

**Antony Aldridge
Major Projects Manager
3rd Floor
Luton Borough Council
Town Hall
Luton
LU1 2BQ**

By email only

13 January 2012

Dear Mr Aldridge,

Application by Luton Borough Council (“the applicant”) for a Development Consent Order for the M1 Junction 10a (Grade Separation) Scheme Order (“the development”), Luton

IPC Reference: TR01009

Further to our telephone conversation on Wednesday afternoon please find below the IPC's comments in relation to the draft DCO and Explanatory Memorandum (EM) that you submitted to the IPC on 16 December 2011.

1. General comments on the quality and completeness of the draft documents

We recognise the draft nature of the DCO, however our comments are limited at this stage until the completion of a) a description of the development, b) requirements, other than the model requirements, c) schedules to the DCO, d) any protective provisions for statutory undertakers and number of provisions are square bracketed.

We also note that the draft EM appears to be in some places, inconsistent with the draft DCO (for example, it refers to requirements which have not been provided). In addition it does not contain an explanation of all of the divergences from the model provisions as required by Regulation 5(2)(c) of the APFP Regulations (for example, it does not explain the reasons for not using provisions relating to the acquisition of subsoil, parts of properties, or the application of landlord and tenant law).

The draft DCO contains a number of inaccurate references, such as the inclusion of references to articles which have been deleted and to out of date legislation. These are covered in the specific comments below.

2. Specific comments on the draft DCO

The following comments relate to the incomplete draft DCO that has been submitted:

- In relation to article 1 (Interpretation), you may wish to consider the following:
- Whether "relevant planning authority" should refer to the two authorities in whose areas the works will be undertaken (see, for example, the Rookery South DCO);
- Whether the inclusion of all of the following terms (all of which are currently used in the DCO) is necessary or helpful: "authorised development", "authorised project" and "ancillary works";
- Whether "undertaker" should include those who have the benefit of the DCO under part 5 or s156 of the Planning Act 2008;
- Whether the inclusion of a provision referring to numbered works would assist in interpreting the document (see, for example, the Rookery South DCO);
- Whether a definition of "maintain" is necessary.
- You may wish to consider the Heysham Link draft DCO (part 11) for a (draft) provision dealing with the classification of highways. <http://infrastructure.independent.gov.uk/projects/north-west/heysham-to-m6-link-road/documentation/ipc>
- The following articles contain incorrect cross-references to other articles: 9(7), 5(4), 20(8)(a) and 23(3).
- The following articles contain references to articles which have been deleted: 15(5), 17(3), 18(5), 20(8)(b), 23(1) and 23(2).
- In article 13(7), it should be noted that the sections of the Water Resources Act 1991 referred to have been repealed. Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010 appears to be the relevant successor provision.
- In article 13(8), the applicant may wish to consider whether it is relevant in this case to refer to a "harbour authority", "National Park Authority" or an "urban development corporation".
- Article 15(1) contains wording in square brackets. It is unclear what is intended.
- Article 21 does not contain the name of the body to which the replacement land will be transferred.
- Article 27 does not contain the name of the body which will conduct any arbitration.
- You may wish to consider whether it would be helpful to include headings in the table of contents (see, for example, the Preesall draft DCO). You may also wish to consider whether it would be helpful to include a similar table of contents for the requirements.

You may also find it helpful to review the Rookery South DCO and the latest draft DCOs that have been submitted with the applications that have been accepted by the IPC.

Please note that the above advice is not intended to be prescriptive, it is for you to determine the content of your application. We must also stress that the decision whether to accept an application will be taken by the Commissioner who has had no involvement in the pre-application stage for this proposal. All the advice the IPC provides at this stage does not prejudice or pre-judge the decision of the Commissioner regarding acceptance or non-acceptance of an application. We recommend that you obtain further legal advice. If you have any queries please do not hesitate to contact me.

Yours sincerely

Tracey Williams
Case Lead
Tel: 0303 444 5085
Email: Tracey.Williams@infrastructure.gsi.gov.uk

The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

Before sending information to the IPC, please consider our Openness Policy, which can be viewed on our website or a copy will be provided free of charge on request