



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: NorwichNDR@infrastructure.gsi.gov.uk

Jon Barnard
Environment, Transport, Development
County Hall
Martineau Lane
Norwich
NR1 2SG

Your Ref: HI/R1C093/GB

Our Ref: TR010015

Date: 29 November 2013

Dear Mr Barnard

Planning Act 2008 (as amended) – Section 51 advice

Proposal by Norfolk County Council for an Order Granting Development Consent for the Norwich Northern Distributor Road (NDR)

Comments on the draft consultation report

I write with reference to your letter received on 26 November 2013 and the draft copy of the consultation report enclosed therein in respect of the proposed Norwich Northern Distributor Road (NDR) project. You have requested our comments on the draft document.

We have now considered the document provided and set out our initial comments on the draft report below. However, in the absence of Counsel's opinion, to be appended at Appendix D, we are not able to comment on Section 2.6 *Compliance with Legislative Requirements*. No reassurance is given, therefore, regarding the implications of the s35 direction at this time.

Draft Consultation Report

Section 37(3)(c) of the Planning Act 2008 (as amended by the Localism Act 2011) (PA 2008) requires an application for development consent to be accompanied by a consultation report which, under section 37(7) of PA 2008 means a report giving details of: what has been done in compliance with sections 42 (duty to consult), 47 (duty to consult local community) and 48 (duty to publicise) of PA 2008; details of relevant responses; and the account taken of any relevant responses. Relevant responses are defined in s49(3) of the PA 2008.

Firstly, we note that the draft consultation report is incomplete, with sections and appendices yet to be finalised including that of the explanatory text providing an overview of the whole pre-application stage. We recommend that this explanatory text sets the scene, from beginning to end, and provides an overview and narrative of the 'whole' pre-application stage as it relates to the particular project. It would therefore

be of great assistance if a quick reference guide in bullet point form, summarising all the consultation activity in chronological order be included in brief and as a prelude to the chronological order set out in the executive summary.

However, the overall structure of the draft report appears to be clear and logical, with the relevant chapters giving: an account of the statutory consultation with prescribed consultees, publicity, deadlines set, and community consultation activities undertaken at the pre-application stage under primary legislation; a summary of the relevant responses to the separate strands of consultation; and an account taken of responses in developing the application from proposed to final form, as required by s49(2).

Similarly, the 'executive summary' would seem to provide a suitable overview of the consultation process carried out, giving a brief chronology of events and its historical context. In addition, your report describes previous consultations on the scheme prior to the enactment of the PA 2008 regime and the Secretary of State's determination under s35 that the project is of national significance. This is contained in chapter 3 and it is helpful that you have delineated between the statutory and non-statutory phases.

The document states at Paragraph 2.6.13 that the applicant has undertaken consultation in compliance with the PA 2008, as well as the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (APFP); this is described within the report and Appendix F-2.

At Paragraph 2.6.15, the report sets out a table summarising the key advice given in the Planning Inspectorate Advice Note 14 (AN14) and the location of the related information within the report, which provides a useful guide. Under s50(3) of the PA 2008, however, applicants are reminded that they must have regard to DCLG's 'Planning Act 2008: Guidance on the pre-application process' and any other guidance published which covers the pre-application procedure for national infrastructure applications. You may therefore wish to consider including references to the relevant paragraphs within the DCLG guidance as part of the table. You must clearly state any departures from any DCLG guidance and the justifications for doing so.

It is also noted that Appendix C contains a summary of pre-application activity as suggested by AN14. Though the Appendix seeks to describe the statutory consultation phase, it would be useful to also summarise any non-statutory consultation undertaken leading up to the statutory stage.

We acknowledge at Paragraph 2.4.4 that the report refers to the division between Norfolk County Council's role as both applicant and prescribed consultee and the internal structure in this regard. It is also noted that a legal opinion is to be included on the validity of the pre-application consultation preceding the direction by the Secretary of State.

Under Regulation 5(5) of the APFP regulations, the Planning Inspectorate can request copies of all responses to consultation, and the applicant should be ready to provide these at short notice, preferably in both hard and electronic copy, in the event of such a request.

We note that the list of persons consulted under s42(d) has been redacted. This

personal information will need to be published in full in the Book of Reference, so its redaction here is not necessary. Please at least show the complete list of addresses to which consultation documents were sent so that this can be corroborated with the Book of Reference. The Planning Inspectorate will subsequently publish documents in line with our own redactions policy.

Section 46 of PA2008 'Duty to notify' requires the applicant to notify the Secretary of State with such information in relation to the proposed applications compliance with s42 consultation. This, you appear to have done in your letter dated 26 July 2013, however it is noted that the submitted document has been filed within the s48 contents – Appendix N – of your report. This would be more helpfully described as s46 notification and must include confirmation that the information provided to the Secretary of State was the same as was provided to consultees under s42.

The Planning Inspectorate has reviewed the evidence of publicity under s48 and note that the advertisement in a national newspaper does not indicate the date or source of publication. Any further reassurance on this matter would be helpful.

A full check of typographical errors has not been carried out. Therefore we advise that this be carried out by the applicant before submission, as at a glance a few have been detected.

In preparing the submission documents the applicant might find it helpful to work through the s55 Checklist which is appended to Planning Inspectorate Advice Note 6, available on the national infrastructure pages of the planning portal website.

You should note that our comments are entirely without prejudice to any future decisions of the Secretary of State, including the decision under s55 of the Planning Act 2008 to accept any application. Whilst a broad assessment has been made on the draft consultation report, it is for the applicant to be satisfied that the document complies with the requirements of primary and secondary legislation and relevant guidance and advice; and it will be the duty of the Secretary of State to review compliance at 'acceptance'.

Yours sincerely,

Nicholas Coombes

Nicholas Coombes

Case Manager

0303 444 5518

NorwichNDR@infrastructure.gsi.gov.uk

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.