



Historic England

**RESPONSES TO EXAMINING AUTHORITY'S
FURTHER QUESTIONS 11/07/2019
ON BEHALF OF THE
HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND
(HISTORIC ENGLAND)
("HBMCE")**

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. ROLE OF THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND

1.2. The Historic Buildings and Monuments Commission for England is generally known as Historic England. However due to the potential for confusion in relation to “HE” (Highways England and Historic England), we have used “HBMCE” in our formal submissions to the examination to avoid confusion. HBMCE was established with effect from 1 April 1984 under Section 32 of the National Heritage Act 1983. The general duties of HBMCE under Section 33 are as follows:

“...so far as is practicable:

- (a) to secure the preservation of ancient monuments and historic buildings situated in England;
- (b) to promote the preservation and enhancement of the character and appearance of conservation areas situated in England; and
- (c) to promote the public’s enjoyment of, and advance their knowledge of, ancient monuments and historic buildings situated in England and their preservation”.

We also have a role in relation to maritime archaeology under the National Heritage Act 2002 and advise Government in relation to World Heritage Sites and compliance with the 1972 Convention Concerning the Protection of the World Cultural and National Heritage.

2.0 HBMCE's RESPONSES TO THE FURTHER QUESTIONS

Following the publication of the Examining Authority's questions, HBMCE have now had an opportunity to consider the questions posed and sets out its response below.

2.1. Question 2.4.1

Title: Draft Development Consent Order (DCO)

All IPs Please review the Examining Authority's Schedule of Proposed Changes to the draft Development Consent Order, published 11 July, and provide any comments by Deadline 5 (Monday 5 August).

HBMCE response

HBMCE notes that on the same date that the Further Written Questions was issued, the Examining Authority also issued its Schedule of Proposed Changes to the draft Development Consent Order. Subsequent to this, an Issue Specific Hearing on the draft DCO was held on 18 July. Unfortunately HBMCE were not able to attend this hearing, and understand that the written submissions of oral cases made at that hearing are due on 5 August. We have listened to the Recording of Issue Specific Hearing 5. In addition, we understand that the Examining Authority has issued Hearing Action Points in relation to the draft DCO and other outstanding matters. We have therefore taken all of this into account in our response set out below, and we will also be reviewing the written submissions of oral cases made and will provide an update on our position if appropriate to do so.

HBMCE has reviewed the proposed amendments to the DCO text and we can confirm that several of the suggested amendments have a direct bearing on matters of concern to HBMCE, identified and expressed in our previous submissions, being: Written Representations (April 2019); Responses to Examining Authority Questions (May 2019) and Responses to Examining Authority's Written Questions (June 2019).

Proposed text A18 – Protective work to buildings:

We have made it clear in our previous submissions that we have concerns about the impact of works on the listed buildings (specifically the Castle Buildings) during the

Construction Phase (Written Representations (April 2019), section 6.3). We therefore welcome the insertion of an additional paragraph into the DCO requiring the process of consultation with the relevant planning authority, and if required by the 2015 Direction, notification to HBMCE. We would query whether there are some missing elements to this provision – i.e that the “details of” the proposed protective works need to be submitted; and that those works that are then approved will indeed be carried out.

Proposed text A29 Temporary use of land for carrying out the authorised development (29 – (1): Although HBMCE is only specifically identified as an interested party at (2A) in this addition to the DCO, we would suggest that the suite of works identified under (1) has the potential to lead to unintended consequences that may cause harm to designated or undesignated heritage assets. Each suggested parcel of work should be preceded by a risk assessment to establish any possible impact on or harm to heritage assets. We will be happy to discuss this further with Highways England and will also review the comments made by others on this proposed text.

A29 Temporary use of land for carrying out the authorised development (29 – (2): We welcome the suggested addition to the DCO identified at (2A) as the requirement for consultation with from Historic England is a key element of the proposed works to Castle Buildings and the Earl de Grey public house listed buildings. The need for consultation between the several stakeholders and the definition of an agreed timetable and clear schedules of work has been stated in all our previous submissions to the Examining Authority. The loss of a nationally important listed building is defined as ‘exceptional’ in both the NNPS (para 5.131) and NPPF (para 194) and as a consequence there is a requirement to ensure and guarantee that the two proposals for the demolition, relocation and partial reconstruction of the Earl de Grey are fully resolved and can only take place when absolutely necessary.

Proposed text Schedule 2 Requirement R9 Archaeological Remains

We note that there is an amendment proposed to this text and agree with the proposal which clarifies matters. We would also want to make sure that the scheme then proceeds in accordance with the approved details for further investigation and

approval. However, we wish to note that the comments made in our Written Representations concerning the lack of clarity of and contradictions in the archaeological strategy associated with the nationally important archaeology along the route of the A63 (paras 6.6, 7.6, 9.1 and 9.2 e) have yet to be addressed by the applicant. We hope that there will be a clear, internally consistent and agreed revision of the archaeological strategy before the next deadline of August 27th 2019.

Proposed text Schedule 2 Requirement R12 Fencing and Barriers; Additional requirement: Myton Bridge Underpass Improvement Works; Additional requirement: Pumping station:

We are pleased to note the suggested additions to these elements of the DCO. However we have raised concerns in our previous submissions (Written Representations, April 2019, paras 6.7.3 and 7.8.1; Responses to Examining Authority's Questions, May 2019, para 2.6 and Responses to Highways England, June 2019, para 2.8) about the need for the applicant to develop and apply an integrated landscape design treatment to the interfaces between the A63 works and the Old Town Conservation Area (also see below 2.1.1). We consider that there is scope within the proposed DCO for clearer additional public benefits to be provided. The 'Additional Requirement' sections both identify 'design', 'materials' and 'landscaping' as key component parts of the proposed works. We would consider those component parts to be key elements of good landscape design and should be included in the overall, integrated approach to landscape improvements throughout the Scheme.

Proposed text Additional requirement: Earl de Grey public House:

We are pleased to see and agree with these suggested additions to the DCO, which goes some way to address our concerns about the Earl de Grey as noted in our Written Representations (paras 6.2; 7.2.1; 9.1 and 9.2). However, the concern that we noted in paras 7.2.5 and 7.2.6 regarding the relationship between the DCO Scheme and the planning permission which has recently been granted in relation to the Earl de Grey still remains. We noted that this relationship was explored in Issue Specific Hearing 5, and we consider that the summary of the issue presented there was an accurate reflection of the case. Essentially there are two proposals for the Earl de Grey: i) the proposal that is part of the Scheme, to move the Earl de Grey 3 meters from its current position and ii) a 'rival' scheme to partially reconstruct the Earl de Grey further back from the road as part of a consented planning scheme.

The latter option is our preferred option, but whichever option is progressed we require that there should be clear timing provisions and clarity over which consent will be applied in relation to the Earl de Grey. We would be grateful if this could be taken into consideration to ensure that the appropriate safeguards were in place regarding the future of this nationally listed building.

A 41 Schedule 9 Deemed Marine licence:

HBMCE is content that this can be deleted as suggested.

Hearing Action Points: Issue Specific Hearing 5 – draft DCO and any Outstanding Matters. Item 4 Light Controlled Crossings and setting of the Grade I listed King William III statue.

HBMCE response

We note in this document that under item 4 the issue of the setting of the Grade I listed King William III statue was raised, and that the Action was for the Applicant to engage with us on the matter. As the Examining Authority will be aware, we have raised the issue of the light controlled crossing and its possible impact on the significance of the 'King William III and flanking lamps' (NHLE 1197697) listed building, in our initial Written Representations (April 2019); Answers to Examining Authority Questions (May 2019) and Answers to Highways England (June 2019).

In our initial response it was our assessment that the Scheme would have an impact on the immediate and wider setting of the Grade I listed building and Old Town Conservation Area (6.8.2). We considered there was insufficient information within the Scheme documentation to understand the nature of this impact and we queried the Highways England statement that there would only be significant adverse effects during the construction phase and no permanent adverse impacts (6.8.3). A plan showing the suggested location of the new crossing has yet to be produced, but we would hope that there will be a clear indication of the scope of works before the next deadline of August 27th 2019.

We made it clear that the Scheme needed to adopt and deliver an integrated landscape treatment between the interface of the A63 and the conservation area in order to deliver enhanced public benefits.

In our response to the Examining Authority's Questions (May 2019, para 2.8, Question 1.5.9 Assessment and weighing of public benefits), we repeated that additional public benefits could be delivered through improvements to the landscaping and public realm at the interface of the Scheme and the conservation area.

In the HBMCE commentary on the responses provided by Highways England (June 2019) we advised that whilst we welcomed the clarification of the design improvements made by Highways England to the landscaping scheme, our advice remained that the potential for enhancement and actual proposals for enhancement did not go far enough and could be more ambitious (2.8, Question 1.5.9).

We consider that the current concern with regard to the location and appearance of the light controlled crossings at the Market Place and Queen Street slip roads and any resulting impact on the listed structure illustrates the benefits of our suggested landscape design approach to the interface between the A63 and conservation area. The current approach addresses each junction as a separate item and proposes a conventional highways/engineering solution. We continue to recommend a designed, more holistic, landscape and public realm improvement approach as the best way to reduce the harm of the Scheme and deliver enhanced public benefit.

We welcome the opportunity to engage further with the Applicant over this matter and look forward to working with them so that the issues raised can be appropriately addressed.

2.2 Question 2.5.1

Title: Earl de Grey Public House

- Please provide an update on any further progress and discussions in respect of proposals for the partial rebuilding/relocation of this listed building.**
- What bearing should the recent grant of planning permission and listed building consent for a development which includes the partial reconstruction/relocation of the Earl de Grey public house (reference nos. 19/00333/FULL and 19/00334/LBC) have on the ExA's assessment of the Applicant's current proposal for this listed building? Is there any**

reason why that permitted scheme should not be implemented instead of the proposal within Work No 30 of the DCO if circumstances permit?

- **Paragraph 5.131 of the National Networks NPS advises that, ‘When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset’s conservation.’ Additionally, both Historic England [REP1-017] and HCC [REP3-215] have expressed concern about the limited information provided regarding the Applicant’s proposals for the Earl de Grey. With that in mind, what further information does the Applicant intend to provide regarding its proposals for this listed building and when will that be provided?**

HBMCE Response

With regards the recent grant of consent and the bearing it has on the DCO and whether that scheme should be implemented rather than the DCO, we would note as follows.

1 We understand that further discussions have taken place between the Council and applicant regarding the demolition and partial re-building of the Earl de Grey public house but we have not been involved in those discussions. There has been no recent progress or discussion between HBMCE and the local authority or applicant in respect of the proposals for the demolition and partial rebuilding/relocation of this building. Our last communication with the applicant was by email on the 8th July, in which the applicant informed us that progress was being made on developing the Heads of Terms between the developer, Highways England and local authority.

2 In our three previous submissions to the Ex A (Written Representations (April 2019); Answers to Examining Authority Questions (May 2019) and Answers to Highways England (June 2019)) we have consistently stated that the Earl de Grey public house is a Listed Building and therefore of national importance on account of its ‘special interest’. We have further stated that its demolition would represent ‘substantial harm’, and drawn attention to para 5.3.1 of the NNNPS which requires that ‘great weight’ is given to the asset’s conservation when considering the impact of a proposed development on the significance of a designated heritage asset.

3 There is no reason we can see why the permitted scheme should not be implemented instead of the proposal with Work No 30 of the DCO, subject to further details of how the implementation of the relocation of the Grade II listed building is agreed to the satisfaction of ourselves and Hull City Council. Regardless which option is to be implemented (the DCO scheme or the consented scheme) there needs to be clarity over the scope for implementation of either consent, so as to ensure that the future of the listed building is secured.

4 In our previous submissions we have repeated that 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. Our position with regard to the applicant establishing an acceptable timetable and sequencing of works remains our principal consideration.

5 The level of detail we would expect to be provided equates to the information set out in the 'Additional Requirement: Earl de Grey Public House' in the schedule of proposed changes to the draft DCO. However, there are two critical elements to any schedule and detail produced. First the applicant must demonstrate that they have created a timetable that recognises and respects that the building is nationally important and therefore the proposed demolition only takes place at a time when the effect of the substantial harm is minimised. The building must only be demolished at a time when it is absolutely necessary and its partial rebuilding is imminent. Second, because there is to be demolition and partial rebuilding of a Listed Building, the appropriate details to achieve this are both comprehensive and clear.

6 In light of our responses above, it remains our view that the information available to us does not provide detail sufficient to ensure that the 'special interest' of the Earl de Grey public house will be secured. We recognise that all parties are keen to deliver the partial reconstruction of the listed building and its integration into a new development scheme, but it is imperative that the demolition of the listed building takes place only at time when it is absolutely necessary.

2.3 Question 2.5.2

Title: Beverley Gate Scheduled Monument

In response to ExQ 1.5.8, The Applicant advised that:

‘Utility diversions for the Scheme could impact the significant element of the scheduled monument. The detailed design stage will provide clarification on the requirement for utilities diversions prior to construction’ [document ref REP2-003]. It also states that, ‘the DCO would require the equivalent level of documentation to scheduled monument consent’.

In view of this:

- Please provide your views regarding the degree of detail and certainty regarding the effect on the Scheduled Monument that is necessary in order for development consent to be granted.**
- If the impact on the Scheduled Monument is not clear by the close of the Examination, how should the matter be addressed in the DCO?**

HBMCE Response

In our previous submissions we made it clear that we had yet to be provided with any clarification about the nature of the proposed works, their location or possible impact on the significance of the Scheduled Monument. In our submission responding to the Highways England response (17th June 2019), our response to Question 1.5.1 was that whilst we noted that Highways England did ‘not plan to conduct works that will impact on the sunken display portion of the Beverley Gate scheduled area’, the scheduled area is larger than the ‘sunken display portion’. It was still possible therefore that works within the scheduled area could harm the heritage values of the site. We have yet to be provided with any indication of where the proposed works are to be located.

1) Whilst we note that the Applicant has stated that ‘the detailed design stage will provide clarification on the requirement for utilities diversions prior to construction’, this does not provide clarification on the scope of the works, their depth or location within the Scheduled Monument, or the nature of their potential impact on the significance of the Scheduled Monument.

We agree with the Applicant that 'the DCO would require the equivalent level of documentation to scheduled monument consent.'

In view of this, the degree of detail should clearly identify the specific area or areas of the Scheduled Monument where physical intervention will take place, identifying the current alignment of services to be diverted and their projected alignment, but critically the depth of the services below ground level and the projected depth of the intervention. The detail of any safeguards to avoid, protect or record deposits or remains encountered within the Scheduled Area should also be clearly established. Identifying the location and depth of the proposed works within the Scheduled Area will establish whether the proposed works will be contained within the uppermost portion of the site and therefore excluded from the Schedule. However, it is not yet clear how or where these safeguards are to be proposed.

The degree of detail should therefore also include the proposed archaeological strategy to be adopted. The applicant has yet to contact HBMCE to discuss any part of the proposed works at the Beverley Gate scheduled monument.

2) We note that there are no suggested amendments to the DCO with regard to the proposed works at the Beverley Gate scheduled monument, but we note that Issue Specific Hearing 5 referred to a 'workshop' to be held between Highways England and the service providers on 15th August to resolve the works issues around the Beverley Gate. We would hope therefore that there will be a clear indication of the scope of works before the next deadline of August 27th 2019.

3) We are currently in discussion with Highways England with regard to the content of the SoCG, the Earl de Grey public house, Beverley Gate, Hull Old Town Conservation Area and Trinity Burial Ground. Our next meeting will take place on Thursday 1st August, 2019. We hope to be in a position to update the Examining Authority on the developing detail of these elements of the Scheme before the next deadline.