



Historic England

**FINAL COMMENTS ON THE HIGHWAYS ENGLAND SCHEME
ON BEHALF OF THE
HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND
(HISTORIC ENGLAND)
("HBMCE")
10/09/2019**

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**

INTRODUCTION

ROLE OF THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND

1.1. 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.

1.2 Following the validation of the DCO application on 18th October 2018, HBMCE submitted its request to become an interested party. As noted in its Relevant Representations we supported the aspiration behind the A63 realignment, but had concerns about the proposed scheme as it failed to minimise harm to the historic environment and we objected to the DCO.

1.3 Since the submission of our Relevant Representations (24/04/2019), in which we highlighted our particular concern on the impacts on the historic environment we have, during the course of the examination submitted various documents commenting on various matters and setting out our position and expanding on the points made in our Relevant Representations. These comprise our Written Submissions, including summary and appendices (REP1-018 and REP1-019 to REP1-026); Response to Examining Authority's Questions REP2-011, 14/05/2019; Response to Examining Authority's Written Questions REP4-011, 10/07/2019; Response to Examining Authority's Further Written Questions REP5-054, 07/08/2019. We have also signed up to a Statement of Common Ground (29/08/2019) with Highways England.

1.4. During the course of the examination we have also had discussions with Highways England and the Local Planning Authority regarding these matters asking for clarification / details to be provided on aspects and also seeking to resolve the issues where possible.

1.5 The recent deadline resulted in a number of further documents being published and we have taken the opportunity to review these together with the submissions we have previously made in order to set out our final position.

HBMCE's FINAL RESPONSES

2.0 Statement of Common Ground

2.1 As the Examining Authority will be aware from the Written Submissions (REP1-017 - see paragraph 4.1.3 we highlighted the following heritage assets that the Scheme would impact on

Trinity Burial Ground

The Early de Grey public house;

Castle Buildings;

Nationally important but non designated archaeological deposits;

The Old Town Conservation Area; and

Beverley Gate.

2.2. Our submissions then set out the significance of these assets, and how the Scheme would impact on these assets. We also highlighted where further information was required in order to better understand the impact. We also noted

where there needed to be future engagement with HBMCE and further revisions so that there would be an appropriate and proportionate strategy for the historic environment. Following on from this, discussions on these issues took place between HBMCE and Highways England which resulted in the draft Statement of Common Ground (REP6-013) being submitted on Tuesday 27th August, 2019.

2.3 As can be seen from this Statement, HBMCE and Highways England have agreed on a number of matters. However, some points were noted to be “not agreed”, or, at the point of submission, were still “under discussion. We set out below our view on these matters in turn:

Trinity Burial Ground:

2.4 Paragraph 1.2.6 of the Statement of Common Ground makes it clear that Trinity Burial Ground is not a designated heritage asset, however it is considered by HBMCE as being of national importance.

2.5 We have made it clear in the SoCG para 2.4.29 and our several submissions to the ExA that we do not agree with Highways England. The core of our disagreement is that we consider the sample size identified for off-site scientific and archaeological analysis is not consistent with current agreed and published good practice. There is an anticipated 16000 individuals buried within that portion of the cemetery to be removed by the Scheme. We consider that a representative sample size of 3 to 5,000 individuals (where the surviving portion of the individual is >25%) is more appropriate than the 10% of circa 16000 individuals suggested by Highways England. As the Examining Authority will be aware, in Sections 6.5 and 7.5 of our Written Reps (REP1-017); Section 2.4 of our Responses to ExAs Questions (REP2-011); and Section 2.4 of our Comments on Applicant’s Responses to Historic England (REP4-011) we set out the basis for our position, referring to current published guidelines and current practice (REP1-017, para 6.5.1 to 6.5.12). We would reiterate that in our view the suggested approach of Highways England to the assessment of the human material from the Trinity Burial Ground is inconsistent with established good practice as established in two published documents, first ‘*Guidance for Best Practice for the Treatment of Human Remains Excavated from Christian*

Burial Grounds in England 2017, (2nd ed), published by the Advisory Panel on the Archaeology of Burials in England, The second guidance document is '*Large Burial Grounds: guidance on sampling in archaeological fieldwork projects*', Advisory Panel on the Archaeology of Burials in England, 2015.

The Guidance for Best Practice for the Treatment of Human Remains Excavated from Christian Burial Grounds in England 2017, The advisory panel which publishes this guidance is made up of members from Historic England, the Ministry of Justice and the Church of England, the purpose of which is to provide a unified source of advice to professionals on the treatment of human burials from archaeological sites in England.

The second guidance document is '*Large Burial Grounds: guidance on sampling in archaeological fieldwork projects*', Advisory Panel on the Archaeology of Burials in England, 2015.

Both these documents represent the most upto date position on burial archaeology in England, with the first document setting out the ethical issues and the second giving greater guidance on appropriate sampling and sample sizes. The number of individuals selected for further analysis is only part of the sampling issue; the desirable solution is to have a sample size that best reflects the make-up of the buried community in terms of infants, children, adolescents, middle aged, elderly, healthy, unhealthy, etc. By establishing a 10% sample size Highways England are limiting the scope to identify a sample that truly reflects the deceased population, and if the sample size is inappropriate, the conclusions drawn from study of that sample are less relevant (at best) and irrelevant (at worst).

We request that the ExA take this into consideration as part of their overall consideration of the scheme and agree with us that Highways England should adopt the current establish good practice.

2.6 This is 'not agreed' in the SoCG.

The Earl de Grey public house:

2.7 We have made it clear in the SoCG (para 2.6.76) and our several submissions to the ExA (REP1-017 Section 6.2 and para 7.2.6; REP2-011 para 2.2 ; REP 4-011, para 2.2 and REP5-054, para 2.2 that we continue to have concerns about the future use of this nationally important listed building. The issue, we understand from Highways England is that in order to construct the improved highway and provide safe pedestrian space alongside, it is necessary to demolish the nationally important grade II Listed Earl de Grey public House. There are two alternative proposals for the subsequent treatment of the building. The first is put by Highways England who propose that the building is demolished and; either put into store and then the listed portions rebuilt 3 meters back from the carriageway at a future date, or, immediately built 3 meters from the carriageway. The second proposal is put by the owner/developer of the Earl de Grey that the building is demolished and then rebuilt and amalgamated into a consented development scheme adjacent to the carriageway, but outside of the of the Scheme 'red line' boundary. Our preference is for the latter proposal, but regardless of which alternative, what is critical is that there can be certainty over the future of the Earl de Grey, and that there is a secured mechanism for its demolition and rebuild. Due to the various options on the table and the uncertainty that this is generating, it is critical that the demolition does not take place until the future of the building is secured.

2.8 We consider that there needs to be a clear assurance that provisions are in place to secure the future of this asset, and at present this does not appear to have been provided within the DCO. We are aware that Listed Building Consent and planning permission have been granted for a commercial development adjacent to the A63 which will incorporate the Earl de Grey. We are also aware that negotiations are ongoing between the developer, Hull City Council and Highways England to establish how this outcome can be delivered as part of the Scheme. We remain of the opinion that the best outcome for the Earl de Grey is that following demolition at the most appropriate point in the development scheme, the listed elements of the buildings are rebuilt and amalgamated into the consented development scheme, but this requires the developer, Hull City Council and Highways England agree an appropriate legal mechanism.

We understand that a Section 106 Agreement between the parties is being contemplated however we would consider that this needs to be agreed and in place before the conclusion of the Examination so that the future of the Earl de Grey is

secured. In REP5-054, para 2.2 we stated that “demolition would represent ‘substantial harm’”, and [drew] 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.” We continued by stating that “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.” It is essential that there is clarity over which scheme is to be implemented so that the future of the listed portions of the building are secured. We would ask the Examining Authority to carefully consider this particular heritage asset and to be satisfied that there are appropriate provisions and mechanisms in place in order to secure the future of the Earl de Grey.

2.9 This is ‘not agreed’ in the SoCG.

Castle Buildings:

2.10 The issue of concern to us was that the DCO proposed the partial demolition of this nationally important Grade II listed building (REP1-017, para 6.3.7). It was our hope that this statement was an error, as the partial demolition of the fire-damaged portion of this building had already taken place. We can confirm that this matter has been resolved to our satisfaction (REP5-054, proposed text A18 and proposed text A29).

2.11 This is ‘agreed’ in the SoCG

Nationally important but non designated archaeological deposits:

2.12 In REP1-017 (Sections 6.6 and 7.6) we made it clear that we considered the archaeological strategy to be adopted by Highways England confused, contradictory and inadequate. In our Response to ExAs Further Questions (REP5-054) we noted under 'Proposed text Schedule 2 Requirement R9 Archaeological Remains', that an amendment was proposed to the DCO text with regard to archaeological matters and we agreed with the proposal as it appeared to clarify matters, although there was no subsequent acknowledgement to us that the text would be altered in line with our concerns.

However, in REP5-054 we continued by stating that 'we would also want to make sure that the scheme then proceeds in accordance with the approved details for further investigation and approval', and noted 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 9.2e) have yet to be addressed by the applicant'. We asked in REP5-054 that there should be a clear, internally consistent and agreed revision of the archaeological strategy before the next deadline of August 27th 2019. The documents supporting the archaeological component of the ES variously describe the archaeological potential of the deposits along the route of the Scheme to be 'low', 'medium' and 'high' (REP1-017, para 6.6.17 and 6.6.18).

This matter has been raised in each draft of the SoCG but there has been no progress on securing a resolution or provision for HBMCE to be engaged with the successful resolution of this issue.

We expect that the existing archaeological strategy documents are reassessed by the archaeological contract manager and a consistent interpretation of the archaeological potential is stated, removing all contradictions in the existing texts (REP1-017, paras 6.6.15 to 6.6.20). Once the archaeological potential of the deposits is clearly stated, the archaeological strategy to be adopted should then be agreed with HBMCE and reissued.

Unfortunately there has been no contact between the applicant's archaeological manager and HBMCE on this matter and therefore we still require that the confusion and inadequacy of the archaeological strategy is to be rectified at the earliest

opportunity. We would ask the ExA therefore to reflect on this situation and be satisfied that Highways England will identify appropriate, agreed provisions and mechanisms to continue discussion with HBMCE in order to secure the potential of the nationally important but non designated archaeological resource.

2.13 This is 'under discussion', in the SoCG.

Grade I listed King William III statue and wider Old Town Conservation Area.

2.14 We have maintained a consistent position through our written submissions (REP1-017, section 6.7, 7.8, 9.1 and 9.2; REP2-011, para 2.6 and 2.8; REP4-011, para 2.8 and REP5-054, question 2.4.1, Proposed text Schedule 2 Requirement R12 Fencing and Barriers) to the effect that we consider the Scheme does not do as much as it could to enhance heritage assets and deliver public benefits. This is clearly set out in REP2-011 where we stated "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.”

We consider that these possible enhancements and additional public benefits are not being explored. This has been illustrated by the late addition into the Scheme of a light controlled crossing adjacent to the King William III statue. We have yet to be presented with any detail of the proposal for the installation of a light controlled crossing adjacent to this listed building, and therefore we remain unable to assess the impact of the proposal on the significance of the heritage asset. We remain convinced that that Highways England should adopt and deliver an integrated landscape treatment along the route of the Scheme, particularly in those areas of interface between the A63 and the Old Town Conservation Area. It remains our view that additional public benefits could be delivered through improvements to the landscaping and public realm.

2.15 This matter is ‘Under Discussion’ in the SoCG. We are disappointed that further progress was not made regarding this element of the Scheme, and although, should consent be granted for this scheme, we will continue to work with Highways England and the local authority, we would consider this a missed opportunity to deliver enhancements and greater public benefits.

The Beverley Gate Scheduled Monument:

2.16 The proposal from the applicant to undertake works within the Scheduled area of the Beverley Gate Scheduled Monument was never discussed during the series of cultural heritage liaison meetings held between the applicant and their agents, Hull City Council and HBMCE. The necessity to undertake works (which were undefined) was only made apparent in the Environmental Statement (para 8.8.9 (page 29) of the Cultural Heritage Assessment, vol 6, Appendix 6.8 Cultural Heritage assessment, A63 Castle Street Improvement, Hull). We have reiterated our concern throughout all our written representations, that the necessity, location, nature and extent of the proposed works should be clearly defined at the earliest opportunity in order for us to understand and assess the impact of any works on the significance of the

Scheduled Area (REP2-011 , para 2.7; REP4-011, para 2.7; REP5-054, para 2.3). Our most recent statement on this element of the Scheme was REP5-054 para 2.3. Whilst we note that discussion has been held between Highways England and the specific service provider (whose service infrastructure is within the footprint of the Scheduled Monument) and the latter has confirmed that their cabling is within the uppermost 500mm of the site (and therefore excluded from the Schedule), we have yet to receive any formal confirmation of this from Highways England. Therefore we would request that the ExA requires that the necessary information is relayed to us at the earliest opportunity in the following form:

- 1) The current understanding of the nature, location and extent of the proposed works within the Scheduled Area is to be clearly set out in the redrafted archaeological strategy (see above 'Nationally important archaeology but non designated archaeological deposits')
- 2) It is to be clearly stated in the redrafted archaeological strategy that the proposed works are to be wholly contained within the uppermost 500mm and will therefore be outwith the Scheduled Area, but will still require archaeological supervision to ensure that the works are undertaken as currently understood, but
- 3) Should it prove that the service infrastructure is at a deeper level, works will be halted in order to allow the contractor time to liaise with Historic England and agree a revised scheme of work.

2.17 This matter is 'under discussion' in the SoCG. We consider that implementation of the steps identified above will resolve this aspect of the Scheme to our satisfaction.

3. Draft Development Consent

2.18 We note the latest version of the draft DCO, and have no further substantive comments to make beyond those made in REP5-054. However, we note the addition in 'Reason/Comment' re Schedule 1, Work No 30, Work to Listed Buildings, to the effect that 'NB This wording is based on the information currently available and further redrafting may be necessary if and when the Applicant provides further details of the proposals.' As noted above (paras 2.7 to 2.9) we understand that

negotiations between Highways England, the developer and Hull City Council are ongoing in an attempt to provide certainty with regard to the adoption of the consented development scheme and the amalgamation of the Earl de Grey public house into that scheme.

4. Overview of our final position

2.19 HBMCE has been committed to, and involved with the current scheme to improve the A63 since 2008. Our chief consideration has been to help improve the current situation in which a major road severs the historic core of this historic city from its waterfront. However, we recognise that any intervention of the scale suggested for the A63 Improvement Scheme will have impacts on the historic environment and will have the potential to harm to the significance of individual heritage assets and their setting. Our participation has been focused on reducing harm (NNNPS paras 5.131; 5.132), looking for opportunities to generate enhancements and public benefit and to realise the potential of the heritage assets along the route of the A63 (NNNPS paras 5.130; 5.132).

2.20 The demolition of a nationally important listed building (The Earl de Grey public house) can only be understood as 'substantial harm'. We consider that we all parties are close to an acceptable solution for this element of the Scheme, but the detail of the resolution has yet to be established to our satisfaction.

2.21 Although not designated, we consider that the Trinity Burial Ground is of national importance as its deceased population spans the period of Hull's transformation from medieval port to industrial scale trading and fishing centre, which is also contemporary with Britain's transformation to industrial and trading entrepot. Our concern with the suggested archaeological strategy is that it does not realise the significance or national potential of this site to tell the story of people, place and change.

2.22 Related to this is the problem of the confusion evident in the archaeological strategy to be applied along the Scheme route. It is perhaps inevitable that when so many documents are produced on one subject there should be inconsistencies between them. However, this is a matter of genuine concern because, on the basis of the information supplied, it is not yet clear what archaeological responses are to

be conducted where or why. The implication here is that, again, the significance and the national potential of the archaeological resource may not be realised.

2.23 There is a genuine opportunity for the applicant to deliver enhancement of the public realm at those points where the Scheme intersects with the Old Town Conservation Area, an undertaking that would address our original concern about the impact of a major carriageway on an historic city centre. We have reiterated our point that an integrated landscape design rather than a piecemeal engineering approach is required, exemplified by the current new proposal to introduce light controlled crossings adjacent to the King William III statue.

2.24 We consider the cultural heritage of Hull to be exceptional, and have made its conservation, and the raising of its profile to be a regional priority. On the basis of our comments, judgements and observations set out above we would encourage the ExA to give great weight to the conservation of heritage assets (NNNPS paras 5.131 and 5.132), in order to offset the harm to significance, and thereby sustain and enhance the significance of those heritage assets at risk from the Scheme.