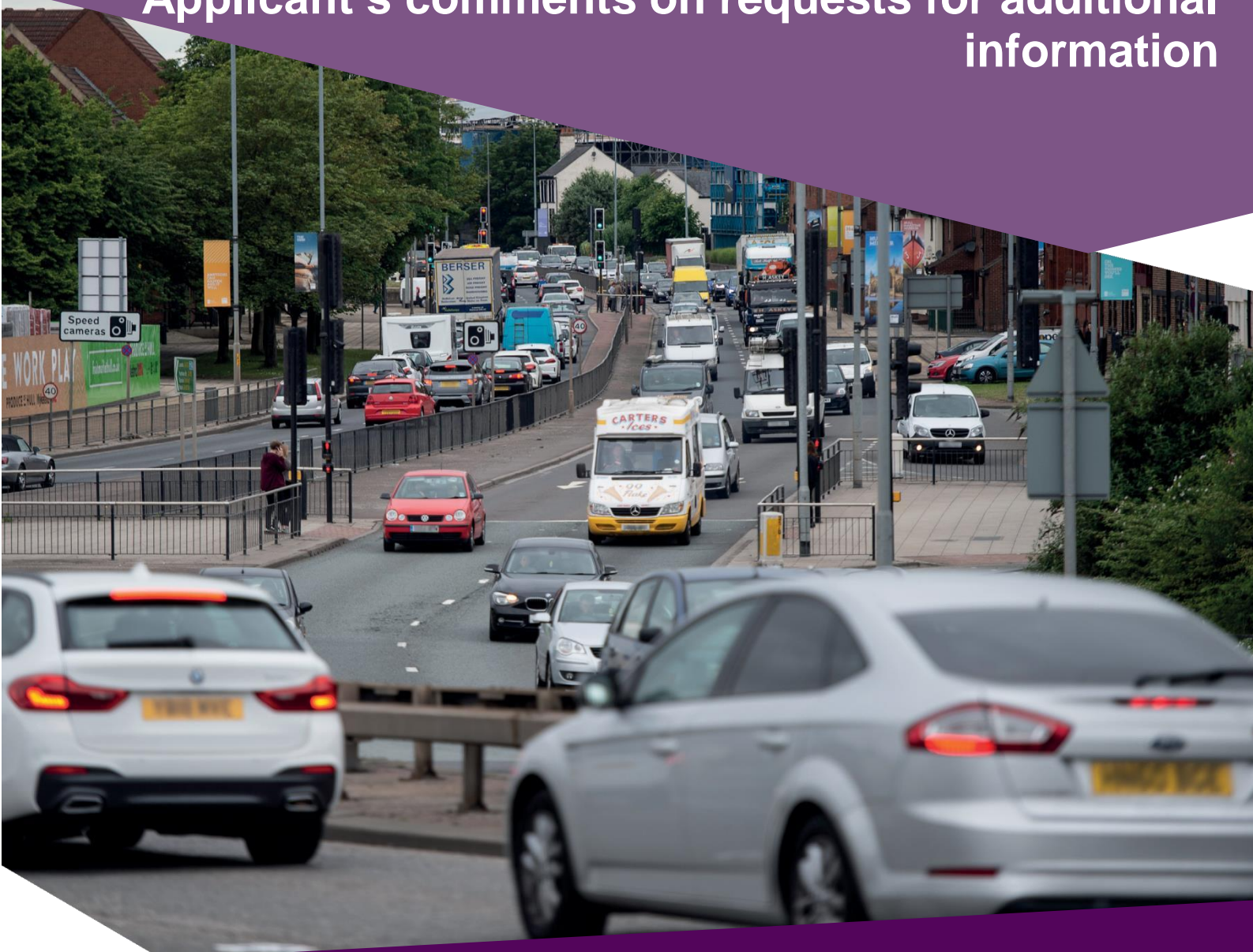


A63 Castle Street Improvement, Hull

TR010016

Applicant's comments on requests for additional information



A63 Castle Street Improvement, Hull Development Consent Order 20[xx]

Applicant's comments on requests for additional information

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Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 8(3) and Rule 17

Application by Highways England for an Order Granting Development Consent for the A63 Castle Street Improvement Scheme

Request for further information

Earl de Grey Listed Buildings

Request for further information	Response to request
<p>In response to ExQ 2.5.1 [see REP5-004], the Applicant advised that: In the event an agreement is reached with the building's owners then the proposed redevelopment to the Earl de Grey would replace Work No 30 of the DCO. The work to relocate the building would be completed by Castle Building LLP.</p> <ul style="list-style-type: none"> • In view of the above, please clarify whether the Applicant intends to provide details of an agreement before the close of the Examination and, if so, whether Work No 30 to Schedule 2 of the draft DCO will need to be amended. 	<p>The Applicant is unable to provide a completed agreement before the close of the Examination. The agreement is still being worked up although the Applicant and the Castle Buildings LLP have agreed on the terms of such agreement and submit to the Examination a copy of the Heads of Terms (with sensitive information redacted). The Applicant would be happy to submit a copy of the completed agreement to the Examining Authority once it is available, albeit this will be after the Examination has closed.</p> <p>The Applicant has been presented (on 18th September) with a revised s.106 agreement from Hull City Council and has been asked to sign up to it. The Applicant understands that the terms of such agreement have been discussed and agreed between HCC, Wykeland/Castle Building LLP and Historic England. At no point was the Applicant given the opportunity to</p>

Request for further information	Response to request
	<p>discuss the terms of such agreement, or take legal advice on it. The Applicant was only presented with the final version and told that the other parties have already signed it, suggesting that it was a fait accompli. Whilst the Applicant is eager to see the alternative proposition for the Earl de Grey come forward, it is not acceptable for the Applicant to be requested into an agreement that it has had no part in negotiating.</p> <p>The suggestion of a s.106 agreement was only put forward for the first time at deadline 6 and following that deadline no approach was made to the Applicant by HCC. If the agreement had been discussed at an earlier stage the Applicant would have been happy to partake in negotiations.</p> <p>The a.106 agreement as drafted is entirely deficient and unsatisfactory from the Applicant's point of view for a number of reasons:</p> <ol style="list-style-type: none"> 1. The agreement provides that the full compensation figure will be paid to the developer within 28 days of the DCO being granted. There is no provision for part of the sum to be paid in advance and part of the sum to be paid following completion of the mitigation works, a common commercial arrangement in situations such as these. Nor is the payment of the compensation is not tied to the owner implementing the planning permission. 2. The agreement requires the owner to undertake the works within one year of receipt of the funds. This is an arbitrary deadline and is not tied in to the Applicant's programme of works. As such, this could result in a delay to the A63 scheme being built out.

Request for further information	Response to request
	<ol style="list-style-type: none"> 3. There are no step-in rights for the Applicant to carry out such works itself in the event that the owner does not. Again, this could leave the Applicant in a position where the works are not being undertaken by the owner and the A63 scheme is delayed for an indefinite amount of time. 4. There are no provisions for the eventuality that the owner chooses not to implement the scheme, goes bankrupt or otherwise. 5. The agreement does not provide that the methodology for the mitigation works be approved by Historic England (something that the Applicant is including in its proposed agreement with the owner as can be seen from the heads of terms). 6. There are no dispute resolution provisions. <p>The Applicant is a public body as such it needs to consider its duties in relation to spending public money and its ability to carry out its functions (i.e: deliver the A63 scheme). The Applicant considers that the agreement as drafted could severely impact its ability to carry out such duties for the reasons mentioned above.</p> <p>The Applicant is committed to entering into a commercial agreement with Wykeland/Castle Building LLP and will continue to progress such. The Council has no obligations contained in the agreement and the agreement is not required for the planning permissions as these have already been granted. As such HCC is not required to be a party to an agreement in relation to this matter and therefore the Applicant</p>

Request for further information	Response to request
	<p>strongly refutes HCC's suggestion that the s.106 agreement is the only way forward.</p>
<p>It is the ExA's understanding that the Applicant's proposal for the Grade II listed Earl de Grey in the event that the alternative relocation scheme fails to go ahead is contained entirely within the wording of Schedule 1, Work No 30, with further details to be provided only following any grant of development consent. Please confirm whether this is correct.</p>	<p>The Applicant confirms that this is correct. The Applicant will also be required to comply with requirement 14 of the draft DCO which requires further information regarding the works and methodology to be approved by the Secretary of State following consultation with Historic England and Hull City Council prior to undertaking Work 30.</p>
<p>Would it be consistent with the approach to designated heritage assets outlined in the National Networks NPS to grant development consent on the basis of this level of information?</p>	<p>The Applicant has undertaken an assessment of the significance of adverse effects arising from the Scheme approach and considers that the substantial public benefits in providing the Scheme outweighs that harm. This is outlined in the Applicant's previous response at (1.5.9 at REP2-003) and at 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] which outlines the public benefits of the Scheme.</p>

Request for further information	Response to request
	<p>It is the Applicant's opinion that the alternative relocation scheme will reduce the negative effects as it represents a more sustainable development with wider public use that is supported by stakeholders. The NN NPS at paragraphs 5.120 to 5.142 (Historic Environment) does not state a requirement for the level of information required to support a proposed scheme. The Applicant has provided as much information as it is possible to provide at this point for a robust assessment of the significance of effects, which is sufficient for the Applicant to demonstrate that the substantial public benefits of the Scheme outweigh the harm caused to the heritage asset. The Applicant will provide further detailed information regarding methodology for the works at Earl de Grey and mitigation measures as it progresses with the Scheme, as required under requirement 14 of the draft DCO.</p>

Beverley Gate Scheduled Monument

Request for further information	Response to request
<p>Having considered the Applicant's response to ExQ 2.5.2 [see REP5-004] and other submitted material, the ExA requires further clarity regarding this matter as follows:</p> <ul style="list-style-type: none"> • Would any of the works proposed ordinarily require Scheduled Monument Consent if taking place outside the NSIP regime? If so, please identify the works and the area they relate to and why they would require consent. 	<p>Given that the scheduling starts at 500mm below existing ground level consent would not be required. It is noted from Historic England's listing that the area outside the sunken Amphitheatre excludes the top 0.5m of deposits immediately below the modern ground surface. This is to enable services such as gas and water pipes, electricity and telecommunication cabling and ducting to be undertaken and updated. The scheduling retains the requirement that any service trench deeper than 0.5m would require consent to protect the archaeological deposits that may be disturbed during any construction activity.</p>
<ul style="list-style-type: none"> • Alternatively, if there is no need for the DCO to make provision for works affecting the Scheduled Monument, could works within the scheduled area be specifically excluded from the permitted works by a requirement added to Schedule 2 of the DCO? If so, please provide wording for such a requirement. 	<p>The provision for works affecting the Scheduled Monument should be retained and amended in the DCO with a requirement, 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 and appropriate archaeological strategy.</p>

Request for further information	Response to request
<ul style="list-style-type: none"> • Please comment on the observations and suggestions made by Historic England at D7 in respect of the Scheduled Monument. 	<p>The current nature, location and extent will follow the route of the sketch provided. The exact details of the location will be produced during the detailed design stage which does not run concurrently with the DCO in this particular case. The proposed KCOM Diversion at Beverley Gate will consist of a six-way duct network which will require an excavation of approximately 1110mm wide (960mm for the ducting and 75mm excavation clearance) not exceeding 500mm in depth. In accordance with suggestions made by Historic England at D7 in respect to the Scheduled Monument (TR010016-000788) we concur with the proposal that 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.</p>

Statement of Reasons

Request for further information	Response to request
<p>In response to ExQ 2.3.1 [REP5-004] the Applicant advised that: The Statement of Reasons has been updated and submitted for Deadline 5. Annex B has now been updated and reflects the progress of negotiations with affect persons. The Applicant is only intending to enter into agreement where they are seeking permanent acquisition of land. Therefore, in the final column – Status of objection and negotiations with land interest – now states 'Agreement not sought' where the Applicant is not planning on entering an agreement.</p>	<p>Annex B of the Statement of Reasons has now been updated and resubmitted to address all points raised in this query.</p>

Request for further information	Response to request
<ul style="list-style-type: none"> • In view of this, can you confirm that all of the references to negotiations within the written section of the SoR, (eg at paras 1.4.3, 4.9.3 and 8.1.3) relate solely to land subject to Compulsory Acquisition rather than Temporary Possession? • Has the applicant attempted to reach a negotiated agreement with owners and occupiers of land where it is proposed to compulsorily acquire rights over land? If not, please explain why not, having regard to the guidance within the DCLG document Guidance related to procedures for the compulsory acquisition of land (eg footnote 2 and paragraph 8) and the MHCLG document Guidance on Compulsory purchase process and The Crichel Down Rules (eg paras 2 and 17). • Annex B of the most recent version of the SoR still contains the phrase 'not applicable' in a number of instances. In view of the Applicant's response above, is it correct to assume that agreement has not been sought in those instances? • Given the response above, please explain why there are instances in Annex B where the comment 'agreement not sought' or 'not applicable' is given even though the table indicates that the plot is to be subject to Compulsory Acquisition (objection no 15(c), for example). 	

Crown Estate consent – Article 45

Request for further information	Response to request
<p>Having considered the response to ExQ 1.4.17 [see REP2-003] and subsequent enquiries, it is the ExA's understanding that the wording of Article 45 has not yet been agreed with the Crown Estate and that discussions are ongoing. Can you please confirm the current position. What options do you consider are open to the ExA if the Article is not agreed by the close of the Examination, having regard to the requirements of s135 of the Act?</p>	<p>The Applicant has submitted to the Examination a notice from the Duchy of Lancaster disclaiming the Crown's interest in plots 3/5a, 3/5b, 3/5c, 3/5d, 3/5e, 3/5f, 3/5g, 3/5h, 3/5i and 3/5j. The only remaining Crown interest is in relation to plot 5/10a. The Applicant has now been able to make contact with a government department that is willing to deal with this plot. However, it is unlikely that consent to article 45 will be forthcoming before the end of the examination. As the Examining Authority will be aware, it is unfortunately very common for Crown consent to be outstanding by the end of the Examination. The guidance contained in Annex B paragraph 2 of 'Planning Act 2008: Guidance related to procedures for the Compulsory Acquisition of land' states that Crown consent should be in place before the application is made and at the very latest before the completion of the examination phase, and it is looking unlikely that this will be achieved. However, in practice this has rarely if ever been achieved. An analysis of the most recent DCO decision letters (for schemes that contained Crown Land) reveals:</p> <ul style="list-style-type: none"> • Tilbury2 – Crown consent given four weeks before the decision • Eggborough CCGT – Crown consent given one month before the decision • Richborough – Crown consent date not specified but during the decision period.

Request for further information	Response to request
	<ul style="list-style-type: none"> • East Anglia Three – no Crown land; s135(2) consent given for other powers affecting Crown land during the examination. • Glyn Rhonwy – consent not given by decision period, applicant decided to remove Crown land • Brechfa connection – s135(1) consent given one month before the decision; s135(2) consent given the day before the decision • Triton Knoll connection – Crown consent given four days before the decision • Humber gas pipeline – Crown consent given on the day of the decision • M4 – Crown consent given four weeks before the decision • Potash – no Crown land; s135(2) conditional consent given for other powers during the examination • North Wales wind farms connection – Crown consent given the day before the decision <p>The Applicant therefore considers that it should not be held against them that consent has not been forthcoming from the Crown during the examination. The Applicant suggests that it would be open to the Examining Authority to make a recommendation that is conditional upon such consent being received.</p>

Crown Department (MHCLG) consent

Request for further information	Response to request
<p>The applicant's response to ExQ 2.3.2 [see REP5-004] says: A notice has been received in relation to plots 3/5a, 3/5b, 3/5c, 3/5d, 3/5e, 3/5f, 3/5g, 3/5h, 3/5i and 3/5j disclaiming the Crown's interest in the land. In relation to plot 5/10a, in which Secretary of State for Housing, Communities and Local Government holds a leasehold interest, the Applicant is still attempting to find the correct party to engage with on this plot. https://infrastructure.planninginspectorate.gov.uk</p> <ul style="list-style-type: none"> • A Notice of Disclaimer under s1013 of the Companies Act 2006 was provided at D7 but was not accompanied by a plan. Please confirm which plots it relates to and also whether the Crown interests in those plots now lie with another party. 	<p>The notice of disclaimer applied to plots 3/5a, 3/5b, 3/5c, 3/5d, 3/5e, 3/5f, 3/5g, 3/5h, 3/5i and 3/5j. The interests in those plots do not lie with another party.</p>
<ul style="list-style-type: none"> • In view of the above, is plot 5/10a now the only land to which s135 applies? 	<p>Yes, plot 5/10a is now the only Crown interest.</p>

Request for further information	Response to request
<p>Can you please advise whether there has been any change in the position regarding plot 5/10a? What options do you consider are open to the ExA if there is no change in the position by the close of the Examination?</p>	<p>The Applicant has now been able to make contact with the correct party at the Ministry of Justice who is able to engage with the Applicant in relation to this plot. As mentioned above, it is unlikely that consent will be received before the end of the Examination. However, it would be open to the Examining Authority to make a recommendation that is conditional upon such consent being received.</p>
<p>Can you please provide an explanation of the need for the Temporary Possession powers sought in respect of plot 5/10a, which is not addressed in Annex A of the Statement of Reasons. Please check the SoR to ensure that the need for all other plots of land is addressed and confirm whether any other omissions have been identified.</p>	<p>The area is to be used as a working area for accommodation works and then landscaping and mitigation works for the Court.</p>

Flood Evacuation and Emergency Plan (FEEP) Report

Request for further information	Response to request
<p>Is there any reason not to amend the Worst Case Scenario considered on Page 16 of the FEEP Report [REP5-031] to make reference to surface water flooding as HCC suggests [see REP4-010]? If such an amendment can be made, please provide an amended document.</p>	<p>The Worst-Case scenario in the FEEP outlines a series of worst-case unlikely events and combined equipment failures, and the contingencies that have been put in place to mitigate these risks. Even though there is the potential of an extreme pluvial event, such as a 1-in-200 or 1000-year event, the provisions that have been in place will mitigate the risk of this happening.</p> <p>In Section 10.2 of the FRA, the report shows that the pumping station has been designed for a 1-in-100-year surface water flooding (pluvial flooding) event.</p> <p>The potential flooding of the underpass due to surface water flooding is mitigated by the provision of sensors in the underpass in the event of pumping station failure (point 3 on WCS List). Secondly, there is CCTV in the underpass, which will monitor any emergency in the underpass. This is covered in Section 3.4 and the Technology Flood Resilience section of the report.</p>
<p>Is the reference to 2.5 hours at bullet point 5 at Page 16 of the FEEP Report correct in view of the amended inundation times provided?</p>	<p>The updated FEEP issued in July 2019 records that during an overtopping event, it will approximately take 1.0 to 1.5 hours for the flood water to reach the underpass from Albert Dock Wall.</p>

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Request for further information	Response to request
	<p>The worst-case scenario was updated to reflect this with a maximum time of 1.5 hours for the Maintenance contractor to mobilise a team to close the underpass.</p> <p>It is noted that there is a typographical error in the tracked changes version [REP5-031] and the clean version [REP5-030] correctly states 1.5 hours instead of 2.5 hours.</p>

Early warning flood signage

Request for further information	Response to request
<p>The ExA has noted the view of Hull City Council (the Lead Local Flood Authority) regarding the need for early warning flood signage to the west of the City [see REP6-017]. Are there any impediments to providing such signage? If the Secretary of State were to take the view that signage is necessary, what form should it take and how should it be addressed in the DCO?</p>	<p>As part of the technology design development for the scheme, the proposal for providing early warning flood signage to the west of the City was discussed with the NERCC (North East Regional Control Centre). It was their recommendation that this sign would not provide any significant value to the scheme due to high level to which the underpass drainage system has been designed. They recommended that this sign should not be included as part of the scheme.</p> <p>Additional constraints to be considered:</p> <ul style="list-style-type: none"> • This falls outside the current scheme Red Line boundary; • This sign will increase the scheme cost; • Difficulty in linking the sign back to NERTS, due to the remote location; and • The new proposals of VMS would require approval from SES for type and Siting. The result may be a departure if necessary <p>To ensure that road users traveling towards Hull can be made aware of a potential flood event, the existing gantry signs on the M62 and A63 can be utilised to display messages. This will allow those road users to make a decision as to a preferred route in such an event prior to the M18 and Humber Bridge junctions.</p> <p>If the Secretary of State was to recommend additional signs further work would be required, and the Area 12 Operations team engaged as it may have to be delivered separately and outside the DCO.</p>

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Revised Draft DCO

Request for further information	Response to request
<p>The ExA understands that the Applicant wishes to submit a preferred draft DCO by 20 September 2019, and confirms his agreement to this. It is essential that this deadline is adhered to. Any comments on the revised DCO must be submitted not later than 26 September 2019.</p>	<p>This has been submitted along with our other final documents on 20 September.</p>