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Denise Carlo
Norwich and Norfolk Transport Action
Group

Your Ref:

Our Ref: TR010015

Date: 24 June 2014

Dear Denise Carlo,

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

Thank you for your emails of 13 June 2014 regarding the NDR's status as a Nationally Significant Infrastructure Project (NSIP) and the position regarding need in the draft National Networks National Policy Statement (NNNPS).

I have previously directed you to the Planning Inspectorate's Section 55 Checklist which discusses, in Box 2.2, the effects of the s35 direction on statutory consultation.

No doubt you will take your own legal advice on methods of challenge but s118 of the Planning Act 2008 describes the circumstances in which legal challenges may be entertained. Any challenge to the status of the scheme would not be considered as part of the examination into the application currently underway.

You may find the high court judgment in relation to the challenge against the Heysham-M6 link relevant; the full name of the case is 'R (on the application of David Gate on behalf of Transport Solutions for Lancaster and Morecambe) v Secretary of State for Transport [2013]'. You can read it at the following link:

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/2937.html>

During the examination, which focusses on the merits of the proposal rather than the process, it is appropriate for interested parties to question the need for the scheme. The purpose of the examination is for the Examining Authority to probe important and relevant matters, including those raised by interested parties.

You may have noticed that in the initial assessment of principal issues, the Examining Authority (ExA) listed:

Need, including issues relating to:

- The justification for the DCO in terms of need, including impact on traffic distribution, highway safety and convenience; and value for money

As the ExA emphasised at the Preliminary Meeting, this assessment was preliminary and likely to be updated throughout the examination. However, it is reasonable to assume that matters raised in this way will be subject to written questions and possibly discussed at hearings if outstanding issues remain. The ExA also said that interested parties do not need to restrict their representations to this list in any case. In addition the ExA will have regard to the current NNNPS, whether designated or in draft, when writing its report and the policies will also be of relevance for interested parties participating in the examination.

In this particular case, it is also worth noting that the draft NNNPS paragraph 1.3 suggests that the 'relevant development plan is also likely to be a relevant and important matter' for schemes which have been subject to Direction under s35. Government policy on need is described in Chapter 2, and set out concisely in paragraphs 2.22-2.24. The National Infrastructure Plan, which you mention in your email, is not referred to in the NNNPS.

When the Secretary of State for Transport decides the application, they will do so having regard to the NNNPS and those other matters set out in PA2008 s104(2). The decision (subject to those matters set out in s104(3)-(8) including adverse effects) will be in accordance with the National Policy Statement , (which is very likely to have been designated by that time). The Secretary of State will be guided by the Examining Authority's recommendations.

I trust the above has provided you with some clarification on the issues you raise. We hope that you will continue to make contributions to the examination, and do get in contact again if we can provide any further advice.

Yours sincerely,

Nicholas Coombes

Nicholas Coombes
Case Manager

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.