

Decision for Inspectorate re Imperative Reason of Overriding Public Interest(IROPI) Test for Applicant

The RA`s have maintained from the outset that there is a major biodiversity net loss by using route F1a+ in preference to the alternative proposed by the RA`s, a modified version of F1c.

The applicant, by their own admission, has not carried out any comparative studies between the two routes.

Nor did it ask Natural England for advice on the pros and cons of the two routes since it had clearly already decided upon route F1a+.

Under the Department for Environment, Food and Rural Affairs Habitats Directive: Guidance on the Application of Article 6(4) it states that `Competent Authorities may not consent to plans or projects they determine may have an adverse effect on the integrity of a European site` unless such an assessment is made.

The Directive provides a derogation under article 6(4) which allows such plans or projects to be approved provided three tests are met:

- There are no feasible alternative solutions to the plan or project which are less damaging.
- There are `imperative reasons of overriding public interest` (**IROPI**) for the plan or project to proceed.
- Compensatory measures are secured to ensure that the overall coherence of the network of European sites is maintained.

The Directive states that `these tests must be interpreted strictly`.

The Applicant fails all three tests because:

- There is an alternative solution which is less damaging to the environment. Natural England has confirmed that as far as it is concerned, either route can be used provided the necessary protection and mitigation takes place.
- There are no `imperative reasons of overriding public interest` for the plan to proceed along F1a+. Indeed there are imperative reasons of public interest for the route not to proceed along F1a+.
- There are no compensatory measures secured to ensure that the overall coherence of the network of European sites is maintained.

Under `Test 1: alternative solutions`, it states that it is the competent authorities' responsibility (presumably the ExA) `to assure itself there are no feasible alternative solutions'... `Where necessary it may consult others on potential alternative solutions`... `Alternatives must be considered objectively and broadly. This could include options that would be delivered by someone other than the Applicant ...`

As the Applicant has consistently refused to provide a comparative biodiversity study of the two routes, despite being required to do so by the ExA, it should now be subject to an **IROPI** test to justify its decision to continue with its SSP for Turf Hill.

Therefore, without any comparative studies, it is the view of the RA`s that the ExA cannot recommend or consent to the use of F1a+.

The RAs are alarmed that the Examination has proceeded for the last six months without being able to direct the Applicant to carry out blatantly obvious actions and provide fundamental information to the Examination. Whilst this is procedurally correct, it significantly restricts the forensic aspirations of the participants.

Heronscourt Residents Association
Colville Gardens Residents Association
Lightwater Residents

15th March 2020