should be provided and categorised in an appropriate way'.</i>	Yes	This has been provided throughout section 4.2 p.74-107 Non-Statutory Consultation
PINS Advice Note 14	P.5	<i>'The summary of responses [...] can save a significant amount of explanatory text. We advise that applicants group responses under the three strands of consultation as follows: S42 prescribed consultees (inc S43 and S44), S47 community consultees and S48 responses to statutory publicity'</i>	Yes	Although responses to statutory consultation not supplied, intended sections in report are categorised by strands of consultations see 4.3 p.108
PINS Advice Note 14	P.5	<i>'The list should also make a further distinction within those categories by sorting responses according to whether they contain comments which have led to changes to</i>		Responses to statutory consultation not provided. Non statutory consultation: paras 4.2.48 & 4.2.49, Figure 4.4 'suggestions for the next round of

		<i>matters such as siting, route, design, form or scale of the scheme itself, or to mitigation or compensatory measures proposed, or have led to no change'.</i>		exhibitions'
PINS Advice Note 14	P.5	<i>'A summary of responses by appropriate category together with a clear explanation of the reason why responses have led to no change should also be included, including where responses have been received after deadlines set by the applicant'.</i>	Yes	Table 4.1 contains summaries of the applicants response to comments during non-stat consultation, notes areas for improvement, i.e. more information requested by local community during non statutory consultation p.82 - insufficient information
PINS Advice Note 14	P.5	<i>'While it is advisable for applicants to seek to resolve as many areas of disagreement and concern with consultees as possible, it is recognised that this is not always possible. It is important that where a resolution has</i>	N/A	No reference to this

		<i>not been reached, the reasons why are set out clearly in the summary'.</i>		
PINS Advice Note 14	P.5	<i>'The schedule in Annex A is indicative, but sets out an approach which the Planning Inspectorate would find helpful'.</i>	No	Annex A schedule has not been followed, in non-stat consultation responses section 4.2 the applicant has designed own table to record results, see tables 4.1, 4.6
<u>Phased Approach</u>				
Legislation/Advice Note/Guidance	Paragraph/Page No	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PINS Advice Note 14	P.5	<i>'Where a phased approach to consultation was undertaken then this can be reflected in the structure of the report and in the summary of responses. For example, it may be advisable to have a separate commentary and summary schedule of responses sheet for each phase of consultation carried out'.</i>	Yes	Structure of report and summary of responses set out by phase of consultation

Local authority responsibilities				
Legislation/Advice Note/Guidance	Paragraph/Page Number	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PINS Advice Note 14	P.6	<i>'Relevant local authorities will be requested by the Planning Inspectorate to provide an adequacy of consultation statement upon the submission of the application. Given the short 28 day timescale allowed for the acceptance stage it is particularly useful if applicants provide local authorities with early sight of the consultation report to inform their views'.</i>		No reference made

PINS Advice Note 14	P.6	<i>'For its part the Planning Inspectorate will seek to provide advice to local authorities about preparing for the submission of the application and will encourage applicants to share drafts of the consultation report with local authorities as early as possible. The Planning Inspectorate will make the submitted consultation report available to local authorities as soon as possible after submission by way of a web link.'</i>	N/A	N/A at present
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Request for Responses

Legislation/Advice Note/Guidance	Paragraph/Page Number	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PINS Advice Note 14	P.6	<i>'Given the statutory timescale for the Secretary of State to issue a decision at the acceptance stage (28 days), it is important that</i>	N/A	Consultation still on-going, report is incomplete

		<i>the consultation report is clear and that the Secretary of State can quickly identify whether applicants have met all the statutory requirements'.</i>		
<u>Data Protection Act 1998</u>				
Legislation/Advice Note/Guidance	Paragraph/Page No	Requirement on applicant/best practice	Has the document fulfilled the requirement	Case Officer's Comments
PINS Advice Note 14	P.6	<i>'Applicants should ensure that the consultation report complies with the Data Protection Act 1998 and that the addresses and other contact information of private individuals are treated appropriately within the context of this statutory process. Applicants should ensure that the consultation report has been fully redacted and is fit for public consumption before submitting it'.</i>	No	No reference given

3.0 **Book of Reference**

3.1 Should be a single, amalgamated document rather than three separate documents based on works.

3.2 Reference should be made within the document to plot numbers and on which plan(s) these numbers are presented.

3.3 Numbering of land parcels should be consecutive throughout the document, rather than making use of hyphens.

3.4 Details of addresses should be repeated in full throughout the document, rather than 'Address as at parcel 1_ER', for example.

3.5 Part 2 of the Book of Reference should not be split into Part 2a and Part 2b.

3.6 If there are no persons within Parts 4 and 5 then an overall statement should be present. For example; 'No land was identified which should be included in this section'.

4.0 Draft development consent order and explanatory memorandum

PINS queries on draft DCO dated December 2013

These queries relate solely to matters raised by the drafting of the substantive DCO Articles and Schedules¹, 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.

PINS queries on the draft DCO are set out in the following table. We would find it helpful if, when submitting the next iteration of the DCO (but not forming part of any application), a column is added to the table identifying how each of the queries has been addressed.

Q No.	General queries and issues	Applicant response
1.	As the draft DCO is to be an SI, it will need to comply with current SI practice in terms of content, layout and formatting. Can the applicant confirm that: (a) the draft DCO to be submitted with the application will be prepared using the SI template prepared by the Office for Public Sector Information, and (b) will follow current drafting conventions as outlined in the "Statutory Instrument Practice" manual prepared by the Office for Public Sector Information, including inclusion of up-to-date footnotes	
2.	Could the next draft DCO be provided as a Word version showing tracked changes from the November 2013 version (but not forming part of any application)?	
3.	Generally can a list be provided of all plans and documents that will require SoS certification, updated throughout the examination process (assuming the application is accepted)? Presumably the list of plans will correspond to the list in Requirement 4?	
4.	Where an article or requirement varies a Model Provision (MP), it would be helpful if the applicant could provide a tracked change version of that article or requirement so the extent of the variation is readily apparent to all parties.	
5.	Where the DCO contains novel provisions not in the MPs, can the Explanatory Memorandum (EM) identify whether or not there is any precedent for the provision, e.g. in Transport and Works Act Orders, and give full details?	
6.	Can the EM expressly state in all cases whether the provision differs from the corresponding Model Provision, identified by MP number. It is noted that in several cases the EM states that a provision is a MP, but in fact it is a variation of a MP	

¹ Not e.g. footnotes or introductory provisions

7.	The Preamble to the draft DCO: (a) refers to s105 PA2008; any Order made will be under s104 as there are relevant NPS in effect; (b) there may be unnecessary references to some provisions of PA2008; for example ss122 and 123 merely provide limitations on the exercise of powers of compulsory acquisition which are provided as ancillary matters under s120. See e.g. the Brechfa order.		
Q No	Article (A)/ Requirement (R)	Queries on DCO drafting	
8.	A2(1)	Can each plan referred to in the interpretation section be identified by a specific plan number e.g. <i>"..the plan(s) numbered XXX certified as..."</i> for clarity?	
9.	A2(1)	<i>"authorised development" means...and any other development authorised by this Order</i> , what additional development is the DCO intended to authorise, over and above that specifically identified in Schedule 1?	
10.	A2(1)	<i>"environmental impact assessment"</i> - this phrase does not appear elsewhere in the draft DCO?	
11.	A2(1)	<i>"footpath and footway"</i> – this combined phrase does not appear elsewhere in the draft DCO?	
12.	A2(1)	<i>"limits of deviation"</i> – would this be more clearly expressed by dealing with each category separately e.g. <i>"means (a) in respect of works numbered XX, the outer limits of the corresponding numbered area on the works plan, and (b) in respect of the linear works numbered YY the limits to either side of the corresponding numbered line as shown on the works plan"</i>	
13.	A2(1)	<i>"maintain"</i> – what is the justification for this extended definition (e.g. alter, remove, reconstruct, replace and improve are outside the normal meaning of 'maintain') - have the activities in the definition all been covered by the ES?	
14.	A2(1)	<i>"relevant planning authority"</i> – what is meant by the term <i>"applicable local planning authority"</i> ? This should be more expressly defined?	
15.	A2(1)	<i>"undertaker"</i> – is the phrase <i>"as authorised from time to time"</i> sufficiently precise? By whom and in what respect?	

16.	A2(5)	Would it be preferable for this sub-paragraph to be incorporated in the definition of "numbered work"?	
17.	A3(4)	As these items are to be authorised by the DCO, why are they not included in Schedule 2 (which already includes demolition)?	
18.	A4(2)	This paragraph seems to go beyond the maintenance of the authorised development and include pre-existing or new mains, sewers etc not necessarily included in the authorised development. As such, it should be a separate article?	
19.	A7(4)	In A7(4)(b) should (ii) – (v) be recast to refer to <u>all</u> such claims having been either compromised, withdrawn, settled etc? As drafted it could be read that provided at least any one claim had been compromised etc, SoS consent is not required? Please can you also explain the rationale for A7(4)?	
20.	A9(1)	Should this be rephrased as " <i>Each means of access specified ...shall be maintained by...the undertaker for a period of 12 months from its completion...</i> "?	
21.	A9(2)	Should this be rephrased as " <i>Each means of access specified ...shall be maintained by...the undertaker for a period of 12 months from its completion...</i> "?	
22.	A11(1)	The EM states that this is a MP, but: (a) it is more extensive in that it authorises prohibition of use or restriction. Is there any specific reason for this? (b) A11(7) is a guillotine provision not present in the MP; has the street authority been consulted on this arrangement? (c) Is A11(7) necessary in any event given the terms of A 39?	
23.	A17	Although the EM states that this Article follows the MP, it does not. What is the reason for adding " <i>and may use any land so acquired...in connection with or ancillary to the authorised development</i> "	
24.	A20	A20(1) just refers to the acquisition of rights; A20(2) refers to acquisition of wayleaves, easements or new rights; A20(3) refers to the date on which any new right is vested in the undertaker. There seems to be some inconsistency in precisely what may be acquired; e.g. whether wayleaves and easements are a separate category of right that does not trigger the compensation provisions in A20(4) and (5)?	

25.	A21	This Article is a modified form of the MP relating to private rights of way – (a) the earlier paragraphs refer to “private rights” – a general term, whereas the later paragraphs refer only to “private rights of way”; is this intentional? (b) the effect of the Article is to extinguish rights; how does this differ from the extinguishment of rights effected under A17(2) and A20(3) – why are two mechanisms needed?	
26.	A21(3)	Presumably (as with the MP) this paragraph should be restricted to land owned by the undertaker which is within the limits of the Order land?	
27.	A23(1)	As drafted, the paragraph envisages acquisition of airspace, not merely rights over it. Is this intended, or indeed possible?	
28.	A23(3)	As with the MP, this paragraph is limited to the acquisition of cellars, vaults or other constructions, where the undertaker is acquiring subsoil. Should there be equivalent or extended provision to cover circumstances where rights to airspace are acquired?	
29.	A24	Is this formulation entirely satisfactory for cases where rights over airspace are acquired?	
30.	A32(1)	(a) The Article provides a power to enter land, but there are none of the usual protective provisions e.g. for notice to owners. Why is this? (b) Is it really appropriate for the DCO to provide a power of entry to land outside the Order limits, as this provision appears to do?	
31.	A32(2)	Why is the requirement to pay compensation limited to damage to trees and shrubs, but not otherwise in respect of the exercise of the power of entry?	
32.	A34	This article follows the model provision, which incorrectly quotes the heading to s264; can the correct heading be included in the next draft?	
33.	A38(8)	Should this read: “ <i>Where a person is no longer willing to accept the use of electronic transmission for any other of the purposes of this Order....</i> ”	
34.	A38(10)	This paragraph is superfluous as the definition is already given in A2?	
35.	A39(1)	(a) How can this provision bind the consentor to do so in writing, as it purports to do? (b) Does this mean that an oral consent is to be ineffective, or that the 28 day guillotine will then apply, such that any conditions on the oral consent are circumvented?	

		(c) What is the justification for a 28-day guillotine in respect of all the categories quoted in this paragraph? In particular is such a guillotine appropriate for private individuals?	
36.	A39(3)	Should this list read " <i>Schedule 11 has effect in relation to all consents sought, granted, refused or withheld in relation to requirements.</i> "?	
37.	Requirements	Can the EM please provide an explanation of the Requirements as well as the Articles please?	
38.	R1(1)	As relevant planning authority is defined in A2(1), does it need to be included here as well? Is the definition intended to be different, and, if so, why?	
39.	R2	What is the justification for an 8 year time limit?	
40.	R3	Is it intended that the various stages be implemented in sequence? If so, should this be stated in this requirement?	
41.	R4(3)	Is the last sentence redundant given the general requirement in R4(1)?	
42.	R8(1)	(a) Is there any reason for the different formulation of this requirement (" <i>Stages 1, 3 and 5</i> " cf. " <i>Each of stages</i> ") (b) There is no provision requiring approved temporary fencing to be implemented?	
43.	R8(4)	Is this first sentence superfluous given that details of proposed permanent fencing etc will already have been approved prior to commencement of the authorised development?	
44.	R9(1)	Is there any reason for the different formulation of this requirement (" <i>Stages 1, 3 and 5</i> " cf. " <i>Each of stages</i> ")?	
45.	R15	Presumably this requirement will be expanded to indicate e.g. type and location of noise measurements?	
46.	R16	Is there any reason for the different formulation of this requirement (" <i>Stages 1, 3 and 5</i> " cf. " <i>Each of stages</i> ")	
47.	R17(3)	Should the reference be to Regulations 40 and 44 of the 2010 Regulations?	
48.	R18	Why should the decommissioning strategy be limited to that Work?	
49.	R19	See query on A39(1). Also, is this requirement necessary given A39?	

50.	R20(2)	The words 'above' where they occur are superfluous?	
51.	Schedule 8	Can the EM explain and provide details of any precedent for the provisions of this Schedule please?	
52.	Schedule 11	(a) Can the EM explain and provide details of any precedent for the provisions of this Schedule please? (b) Has the relevant planning authority been consulted on the proposals in this Schedule, and with what result? (c) it is unlikely that the Secretary of State will agree to be bound by a strict timetable for appointment of a person to determine the appeal or for the procedure in or decision on such appeal, or constraints on the qualifications of an appropriate person for such an appointment. Can the next draft suggest alternative provisions?	

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

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