



Historic England

**HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND  
(HBMCE) COMMENTS ON APPLICANT'S RESPONSES TO HISTORIC  
ENGLAND RE: EXAMINING AUTHORITY'S  
QUESTIONS 01/04/2019**

**Application by**

**Highways England for an Order granting Development Consent for the  
A63  
Castle Street Improvement Scheme, Kingston Upon Hull**

**PINS Reference No: TR010016  
HBMCE Reference No: 20016278**

## **1. INTRODUCTION**

### **1.1. PURPOSE OF THIS DOCUMENT**

- 1.2. The Historic Buildings and Monuments Commission for England (HBMCE) has considered the responses of the Applicant to our answers to the Examining Authority's (ExA) first Written Questions (WQs).
- 1.3. The Historic Buildings and Monuments Commission for England has prepared comments on the Applicant's responses to further assist the ExA in its consideration of the application. The order of this document will reflect that of the ExA's WQs

## **2.0 HBMCE's Comments on Highways England responses to ExA's first written questions**

### **2.1 Question 1.5.1**

#### **Title: Key Heritage Impacts**

**The Executive Summary of the applicant's Cultural Heritage Assessment [APP-066] identifies some adverse effects of the scheme (paras 8.1.1. – 8.1.4). Are these the key cultural heritage matters on which the Examination should focus?**

#### **HBMCE Initial Response**

HBMCE considers that the Executive Summary of the applicant's Cultural Heritage Assessment [APP-066] (paras 8.1.1 – 8.1.4) broadly identifies the cultural heritage matters on which the Examination should focus. However, although mentioned in the ES as being the subject of physical works or works within their setting, there is no explicit reference to the Grade I Listed King William III Statue and flanking lamps (NHLE 1197697), and no explicit reference to the Beverley Gate Scheduled Monument (NHLE1430250) in the specific paragraphs identified above. It is not clear therefore whether the applicant has correctly considered and assessed the impact of the proposed works on these designated heritage assets, and therefore it is our view that the Examining Authority should consider these heritage assets as key elements within the Scheme.

#### **Highways England Response.**

The impact has been correctly considered with respect to Grade I Listed King William III Statue and flanking lamps (NHLE 1197697). The construction work for the scheme stop prior to the statue and flanking lamps and therefore the impact is to the setting of the statue. There are no planned works around the statue that will impact on the monument itself. The temporary negative impact is identified in 8.9.10 of "The Cultural Heritage Assessment" (APP-066).

The impact has been correctly considered with respect to the buried monument at Beverley Gate (NHLE 1430250). There are no planned works around the monument of Beverley Gate that will impact on the sunken display monument itself.

### **HBMCE further Response.**

We welcome the clarification by Highways England that there will not be any physical works to the Grade I Listed King William Statue and Lamps. However it is important to recognise that “significance derives not only from a heritage asset’s physical presence, but also from its setting”. Therefore works within the ‘setting’, or works that affect the ‘setting’ of a heritage asset can impact on the significance of those heritage assets. Understanding the significance of a heritage asset, including the contribution made by setting and the impact the proposal can have on the significance should be part of the Applicant’s assessment, and is then to be taken into account in decision making (NNNPS paras 5.122., 5.127, 5.128). Therefore the proposed works need to be carefully considered and detailed to ensure that this aspect of policy can be complied with.

We note that Highways England do not plan to conduct works that will impact on the sunken display portion of the Beverley Gate scheduled monument. However, the scheduled area is in excess of double the size (in area) of the sunken display space and therefore we still require clarification about the nature of any works within the scheduled monument.

The Scheduled Monument is comprised of visible standing fabric and buried dry and waterlogged deposits. The visible portion of the Beverley Gate consists of late medieval and 17<sup>th</sup> century brickwork, formerly buried, but excavated in the 1980s and now consolidated and on public display. At the time of excavation it was acknowledged that waterlogged archaeological deposits continued below the remains of the Beverley Gate. However, the visible portion represents only one half of the gate and gatehouse and a small proportion of the connecting city wall and rampart. The ‘other’ half of the gate and defences remains buried in the Scheduled Area.

The top 0.5m of deposits immediately below the ground surface are excluded from the Schedule, and this would include the majority of services. However, any services and service trenches buried deeper than 0.5m are included in the scheduled area. Excavation of the site in the 1980s identified that intact archaeological deposits commence at approximately 0.8m below the ground surface, becoming waterlogged at greater depth, but there is the potential for

undisturbed archaeological deposits to survive elsewhere within the scheduled area at shallower depth.

Whilst noting that the suggested works to the Beverley Gate are connected to the redirection of services and may therefore be contained within the uppermost 0.5m, the lack of any detail about what might be proposed, at what depth and in which location is a matter of considerable concern, and should be clarified as soon as possible in order to redesign the proposal, develop any necessary mitigation and to avoid harm to the significance of a designated heritage asset.

## **2.2 Question 1.5.2**

**Title: Earl de Grey public house**

**Can you please clarify the proposals in respect of the Grade II listed Earl de Grey? In particular, is it proposed to demolish the building or is to be rebuilt elsewhere? If it is to be rebuilt, where will it be rebuilt and has a detailed scheme been prepared?**

### **HBMCE Initial Response**

We note that this question is directed to the Applicant, however we would note that the A63 Improvement Scheme requires that the Earl de Grey public house is to be demolished in order to construct the carriageway improvements, and to provide an adequate and safe public realm alongside the carriageway. It is further proposed that a portion of the Earl de Grey is rebuilt adjacent to its current location but incorporated into a proposed commercial development scheme. There is a live planning and LBC application for this commercial scheme. HBMCE has identified that the proposal to demolish the listed building would cause substantial harm to its significance.

It is clearly for the Examining Authority to come to a conclusion on this aspect of the proposal, however we would note that paragraph 5.136 of the NN NPS states that where the loss of significance of any heritage asset has been justified by the applicant based on the merits of the new development and the significance of the asset in question, the Secretary of State should consider imposing a requirement

that the applicant will prevent the loss occurring until the relevant development or part of development has commenced. HMBCE questions whether there is scope within the granting of the DCO to ensure that the demolition of the Grade II listed Earl de Grey public house does not take place until it is absolutely necessary, in order to deliver the construction of the relevant part of the road improvement scheme, but also to be correctly sequenced in the planning and Listed building consent process for the commercial development.

### **Highways England Response.**

The Environmental Statement (ES) assesses the worst-case scenario should the planning application from the building's owners (19/00334/LBC) not proceed.

The Scheme requires dismantling of the Earl de Grey public house to allow work to proceed and the assessment in the ES Chapter 8 Cultural Heritage Section 8.7.5 (APP-023) reflects this scenario.

Relocation of the Earl de Grey is required early in the programme of works to ensure that utility diversions required for the scheme can be completed safely. It is also required for installation of the traffic management.

### **HBMCE further Response.**

We understand that the Planning permission and Listed Building Consent has been determined for the proposed hotel, the demolition of the Earl de Grey public house and the incorporation of part of the Earl de Grey public house into the new hotel development. We also understand there is a commitment of the developer to undertake this ambitious re-use of a portion of nationally important listed building. However the detail of how this is to be undertaken, and the timing of the various component parts of the scheme are still unresolved.

The loss of a grade II listed building is defined as 'exceptional' in both the NNPS (para 5.131) and NPPF (para 194). Therefore in the case of the Earl de Grey public house, the requirement to ensure and guarantee its reuse into the new development carries with it an onus to firmly establish the timing and methodology of its incorporation into this new building.

Historic England continues to have concerns that, should the Earl de Grey public house be demolished at an early stage in the road improvement process and before the essential building development timing is agreed and implemented, there

is considerable risk that the disassembled portions of the listed building could be damaged or lost. We would therefore advise that clarification is sought about the relationship between the DCO application and the planning application to ensure that there is no “gap” regarding the handling of this designated heritage asset and that appropriate safeguards will be in place in securing its future.

## **2.4 Question 1.5.4**

### **Title: Trinity Burial Ground**

**Why does Historic England consider that the archaeological strategy for the Trinity Burial Ground site is not consistent with sector-wide published guidance on the excavation of Christian burial grounds?  
How would you like to see the strategy amended?**

### **HBMCE Response**

As stated in our Written Reps (paras 6.5.1 to 6.5.12 and 7.5.1 to 7.5.3) we consider that the decision by Highways England not to allow for the further off-site scientific analysis of a representative sample of the buried population is contrary to published and agreed sector wide guidance on the treatment of human remains from Christian burial grounds.

Current good archaeological practice (established in *Guidance for Best Practice for the Treatment of Human Remains Excavated from Christian Burial Grounds in England*, Advisory Panel on the Archaeology of Burials in England, 2017 2<sup>nd</sup> ed and *Burial Grounds: guidance on sampling in archaeological fieldwork projects*, Advisory Panel on the Archaeology of Burials in England, 2015) requires that the opportunity for additional analytical work is undertaken off-site on an appropriately sized sample, but funded by the research community (rather than the developer) who have very specific research questions to ask of the material. The corollary of this is that development projects affecting large scale burial sites should allow an appropriate timescale for the removal of human material, the further research on that material and its later reburial, preferably on the site from which it came. This has not been included in the case of the Trinity Burial Ground. Whilst Highways England have allowed for and say that they will fund limited analysis of a small sample size as a direct result of the physical impact of their scheme, they have not provided the safeguards necessary for this additional research.

HBMCE recognises the ethical considerations associated with the study of human remains generally and the Trinity Burial Ground in particular and the wishes of the Holy Trinity PCC. As the lead national authority on heritage matters, HBMCE has amassed considerable experience on the archaeological potential of human remains. In our professional judgement we consider that a sample size of 3,000 individuals removed from the Trinity Burial Ground, held for a maximum period of 10 years by the research community (this would allow for the research community to generate the grant support to carry out the work and the research period to conduct the work) and then reburied on site would be appropriate. We would only accept this reduced sample size from Trinity Burial Ground if all the human remains recovered from the recent excavations around Holy Trinity Church, Hull are added to the 3,000 sample (in this sense an “individual” is represented where there is >25% of the skeleton remaining), thereby creating a more appropriate sample size and extending the date range of the individuals from medieval to 19<sup>th</sup> century (section 7.5.3 of our Written Reps). Additional funding for this latter piece of work has already been identified in the Highways England Designated Funds initiative but not yet agreed.

### **Highways England Response.**

Highways England’s response to the archaeological mitigation strategy at the Trinity Burial Ground has been discussed with Historic England and the Church of England during ongoing consultation at the Cultural Heritage Liaison Group in accordance with best practice.

As discussed at the Issue Specific Hearing on the Historic Environment, the size of the sample reflects considerations of both Historic England and the Church of England who have provided a Faculty for the exhumation of the remains.

National guidelines referred to in the Historic England response do not contain specific numbers for sample sizes (see - Advisory Panel on the Archaeology of Burials in England, 2017 2nd edition and Burial Grounds: guidance on sampling in archaeological fieldwork projects, p6). The sample size decided has resulted from ongoing consultation between Highways England, the Church of England and Historic England and represents a compromise between the concerns of all parties. The total burial numbers to be exhumed and the number of burials that are 25% complete and therefore suitable for analysis is based on historic research and archaeological evaluation but remains an estimate.



The Highways England Designated Funds cannot be used to fund mitigation for the scheme. The application for analysis to the remains exhumed around Trinity Square as part of the City's public realm work represent an opportunity to increase both the chronological period and size of the sample but it cannot be considered as part of the DCO Application.

**HBMCE further Response.**

We note the content of the Highways England response.

We were not able to attend the Issue Specific Hearing on the Historic Environment and are unaware of the extent to which discussions on this point took place.

However, we would note that we have not had further discussions with Highways England regarding the sample size and are therefore unclear as to the extent to which the reference to the associated agreements and compromise position can accurately reflect our position.

We remain of the view that the proposed approach to the excavation and analysis of the Trinity Burial ground does not reflect current good practice and we do not agree that the suggested approach represents an agreed compromise between the parties.

It is estimated that there is in the region of 16,255 individuals in that portion of the Trinity Burial Ground to be removed as part of the A63 Improvement Scheme. We agree with Highways England that all these buried individuals are to be excavated archaeologically rather than removed under a cemetery clearance contract.

From our understanding, Highways England has put forward the sample size preferred by the Diocese and PCC and they will only permit a maximum of 10% of the circa 16,000 individuals to be identified as a suitable sample for osteological analysis. In addition we understand that the 10% is not to be removed from site for further biochemical and osteological analysis (29-3-2017, Workshop on Trinity Burial Ground).

HBMCE however do not agree that this is a statistically valid sample size, and as such it is our judgement that the evidential value of the Trinity Burial Ground will not be realised and may be lost if the sample is limited to this number.

We agree with Highways England that the national guidelines *Guidance for Best Practice for the Treatment of Human Remains Excavated from Christian Burial Grounds in England*, Advisory Panel on the Archaeology of Burials in England, 2017 2nd ed do not contain reference to specific numbers or percentages for sample sizes, relying instead on the specifics of each individual case to determine a representative and viable sample. Indeed we made this very same point in our Written Representation to the ExA (paras 6.5.9 to 6.5.12 inclusive), and reiterated that a viable sample size is crucial in order to gain an understanding of the site, Hull and the north of England, and be able to compare and contrast with similar excavated sites in London and the south east of England (where the majority of such excavations have taken place)..

However we also referred to a second document in our Written Representations to the ExA (*Large Burial Grounds: guidance on sampling in archaeological fieldwork projects*, Advisory Panel on the Archaeology of Burials in England, 2015) and this includes a number of case studies which do indicate sample size, and reflect current best practice, eg:

- St Mary, Spital, London: 10516 inhumations, sample size was 5387 or 51.2%. Only skeletons >35% complete were analysed.
- St John's School, Bethnal Green, London: 1033 inhumations, sample size was 959 (92.8%). Only skeletons >25% complete were analysed.
- St Marylebone Church (extramural burial ground), London: 393 inhumations, sample size was 295 (75.1%).
- St Marylebone Church (excavated 2004-5), London: 372 inhumations, sample size was 301 (80.9%).

Currently the largest Christian burial grounds being excavated are those associated with the route of HS2. We understand that representatives of the archaeological team on HS2 are willing to meet with Highways England to share their up to date knowledge and experience of the excavation and analysis of Christian burial grounds.

The purpose of the viable sample is that it should reflect the buried population such that it will allow statistically valid analysis to be undertaken. The sample therefore, should include male, female, adult, senior, child, rich, poor, healthy and infirm. The suggested 10% maximum sample size is not sufficient to compile the appropriate

database, but it also does not allow any flexibility to compile such a reflective sample when the actuality of the 16,000 burial group is revealed at the time of excavation. It remains the position of Historic England that we consider a sample size of 3,000 individuals to be the most appropriate response, and to be retained off site for a period of up to 10 years for continuing and detailed research based analysis before reburial on site at Trinity Burial Ground. We cannot stress enough that the excavation of a closely dated cemetery, located in the north of England, outside of London and the south east, in use at a time when Hull was undergoing dramatic change towards an urban, industrialised community represents a rare opportunity not just for valuable academic research, but for long-lasting and meaningful community engagement. It is essential therefore that this work is conducted according to current best practice standards.

## **2.7 Question 1.5.8**

**Title: Beverley Gate and adjacent archaeological remains Scheduled Ancient Monument.**

**Table 4.1 of the Outline Environmental Management plan [APP-072] says that Scheduled Monument Consent may be required for Beverley Gate and archaeological remains, depending on if it is affected by utilities diversions. Has this now been clarified? If not when will it be clarified? See also Question 1.0.12 – Other Consents.**

### **HBMCE Response**

The possible extent and impact of the proposed works on the Beverley Gate scheduled monument have not been clarified (see 2.1 above). Whilst understanding that a separate Scheduled Monument Consent, or indeed separate listed building consent, is not required for works to a scheduled monument, or listed building respectively, in accordance with the Planning Act 2008, it is expected that works to any scheduled monument or listed building within the DCO application will be set out in detail so that the legislative and policy requirements for determination of the impacts on these designated heritage assets will be correctly discharged. Our understanding is that should works take place to a scheduled monument or listed building which is not covered by the DCO application would require separate scheduled monument consent and separate listed building consent.

In respect of the Beverley Gate scheduled monument the details of these works to the scheduled monument should have been set out clearly so that they can be considered as part of the DCO application. However, these details have not yet been clarified and it is unclear when they will be clarified. We would expect that Highways England would present clear details of the work that will be undertaken together with a comprehensive scheme of archaeological mitigation in relation to these works. We would be pleased to consider these details and advise further when this information is forthcoming.

### **Highways England Response.**

Initial enquiries with utilities have identified that a KCOM for the scheme. This has identified an option for diverting the existing cables running along the northern footway of the A63 in the vicinity of the Princes Quay bridge. The option identifies the diversion of the cables via Anlaby Road and Beverley Gate. This route would require a new cable being pulled along the existing network in Anlaby Road, around Beverley Gate and into Princes Dock Street. A new duct run would be required for reconnection the network with the existing cables running from Princes Dock Street towards Market Place. It is believed that there is adequate spare capacity in the existing duct network in Anlaby Road and round Beverley Gate to accommodate the cables required.

During the detailed estimates (C4) stage these works will be finalised and confirmation on any works required in this area will be agreed with the understanding that unless there is sufficient capacity for the new cable to run in the existing duct network another alternative route may be required. This will therefore minimise any excavation works required in the vicinity of Beverley Gate, apart from the connection in Princes Dock street to the existing network.

The diversion are fibre cables and therefore the most likely outcome is two way ducts if required to divert the service. A 450mm wide trench would be the most likely solution if this is the case.

National Joint Utilities Group guidelines on the "Positioning and Colour Coding of Underground Utilities Apparatus" gives a recommended depth of utilities as 250-

350mm depth in footways and 450-600mm in carriageways giving a depth distribution of 250-600mm.

It is not possible to confirm with a definitive answer until the detailed estimate stage during the detailed design which will not commence until September 2019 on the current programme.

#### **HBMCE further Response.**

We note the further reference to works 'in the vicinity of Beverley gate', and the general description of the works that might take place but as identified above in our initial response to the question, the detail of these works to the scheduled monument need to be set out and we remain unclear as to the extent to which there could be an impact on the scheduled monument (either directly or through development in its setting. We would therefore advise that further information is forthcoming on this point and we would be pleased to consider these details and advise further when this information is forthcoming.

#### **2.8 Question 1.5.9**

##### **Title: Assessment and weighing of public benefits**

**Paragraphs 5.132 – 5.134 of the NN NPS and paragraphs 195 and 196 of the NPPF require public benefits of the scheme to be considered and weighed against any harm to heritage assets. Paragraph 1.2 of the NN NPS also requires the adverse impacts of the development to be weighed against its benefits. Please consider the public benefits of the scheme and give your assessment of the scheme against these parts of the NPS and NPPF.**

#### **HBMCE Response**

In its assessment of the Scheme, HBMCE is looking only at proposed heritage benefits, and providing a commentary on those. It would be for the Examining Authority to conclude whether there would be public benefits to be considered and weighed against the harm to the heritage assets.

It has always been our concern that the A63 severs Hull from its waterfront, thereby eroding the principal relationship that has defined Hull throughout its history, and thus causing harm to the significance of the place. Our concern has been to establish ways in which this boundary between Hull and its waterfront can be made more permeable, and identify how the Scheme can be modified to help establish a sense of 'place'.

HBMCE actively supported the installation of an architect designed bridge (as opposed to the installation of a standard Highways England engineering bridge solution) over the A63, and we consider that this will go some way to addressing the question of permeability between the centre of Hull and its waterfront, but we consider that much more can be done by Highways England to deliver the potential of the heritage components to create a better sense of place and enhance their significance.

In our Written Reps (and in answer to these specific questions) we have identified that more could be done to improve the landscaping and public realm at the interface of the Scheme and the conservation area. HMBCE considers that paragraphs 5.1.38 of the NN NPS and paragraph 200 of the NPPF calling for applicants to look for opportunities for new development within Conservation Areas and within the setting of heritage assets to enhance or better reveal their significance have not been taken. Please refer to the issues raised in our Written Reps 6.2.9, 6.3.7 – 6.2.10 and 7.3.1.

At the moment the problem with the Scheme and its supporting information is the lack of clarity around its proposed execution, and therefore a lack of certainty about its impact on heritage assets, its confused and partial mitigation measures and as a consequence the lack of a clear relationship between harm and public benefit.

### **Highways England Response.**

The baseline environment where the Scheme passes through the Old Town conservation area, is one of the weakest elements of the conservation area and does not convey a sense of place of the historic environment. There is limited historic building stock and the grain of the street pattern has been disrupted by the existing A63 Castle Street. This is reflected in the assessment of significance for

the individual components of the Old Town conservation area as outlined in Appendix 8.2, Table 2.2, section B2, B3, and C2 Docklands (APP-048) which concludes that it is medium value in comparison with other areas of the Old Town conservation area which are of high value.

There are limited areas and scope within the conservation area to improve the public realm and sense of place. The boundaries of the Scheme are close to the buildings in the conservation area and public space is limited to a few parcels of land at Market Place, Princes Dock and Humber Dock and the Trinity Burial Ground which limits the areas for landscape design.

However, the Scheme has introduced mitigation where possible to the Old Town as discussed in the ES Chapter 8, Cultural Heritage Section 8.8.9 and in ES Chapter 9 Section Landscape paragraphs 9.7.4 to 9.7.17 (APP-023) and as shown on Figure 9.8 Landscape proposals (APP-035) with positive design improvements in the following areas:

- Old Town conservation area includes some areas of natural stone paving.
- Market Place and the improvements to the High Street underpass include new tree planting at the eastern end of the scheme close to the Magistrates Court.
- Princes and Humber Dock area includes the construction of the Princes Quay Bridge and associated public realm works around the grade II listed Warehouse No. 6, grade II listed Humber Dock and Grade II listed Princes Dock which will have positive impacts on the Old Town conservation area as detailed in ES Appendix 8.3, Table 1.6 and 1.9 (detailed section C2 Zone 2 Docklands) (APP-048). These are supported by Hull City Council in their Local Impact Report, Section 5.3.1.
- Trinity Burial Ground landscape improvements include the replacement of mature and semi mature trees (within and immediately adjacent to the burial ground). The boundary wall is to be rebuilt and enhanced using the reclaimed brick and stone copings from the original wall and the addition of historic gates and pillars from the Minster (formally Holy Trinity Church) at both north boundary entrances and contemporary railings to match the gates. These proposals have been approved by the Diocese of York Consultation between Highways England, Historic England and Hull City Council has been ongoing throughout the development of the mitigation through the Cultural Heritage

Liaison Group to reduce the impact and protect all the historic heritage assets on Castle Street. As stated in Highways England's response to the Examining Authority's Written Question 1.0.7 (APP-REP2-003), all efforts will be made to mitigate further if circumstances allow. An opportunity for this may arise from the current planning application to Hull City Council (reference 19/00334/LBC) which includes for the demolition and partial rebuilding of Earl de Grey public house and erection of link extension to Castle Buildings. If the development goes ahead, the significance of adverse effects to both Earl de Grey and Castle Buildings will be further mitigated. As stated in Highways England response to the Examining Authority's Written Question 1.5.9 (APP-REP2-003), the wider public benefits of the Scheme are outlined in the Scheme objectives set out in ES Volume 1, Chapter 2 The Scheme, Sections 2.3.2 to 2.3.8 and Figure 2.2 Alignment of National networks National Policy Statement and Scheme objectives (APP-023). The assessment of the cultural heritage impacts of the Scheme are clearly recorded in ES Volume 1, Chapter 8 Cultural heritage, Sections 8.9.16, 8.9.17 and 8.9.18 (APP-023).

### **HBMCE further Response.**

We welcome the comments on the clarification of design improvements made by Highways England. However we would note that the NNNPS (para 5.130) states that the "Secretary of State should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets..." Para 5.137 further states that "Applicants should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance". The aim therefore is that new development within designated heritage assets should enhance those assets.

We consider that the assessment of the potential for enhancement and the actual proposals for the enhancement of the Conservation Area (particularly at those interfaces between junctions with the A63) suggested by Highways England do not go far enough and could be more ambitious, in much the same way the new Princes Quay Bridge adopted a high quality design rather than an engineering solution.



We would be happy to discuss with the applicant how these enhancements could be undertaken and delivered.