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Mr Mark Allot
Cornwall Council
By email

Your Ref:

Our Ref: TR010014

Date: 13 September 2013

Dear Mr Allot

Planning Act 2008 (as amended) – Section 51

Application by Cornwall Council for an Order granting development consent for the A30 Temple to Higher Carblake Improvement

Post-Acceptance advice to the applicant

The 's55 acceptance checklist' published on our website sets out the Planning Inspectorate's comments in respect of the tests that must be met under s55 of the Planning Act 2008 (as amended) (the PA2008). The purpose of this letter is to provide advice under s51 of the PA2008, where the Acceptance Inspector has indicated on the checklist that it should be issued to the applicant.

Cornwall Council is strongly advised to review the checklist, and to read it in conjunction with the following advice.

Environmental Statement

The Inspectorate is of the view that the Environmental Statement (ES) should contain further information in order to comply with the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations).

Project description

The ES contains limited information on the dimensions of the different elements of the proposed development. The road widths have been identified in some places (e.g. paragraphs 2.3.14 to 2.3.15) and can be inferred from figures contained within the ES. However, with regards to vertical alignment there is no description of this except at paragraph 15.7.9 of the ES, which states that there are 10 areas of cutting proposed. The depths of each of the cuttings have not been specified although it is

stated that they range in depth between approximately 1 to 5m.

Cross sections of the proposed road and cuttings are shown at drawings TRXCP311_PA_6.02_FIG_08.06.06 to .08 (inclusive); the locations of which are shown on TRXCP311_PA_6.02_FIG_08.06.01 to .05 (inclusive). These drawings are intended to show landscape mitigation measures, and are to scale, although not dimensioned. No cross sections or information on height are provided in respect of the proposed overbridges which, together with associated structures, will be the most visually dominant elements of the scheme. The depths of cuttings at these locations can be estimated by extrapolation, but are not shown definitively.

A clear plan showing the key elements of a proposed development should be provided within an ES. The Planning Inspectorate considers that ES 'Figure 01.02: Route Design' is of poor quality and should be updated taking into account the observations below:

- Whilst it is possible to identify the location of the proposed development from the figure, this is difficult due to a lack of notation of the surrounding properties, villages and towns.
- Due to the low resolution and scale at which the figure is provided, it is not possible to accurately determine the locations of cuttings. In addition it is not possible to determine the heights of overbridges and depths of cuttings from the figure or the text description contained within the ES.
- New access roads and construction compounds are not clearly identified on the figure.
- Due to the low resolution at which the figure is provided, it is not easy to decipher the precise red line boundary. For example, the red line boundary adjacent to the assumed attenuation pond and also adjacent to the central overbridge is not clear. It is not possible to determine whether these areas are included or excluded from the red line boundary.
- It is not clear what works will take place in the 'empty' areas within the red line boundary (i.e. where the red line extends beyond the proposed scheme (shown in black)); although these are understood from the land plan to be land for temporary use/possession. A key would be useful to clearly explain what the land will be used for (e.g. as construction compounds).
- The figure does not identify what the two discrete land parcels to the north/north west of the scheme are. It is understood from Table 14.11 and other application documents that this is replacement common land, however this is not immediately clear from the figure (or until Chapter 19 of the ES that such replacement land is required) and a key would be useful to identify such land for readers of the ES.

This lack of information on the design of the proposed development means that it is not possible to readily determine the basis upon which the assessments have been undertaken. It is also not known if consultees have had access to this information during the statutory consultation. This is of particular importance for the landscape and visual assessment as the depths of cuttings and heights of embankments,

overbridges and associated structures would inevitably impact upon the assessment outcome. In this regard it is noted that the methodology referred to in the landscape and visual impact assessment, Interim Advice Note 135/10 Landscape and Visual Effects Assessment, sets out at Annexes 1 and 2 that 'Define Project Characteristics... Size and extent... Location and alignment... Type... Massing' comprise the first stage of the methodologies for assessment of landscape and visual effects.

It is noted that of the three overbridges proposed, two are located within Bodmin Moor AONB, and the third is located on the margin of the Camel and Allen Valleys AGLV. It is therefore important that the full details of the overbridges and associated junctions can be established so that the potential impact on these sensitive areas can be considered during the Examination.

It is also noted that the photomontages provided within the ES (Figures 08.08.01 to .10 (inclusive)) are stated to be for illustrative purposes and cannot therefore be relied upon for dimensions or accuracy. Confirmation should be provided of the engineering design used as the basis for the presentation of the photomontages.

Figure 13.01 shows the existing Public Rights of Way (PRoW), but it is not possible to determine from the figure where alterations to these will be made (the ES refers the reader to Drawing Reference TRXCP311_PA_2.04 which does not form part of the ES). Paragraph 2.3.23 states that the diversion on the Stokely Farm route (FP/503/16 [Blisland Civil Parish]) is approximately 480m. Without information on the location of the diversions there is insufficient information to assess the potential impacts of these alterations. The Inspectorate requests that a plan clearly identifying the PRoW diversions is provided.

Non-technical Summary

In addition to the information required above, the Inspectorate also considers that the Non-technical Summary (NTS) is of a poor quality and should be updated. It is noted that the use of figures within the NTS is limited. The scheme location is shown in Figure 1.1 but at a very low resolution and it is therefore not possible to determine the exact location of the development. In addition, a number of the elements of the proposed development have not been identified; for example the new junctions at Cardinham Downs, Preeze Cross and Temple Tor, and the locations of private accesses and existing PRoWs that will be diverted. The Inspectorate recommends that a higher quality figure is provided within the NTS.

The NTS contains only a high level explanation of the consideration of alternatives but does not specifically identify alternative route options that were considered by the applicant. The Inspectorate therefore considers that this should be rectified to contain more detail; using figures where appropriate.

It is likely that the NTS will form a key document in the Examination and it would be advantageous to the Examining Authority (ExA) and the conduct of the Examination if

the information summarised in the NTS was clearly cross referenced to the relevant locations in the ES.

Cornwall Council is strongly advised to address these issues in the Pre-examination period; in preparation for the examination of the application. It is likely that the ExA will set a deadline for receipt of amended/updated documentation early in the Examination timetable.

Duty to consult

You will note that section 3.1 of the s55 checklist identifies the following:

“There is suggestion that the applicant’s s42 consultation could have commenced before the Planning Inspectorate was notified under Regulation 6.”

The applicant is reminded of the requirements of Regulation 6 of the EIA Regulations which provide that:

*“6.—(1) A person who proposes to make an application for an order granting development consent must, **before carrying out consultation under section 42 (duty to consult)** either—*

(a) request the Commission to adopt a screening opinion in respect of the development to which the application relates; or

(b) notify the Commission in writing that the person proposes to provide an environmental statement in respect of that development.”

On the basis of the information provided, it appears that Cornwall Council issued letters notifying consultees of the commencement of s42 consultation on 2 January 2013; two days before notifying the Planning Inspectorate under Regulation 6 on 4 January 2013. It is possible therefore that s42 consultation could appear to have begun before notification to the Inspectorate under Regulation 6; particularly as the letter to s42 consultees did not state 4 January 2013 as the date of commencement. The Inspectorate advises that for any future applications for development consent, the applicant ensures that the requirements of Regulation 6 are met.

The applicant should be aware that in accordance with the saving provisions of the Infrastructure Planning (Prescribed Consultees and Interested Parties) (Amendment) Regulations 2013 (the PCIP Regulations), where notification has been given under Regulation 6 of the EIA Regulations before 6 April 2013, the definition of consultation bodies in the EIA Regulations relies on the prescribed consultee list in Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations); without any amendments contained within the amendment regulations. This means that when complying with Regulation 13 and 14 of the EIA Regulations the applicant must ensure that all bodies listed in the ‘old’ APFP Regulations are consulted. The applicant should also note that Regulation 13(2) requires applicants to consult with every person that was notified to the

applicant under regulation 9(1)(c).

Section 3.4 of the s55 checklist identifies a number of consultees prescribed in the APFP Regulations that, on the basis of the information provided in the Consultation Report, do not appear to have been consulted by Cornwall Council under s42 of the PA2008. The Consultation Report does not appear to provide any explanation as to why these consultees were omitted. If they were not omitted, no appropriate action has been evidenced.

As a result of that observation, the Inspectorate requested all consultation responses from the applicant under Regulation 5(5) of the APFP Regulations on 28 August 2013. These were received from Cornwall Council on 2 September 2013. The purpose of this request was to identify whether any of the apparently omitted consultees had made representations to the applicant at the pre-application stage. On the basis of the consultation responses now provided by the applicant, it appears none of the omitted consultees listed in Section 3.4 of the s55 checklist made representations to the applicant during the pre-application stage.

The applicant is reminded of duties under s42 of the PA2008, and the Inspectorate strongly advises that for any future applications for development consent the applicant ensures that these duties are fully met.

The applicant should note that the requirement under s56 is to notify persons as prescribed by the APFP Regulations in Schedule 1. The PCIP Regulations state that where the Secretary of State (SoS) has been notified under s46 of the PA2008 before 6 April 2013 then the amendments in the regulations do not apply and the 'old' APFP regulations apply. In this case it appears that the applicant notified the SoS under s46 on two occasions; the first on 21 December 2012 and again on 16 May 2013. It is for the applicant to decide the implications of this when considering who it should notify under s56. The applicant is advised to seek legal advice on this matter and to ensure that a clear explanation is provided with the s56 notice to justify the approach taken to notification.

If you require any further advice arising from the content of this letter, please do not hesitate to contact me either directly, or via the project inbox at Templetohighercarblake@infrastructure.gsi.gov.uk.

Yours sincerely

Richard Price

Case Manager
Tel. 0303 444 5654

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.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.