



A14 Cambridge to Huntingdon examination

Questions for the second issue specific hearing into the draft development consent order

Thursday 4 September 2015

Matters arising from written submissions

Item 2 – Update on positions of interested parties in relation to SoCG

1. Would the EA and the applicant confirm whether all 'live' issues have now been resolved following the meeting on 28 July? The SoCG submitted at Deadline 7 does not make this clear.
2. In the context of the movement from 'minor outstanding issues' to 'outstanding matters fundamental to the effective delivery of the scheme and the protection of third parties', what amendments do the EA require 'to be made (to the DCO) in order to make the proposals acceptable?
3. What are the outstanding areas of disagreement between the local authorities and the applicant?

Item 3 – Discharge of requirements

1. The role of relevant LPAs

The ExA notes the following:

- a) relevant LPAs are agreed that it would not generally be appropriate for them to discharge requirements, as there are issues around resources etc.
- b) relevant LPAs are advocating an active role in discharge of requirements.
- c) LPAs have expressed concern that consulting LPAs should be consistently provided across all relevant requirements.

The ExA also reminds the applicant and LPAs that it is an offence to breach the terms of a DCO and relevant LPAs would be the enforcing authorities in this respect.

Given this, are the LPAs satisfied that the latest drafting of requirements as set out in Rev 3 (August DCO) meets their expectations in relation to points a) to c) above? If not, what drafting changes would be required and to which requirements to satisfy expectations of local authorities in this regard?

2. Consultation in respect of requirements

Whilst the ExA notes the case law provided by the applicant on consultation, it could be argued that the principles of a fair consultation process (as set out in by the Supreme Court judgment Mosley v Haringey) differ somewhat from those which are applicable here.

The relevant LPAs are being consulted on important matters within their local boundary and for which they have responsibilities and statutory duties.

In legal terms, the applicant must conscientiously take into account comments made by relevant LPAs, but it must also be recognised that in formulating their detailed proposals for approval by the SoS, the relevant LPAs have a special position compared to the 'average' consultee party and it would be expected that their contributions be incorporated in recognition of those duties.

Any application for discharge should allow for incorporation of relevant LPA input otherwise they could simply be conscientiously considered and rejected. As an example the applicant (at Q 2.6.10) anticipates that borrow pits restoration and aftercare plans would be prepared 'in consultation with' CCC and other key stakeholders.

How does the applicant respond?

3. Deemed discharge of requirements

The ExA remains concerned as to the number of matters that are for discussion at a detailed design stage and the process by which local authorities and members of the public would be involved in discussion given the lack of statutory basis for securing this.

What are the safeguards that are in place to ensure that matters which might require greater scrutiny because much detail has been reserved, are not approved by default?

4. Public register of requirements

The ExA notes that the proposal for a public register in the interests of transparency is still under discussion and development with the local authorities. It is possible that this may go some way to resolving the potential difficulties arising as set out above. What progress has been made since Deadline 7 and what are the steps that are being taken to reach agreement before the close of the examination?

Could reference to a requirement discharge register be added to the draft DCO? If so, what would be the wording? If not, why not?

5. On the basis that the applicant's position on the discharge or requirements is evolving, what is the current position?
6. As it is said that local planning authorities defer strategic road network issues to the applicant in conventional planning applications, would this opportunity still exist where details were submitted to them for approval?

Item 4 – Code of construction practice including CEMPs and LEMPs

1. Drafting of Requirement 4

Local authorities have suggested amended drafting of Requirement 4 to improve clarity and to secure local authority consultation (See for example para 9.2.1 of CCC

written rep and para 131 of SCDC WR). The applicant disagrees on the grounds that the need to produce a CEMP and LEMP as well as the need to consult with the local authorities and local communities is included in the CoCP.

At Deadline 5, Cambridgeshire County Council argued strongly for the wording to be changed, considering this to be of “paramount importance as the Planning Act 2008 appears to provide a general absolute defence to action in respect of statutory nuisance. Therefore local authorities have little or no powers if annoyance or nuisance arises.” The County Council also provided a further amended draft of this requirement.

The applicant and Interested Parties should note that the ExA will be considering whether all proposed requirements meet the tests set out in National Networks NPS at para 4.9.

The ExA notes that at Deadline 7, Rev 3 of the DCO does not alter the drafting of this requirement. The ExA also notes from the comments of the relevant LPAs in their responses to Deadline 7, the considerable amount of work considered to be outstanding on this document (and supplementary CEMP and LEMP). Other agreed statements in SOCG are in turn dependent upon finalisation of the CoCP and whether it can subsequently be liberally changed.

As such, Requirement 4 in its current form would therefore appear to the ExA to be inadequate.

- Does the applicant continue to resist the amended drafting put forward by the County Council?
- Can the applicant explain how its proposed drafting meets the tests of NN NPS para 4.9?
- Do local authorities wish to comment?
- Do other IPs wish to comment?

2. Cambridgeshire CC questions on the CoCP

Cambridgeshire County Council’s written rep includes a table with questions on specific sections of the CoCP. The applicant provided its response at Deadline 4. Is the County Council content with that response?

3. Can the applicant comment on the apparent contradiction between the CoCP being described as a ‘live’ document and the confirmation it has provided at Deadline 4, that the CoCP will be finalised and certified at the end of the examination.
4. The finalised CoCP must be brought into the examination in a timely way. This is to enable representations to be made by other parties if they so choose. As such, the ExA requests the applicant to deliver the CoCP to be secured by the DCO at Deadline 10 – 28 September 2015. Comments from IPs are requested by Deadline 11 – 30 October 2015. Responses to those comments are requested by Deadline 12 – 6 November 2015. (Updated Examination Timetable, August 2015) Does the applicant wish to comment?
5. Would it be appropriate to include an additional requirement for the CEMP and LEMPs? If so, what would the wording be? If not, why not?

Item 5 – Borrow Pits Restoration Plan

1. Borrow Pits – Requirement 11

Cambridgeshire County Council Written Rep proposes amended wording to include consultation with the County Council over detailed design, aftercare and restoration in view of their role as mineral planning authority and to ensure the borrow pits meet the operational and restoration standards required for mineral extraction in the County of Cambridgeshire.

South Cambridgeshire DC also requests redrafting the requirement, which it considers contains 'insufficient detail' so that it ensures detailed plans are formally approved (Para 123 of Written Rep).

The ExA notes that the drafting amendments to this Requirement at Rev 3 do not address the point made by the County Council or SCDC (REP7-032).

Can the applicant provide further explanation of its view in relation to Requirement 11 and how this meets the tests set out in NNNPS para 4.9.

2. South Cambridgeshire DC considers that it may not be possible to return BP5 and 6 to productive agriculture and that BP5 and 6 will make limited contribution to 'agriculture, amenity and legacy'. It requests 'conditions' to cover the detailed restoration of the BP areas. Can the applicant comment?

3. Interpretation – (Article 2)

As set out in Deadline 7 (REP7-030) the ExA notes the new borrow pits restoration and aftercare strategy whilst not in itself a detailed document will be a 'roadmap' for how detailed restoration and aftercare will be developed. The ExA also notes that the document is now included as one for certification by the SoS (Article 41) rather than for later submission and approval (via a requirement).

The applicant confirms its intention to produce an Aftercare and Management Strategy for each Borrow Pit during the examination period (5.10.3 of REP4-011).

- a) Does the borrow pits restoration and aftercare strategy address the matters raised by CCC and SCDC?
- b) What discussions have been had with local authorities and others in finalising the borrow pits restoration and aftercare strategy and the individual Borrow Pit Aftercare and Management Strategies?
- c) What are the 'timing issues as well as all other relevant issues' in relation to the borrow pits restoration and aftercare strategy referred to in the applicants response to paragraph 123 of SCDC WR (REP4-011)
- d) The finalised borrow pits restoration and aftercare strategy must be brought into the examination in a timely way. This is to enable representations to be made by other parties if they so choose. As such, the ExA agrees with the applicant proposal to deliver the document to be secured by the DCO at Deadline 10 – 28 September. Comments from IPs are requested by Deadline 11 – 30 October. Response to those comments are requested by Deadline 12 – 6 November (Updated examination timetable, August 2015).

4. The ExA notes the applicant has rejected a suggestion by EA that a requirement secure a retained role in relation to a sensitive borrow pit (6). How would the EA have a role in assessing any design and monitoring information for borrow pits in the detailed design phase, within or outside the DCO?

Item 6 – Arrangements in relation to Cambridgeshire County Council responsibilities

1. If the suggested legal agreement for de-trunking arrangements referred to at para 4.23 of Deadline 4 is not in place by the end of the examination, would A12(4) need to be amended to ensure that CCC are content with any arrangements?
2. Are any mechanisms for monitoring or mitigation proposed in relation to the projected impacts of the scheme the junctions identified within, or by agreements outside of, the draft DCO?

Item 7 – Water elements of the DCO

1. Notwithstanding the applicant's anticipation that the Flood Risk Assessment (FRA) will be agreed with the EA before the end of the examination, if agreement is not reached, could changes be made to the DCO, or by a separate document, to accommodate any future agreement and require such an agreement to be obtained before commencement? If so, what would the changes be, in order that they can be considered for inclusion in the ExA's draft DCO to be published on 9 October 2015, on the basis that an updated FRA will only just have been submitted to the EA at that time? If not, why not?
2. Contaminated Land and Groundwater – (Requirement 6) Is SCDC content that this requirement meets the points raised in its WR at para 138?

Item 8 - Protective provisions – (Article 40)

1. The ExA notes the updated protective provisions included as Appendix 2 of response to Q2.2.2. What is the current position in terms of draft DCO protective provisions to apply to the proposed disapplication of consent provisions?

Item 9 – Other matters relating to the DCO not covered in the items above

Disapplication of Legislative Provisions – (Article 3)

At the first DCO hearing, the ExA requested a note from the applicant on how the disapplication of consents would be dealt with in practice and where this might affect the proposed scheme. The applicant's response is attached at Annex 2 of REP4-011. Do interested parties wish to comment?

Does the disapplication of consents need to extend to operation and maintenance and

how would this work following the transfer of the local roads to CCC?

Limits of deviation – (Article 7)

Following discussion at the first DCO hearing and the amendments made to the wording of this article, could the Article enable the limits of deviation to potentially be extended beyond that proposed at examination. What are the powers for the SoS to 'certify' at a later date that any excess deviation from the approved limits are acceptable. The certification of documents as provided by Article 41 can be distinguished (from certification described in Article 7) as being a convention associated with the making of a statutory instrument at the time of its making, yet this Article would appear to suggest something different.

Does any other IP wish to comment on the wording of this article?

Construction and maintenance of new, altered or diverted streets and other structures – (Article 11)

At Article 11, Cambridgeshire County Council proposed amendments to the wording of 11 (2) and (8) in their Written Representation (REP3-006). What is the outcome of discussions with the applicant?

Classification of roads, etc. – (Article 12)

At Article 12, Cambridgeshire County Council proposes amendments to the wording of this Article to include reference to 'a date to be agreed with the County Council' (REP4-006). The applicant has now confirmed that it does not propose to include this wording (REP7-030). If CCC and the applicant are agreeing the de-trunking date outside the DCO in a legal agreement, it is not clear to the ExA why the words 'to be agreed between the parties' should not be included in the DCO as a point of clarification. Can the applicant please comment?

Cambridgeshire County Council refers to the roads that would be being detrunked as being of a scale and types not present in the Councils inventory for care. As such it says that resources would be needed towards operational and maintenance costs. HE confirms that discussions are ongoing with the County Council 'in respect of the precise terms of a legal agreement'. HE also confirms that discussions as to funding are also ongoing with the County Council. What is the latest position?

REP5-028 refers at paragraph 4.19 to discussion with NRIL as to the wording of 12 (3). What is the outcome of those discussions?

Permanent stopping up of streets and private means of access – (Article 13)

Cambridge County Council states that Article 12 and 13 should more accurately refer to stopping up of highways (REP3-006). The ExA notes the July and August DCOs contain no such amendment. Can both parties set out their position?

Temporary stopping up and restriction of use of streets - (Article 14)

At Article 14, Cambridgeshire County Council argues that the deletion of 14 (6) is an unnecessary addition to the provisions of Article 4 which states that 'consent must not

be unreasonably withheld or delayed' (REP3-006); HE disagrees (REP4-011). What is the latest position of both parties?

Compulsory Acquisition of rights – (Article 23)

At the first DCO hearing, the ExA requested a note from the applicant on the interaction between 23(4) article 28 and Schedule 6 of the DCO. The applicant's response is attached at Annex 3 of REP4-011. Do interested parties wish to comment?

Public Rights of Way – (Article 24)

Widths of rights of way

The ExA notes the submission by Cambridgeshire County Council of Counsel's opinion on the issue of whether widths of rights of way which are being created should be specified at this stage. In particular: "A DCO specifying the widths of the rights of way for which it grants consent on its face has the benefit not only of procedural simplicity, but also of legal certainty".

Does this advice have wider application for the content of this DCO? Interested parties may wish to comment?

What would be the process between the detailed design of a PRoW width by HE and the modification of the definitive map by CCC, and how would this be regulated (within or outside the DCO, by a Section 106 agreement or by another binding contract)?

Temporary use of land for carrying out the authorised development - (Article 30)

The ExA notes the applicant has declined a change to the DCO in response to a point raised by the ExA at the first DCO hearing in relation to when 'completion' had happened and thus the 'end date' for use of powers of temporary possession. HE considers this is standard wording. Can the applicant provide examples of where it is used in other made DCOs?

Although the applicant proposes a local forum and a landowner forum (to keep landowners informed of progress with elements of the scheme having a bearing on temporary possession) (Q 2.6.4) it appears to suggest that engagement during the detailed design and construction stages will follow the making of the DCO. Would the applicant and other IPs wish to comment?

Schedule 1 – Authorised Development

Can the County Council confirm that its comments in relation to Schedule 1 (REP3-006) have been addressed by the applicant?

Please explain the need for each of the work items (a) to (r) in Work No 33.

The ExA has noted the exchange between Suffolk County Council and the applicant with reference to the provision of onsite accommodation for workers. The applicant's response set out at HE/A14/EX49 page 225 refers to the 'catch all' provisions at the end of Schedule 1, namely subparagraphs m) and n). The applicant argues that this is

wide enough to secure the provision of on-site worker accommodation. Having reviewed the drafting, it is not clear to the ExA that the wording of m) and n) does actually cover the point raised by Suffolk County Council. What further evidence can the applicant provide to support its argument?

Schedule 2 – Requirements

General 1

South Cambs DC in its WR comments at para 118 that it is concerned about the way the Part 1 Requirements are drafted. “The requirements, as drafted, are not sufficiently detailed. Each of the Requirements needs to require the necessary works to be carried out in accordance with formally approved plans/documents. They should also be clear precisely which plan, drawing and/or document is being approved. For example, the detailed design will encompass a number of plans and drawings for each of the individual elements of the scheme and the Code of Construction Practice (submitted in Appendix 20.2 of the Environmental Statement) may be amended prior to approval. Therefore it is important that the precise reference number/title and date of each are clearly recorded.”

Highways England (REP4- 011) considers that the Requirements are sufficiently detailed. It states that “wording of the majority of the Requirements has come directly from precedent made DCOs, illustrating that the Secretary of State is content with their form. The Requirements all explicitly require Highways England to carry out the authorised development in accordance with any details or schemes formally approved. Any documents and plans which Highways England is required to comply with under the Requirements contained in Schedule 2 to the DCO will be certified by the Secretary of State under Article 41 of the draft DCO. As such, Highways England considers that there is sufficient certainty in this regard and no further cross referencing is required.”

Does this meet the point raised by SCDC?

General 2

At Appendix 6 of HE REP4-011, the applicant provides details of the origins of the different requirements, including those that do not come directly from precedent DCOs. Can the applicant comment on how the wording in these instances where it is not directly from precedent DCOs, meets the test set out in NN NPS para 4.9?

The specific requirements which do not appear to have come from precedent DCOs include:

i) Detailed Design (Requirement 3)

The wording differs from the Port of Immingham, the latter of which contains details of the type of carriageways surfacing, and the need for detailed design of noise barriers to be approved by the secretary of state in consultation with the relevant planning authority.

ii) Code of Construction Practice (Requirement 4)

Identified as a ‘bespoke’ requirement for the DCO

iii) Protected Species (Requirement 5)

Some difference in wording from precedents

iv) Implementation and maintenance of landscaping (Requirement 7)

Wording 'mirrored' – but is it the same?

v) Archaeology (Requirement 8)

The wording is different from the Port of Immingham – the latter of which refers to a WSI for specific parts of the authorised development reflecting the measures set out in a specific chapter of the ES.

vi) Borrow Pits (Requirement 11)

Bespoke

vii) Noise Mitigation (Requirement 12)

Bespoke

Detailed design – Requirement 3

South Cambridgeshire District Council has a number of concerns regarding matters of detail which are left to a detailed design stage. The Council has concerns about the procedure for agreeing such matters which relate to the detailed design of the scheme, but which are not covered within the scope of the DCO documentation. The applicant has said at Deadline 4 (REP4-011), that it would discuss this matter further with SCDC. What is the outcome of those discussions?

SCDC note that implementation of landscape is addressed by a specific sign-off process (Schedule 2 Requirements, Part 1 Requirement 6). Other detailed design matters are not addressed. Can the applicant comment?

What are the other detailed design matters that SCDC wished to be consulted upon (para 131 – WR)?

Protected Species – (Requirement 5)

South Cambridgeshire DC is concerned that there is no requirement to ensure that adequate pre-construction surveying of habitats is undertaken to establish whether important ecological species are present on directly affected land or nearby land which could be indirectly impacted. It is important that if important species are found or indication that they may be present, that adequate protection is afforded to them and such are agreed with the local authority before works are permitted. The applicant says this is covered by Requirement 5 – protected species. Does this address the point raised by SCDC?

What is Cambridgeshire County Councils position given its response to Q2.2.26 and the concerns it has expressed in relation to locally important species?

Implementation and maintenance of landscaping – Requirement 7

SCDC wishes an Aftercare and Management Strategy to be agreed which should state the long term vision for the landscape and describe the relevant operations to achieve this, through landscape restoration, maintenance and management throughout the

entire aftercare management period. Rev 3 of the DCO does not reflect this point. What is the applicant's response?

Cambridgeshire County Council requested to be consulted on this requirement. Rev 3 of the revised DCO does not address this point. Can the applicant explain further why this is not considered appropriate?

Noise Mitigation – Requirement 12

Although welcoming the insertion of this requirement, Deadline 7 responses from relevant LPAs indicate that there is disagreement over noise mitigation measures, consultation with local authorities and timing/triggers for the detail. A degree of flexibility is written into the draft requirement which does not provide the certainty or clarity that the LPAs with local duties feel should be demanded. Amendments are proposed.

What is the applicant's response to the concerns out forward by the LPAs?

Highway Lighting Scheme – Requirement 14

The ExA notes the inclusion of this requirement. Is there is a standard lighting for all road types or would these standards differ (depending on status). For what reasons could the standards eventually adopted materially differ from those already identified? Do Interested Parties wish to comment?

Schedule 4 – Permanent Stopping up of Highways and Private Means of Access and provision of new highways and private means of access

Can the applicant and Cambridgeshire County Council confirm the outcome of their discussions in relation to PROW and/or new highways to be diverted or created as part of the scheme and referred to at the first DCO hearing in July?

Other requirements

Section 20.1 and 20.2 of Cambridgeshire County Councils written rep (REP3-006) proposes a number of what it refers to as 'opportunities'. Can the County Council indicate where and how it would wish to see these opportunities embedded into the DCO? Does the applicant wish to comment?

Legal obligation

What arrangements are being made (within or outside the DCO, by a Section 106 agreement or by another binding contract) for future highway monitoring and mitigation within the A14 corridor?