

Our ref: SHARE/ 72032672
Your ref: EN020021

The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Via Email:

NorthShropshireReinforcement@planninginspectorate.gov.uk

Robert Jaffier
Asset Manager
Operations Directorate

The Cube
199 Wharfside Street
Birmingham
B1 1RN
www.highways.gov.uk

05 April 2019

Dear Sirs,

North Shropshire Electricity Reinforcement DCO – Written Representation Deadline No 1

We attended the DCO Issue Specific Hearing and provided the ExA with comment on a number of issues.

As we have recorded in previous written representations and subsequent oral submissions our concerns relate to the matters below:-

1. The temporary nature of the works access on the A5 trunk road.
2. The principle of “deemed approval”.

For clarity, we have no comment to make on the relevant representations of other parties.

A5 trunk road access

The use of the proposed temporary A5 trunk road access has been agreed in principle and a proposed signage and highway changes strategy which could form the basis for a suitable mitigation proposal has been tabled by the applicant for technical review.

In terms of the draft DCO, we remain concerned that the wording as drafted may open up the potential for third parties to establish a principle of general access to the land adjacent to the trunk road in contradiction to the policy established in DfT Circular 02/2013 ‘Strategic road network and the delivery of sustainable development’ which makes a presumption of no new accesses from the trunk road.

We note the comment from Counsel for the applicant that a revision to the powers of acquisition / access in respect of the land accessed from the A5 is under consideration which may remove the potential for future access.

As we are aware that the applicant is intending to table a revised draft DCO at Examination Deadline No 2 we propose to review the wording changes likely to be made by the applicant in

respect of the access matter and make further representations at that point in the Examination. In addition, we shall convey the outcome of the technical review of the signage and highway changes strategy to the applicant for further consideration.

Deemed approval

The premise for our observations on deemed approval are based on the requirements of the Infrastructure Act 2015. We note that deemed approval is recorded in Article 37 and the Protective Provisions in Schedule 6, Part 6 of the draft DCO.

Highways England is a strategic highway company operating under the terms of the Infrastructure Act 2015 including a licence issued by the Secretary of State for Transport.

Section 5(2) of the 2015 Act provides that; “...a *strategic highways company must also, in exercising its functions, have regard to the effect of the exercise of those functions on—*

(a) the environment, and

(b) the safety of users of highways”

Section 4.2 of the License (dated April 2015) indicates that “*Without prejudice to the general duties on the Licence holder under section 5 of the Infrastructure Act 2015, the Licence holder **must**, in exercising its functions and complying with its legal duties and other obligations, act in a manner which it considers best calculated to:(e) Protect and improve the safety of the network.....”.*

Only Highways England as the licensed highway authority can determine the safety implications of any development proposition that introduces changes to its network. This duty is non-delegable to third parties as only Highways England under section 5(2) of the 2015 Act and its license has the locus to carry out this function. Our statutory duty to have regard to the safety of users of our highways is negated by the very principle of deemed consent.

The Protective Provisions have been drafted in such a way to mirror a standard Section 278 agreement and largely reflect the process that Highways England would expect a developer to follow should it wish to carry out work on the SRN. As the highway authority for the SRN and the body that will become responsible for those works on completion, it is considered absolutely vital that Highways England has a role to play in both the design of those works and how they are carried out. Highways England is a competent network operator with a tried and tested asset protection team in place to address these issues and therefore the appropriate body to ensure that these works are designed and carried out safely and correctly.

The Protective Provisions have in general been agreed on the basis that they ensure that no work is either accepted as an appropriate design, or constructed on site, if it would not be compliant with the Design Manual for Roads and Bridges. Deemed consent is not workable with this requirement. These provisions are written to ensure the safety of the travelling public is paramount with only suitable work being taken forward and implemented for use. Should deemed consent apply in terms of design and specification work then the risk of unsuitable work being constructed on site and the likelihood of adverse safety incidents occurring increases. This is something that Highways England cannot tolerate as highway authority and network operator with statutory obligations to protect the safety of the SRN.

On review of the trunk road works we note that the works are minor in nature compared to the full ambit of the DCO. However, the applicant to date has not supplied sufficient design detail (e.g. sufficient to gain 'approval in principle') to confirm that the works would be of low risk to the trunk road asset and that the volume of design information would be such that we could discharge our statutory duties within the proposed 28 day period.

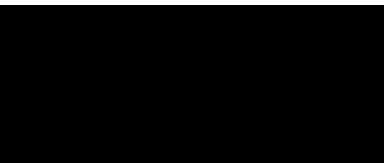
On the basis of the above, we restate our objection to the principle of deemed approval. Should the applicant move to a position where sufficient design detail has been presented and approved during the course of the Examination we propose to make further representations to confirm any update to our position.

Statement of Common Ground

We note the Examining Authority's request for a Statement of Common Ground (SoCG) between us. We have received a further draft SoCG from the applicant and have reviewed its content. We can confirm that the SoCG as drafted is acceptable to Highways England.

Please do not hesitate to contact me if you require any more information or clarification.

Yours sincerely

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Robert Jaffier
OD Midlands
Email: Robert.Jaffier@highwaysengland.co.uk