

A14
Cambridge to Huntingdon
improvement scheme
Development Consent Order Application

HE/A14/EX/128

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Response to Cambridgeshire County Council's Submission on
the Widths of Public Rights of Way within the DCO and its Certified Plans

September 2015

The Infrastructure Planning (Examination Procedure) Rules 2010



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2 September 2015

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1 Response

- 1.1.1 This response to the submissions of Cambridgeshire County Council ('CCC') at Deadline 7 (REP7-004) relates to whether or not the widths of public rights of way should be specified in the Development Consent Order ('the DCO') and its certified plans.
- 1.1.2 The response is further to Highways England's previous submissions on this topic, which were made in Deadline 5 in Highways England's 'Comments on Open Floor Hearings' (Applicant reference HE/A14/EX/65, PINS reference REP5-029). Separately, Highways England had sent CCC a more detailed paper ('the Detailed HE Paper') explaining its position, of which Highways England's Deadline 5 submissions were a summary. CCC attached the Detailed HE Paper to its Deadline 7 submissions along with its Counsel's opinion.
- 1.1.3 It remains Highways England's position that there are sound legal and practical reasons why the widths of public rights of way ('PROW') should not and cannot be specified within the DCO and its certified plans. These reasons are set out in Highways England's original above-mentioned submissions and the Detailed HE Paper.
- 1.1.4 Highways England's responses to the main points within CCC's Counsel's opinion in Table 1 below:

Table 1: Response to Cambridgeshire County Council's Counsel's Opinion

CCC Opinion	Highways England Response
<p>How can a plan properly identify a "right" if one of the dimensions is absent from it? The requirement is to identify the "rights of way" not simply the route of a right of way. (paragraph 7)</p>	<p>It is not necessary for the dimensions of a 'right' granted by agreement or through a statutory process to be identified unless such identification is required by statute (i.e. in the case of the creation of a footpath pursuant to the Highways Act 1980 and the Public Path Order Regulations).</p> <p>It is not usual practice, for example, for a property agreement that involves the granting of a right of way to specify the dimension of such a right – it is merely the route of the right that is granted together with the purposes for which it is to be used.</p> <p>It therefore does not follow that the identification of a right of way should always include its dimensions.</p>
<p>Indeed, pursuant to the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (as amended) a modification to the Definitive Map and Statement to include a new right of way must specify the width of that right of way. It is therefore logical to include on the face of the DCO the widths of the rights of way granted. (paragraph 13)</p>	<p>Any modification to the Definitive Map must go through a consultation process under the Wildlife and Countryside Act 1981 and the relevant regulations. It is at this stage when the exact extent of the rights of way will be determined and identified.</p> <p>Given this later stage of consultation, it is not necessary or appropriate for the exact details of PROW provision to be specified at the DCO stage. At this DCO stage, landowners and the public are dealing purely with the fact that rights of way are being created/diverted over land, with it falling to the detailed design stage of the project to identify the precise route and other characteristics of the PROW, including its width.</p>
<p>Once the right of way has been set out and opened to the public the rights crystallize and the public highways (including public rights of way) assume their legal status as such (paragraph 16).</p>	<p>Highways England is only able to provide the details of rights of way at the detailed design stage. Thus, to use the argument put forward by CCC, these rights will not therefore crystallise (i.e. be set out and opened to the public) until after the width has already been determined at the detailed design stage. Full details of the PROW are therefore not available at the DCO stage, and it would be inappropriate and premature to attempt to pre-empt the detailed design process.</p>

<p>Highways England's apparent practice (see the table of DCOs set out under 3.6.2 of the Advice dated 22 July 2015 provided by Pinsent Masons) is to specify the width of the public rights of way granted by the DCO after the DCO has come into force. However, as Pinsent Masons' table of DCOs makes clear, some previous DCOs have been drafted in such a way as to set out the width of public rights of ways for which the order grants consent. There is certainly, therefore, no legal barrier to doing so (paragraph 21).</p>	<p>It is not correct to suggest that it is only 'Highways England's' practice not to specify the widths of rights of way at the DCO stage.</p> <p>As the table of DCOs included within the Detailed HE Paper sets out, only three DCOs made to date make any provision for the width of NMU provision; and only one of these three (Knottingley Power Project) has done so for PROW.</p> <p>However, the width of this Knottingley provision was specified because of the specific circumstances of the project - namely that the bridleway was to be shared as a private means of access ('PMA') to a nearby business; and the width of the PMA (and therefore the bridleway) needed to be a certain width to facilitate appropriate access to the facility. This therefore cannot be used as a precedent for a general position that PROW widths should be specified within the DCO.</p> <p>It is undoubtedly the case, as the Detailed HE Paper demonstrates, that the almost universal practice is for DCOs <u>not</u> to specify the width of PROWs. It is submitted that the main reason why this is almost universal practice is because detailed information is just not available at the DCO stage, as the detailed design work has not been done. That is, of course, the position with this project.</p>
<p>As set out above, CCC is required pursuant to the Wildlife and Countryside Act 1981 to specify the widths of the public rights of way created by virtue of the DCO when modifying the Definitive Map. This can be most simply and efficiently achieved if the DCO itself specifies the width of those public rights of way (para 23).</p>	<p>Pursuant to the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (as amended), the Council will need to produce a plan (with its own legislative requirements) as part of its Definitive Map Modification Order.</p> <p>Simply extracting the DCO certified plans would not be an appropriate method in which to produce these statutory plans, and so a new plan would need to be created at this stage, following the completion of detailed design work.</p> <p>The 1993 Regulations therefore not only envisage that, as in the case of the DCO, the PROW will be created by a separate legal instrument, but that a subsequent modification of the Definitive Map is the best way to reflect the full characteristics of the PROW, including its width, once the information becomes available.</p>

<p>When should a person object to a proposed PROW on the basis that it will either be too wide or not wide enough?</p>	<p>The exact details for the provision of PROW can only be finalised once the detailed design work has been done, matters have been discussed with landowners and any constraints can be identified.</p>
<p>The DCO process should be 'frontloaded' so that the DCO contains all of the requisite information for the matters for which consent is granted (paragraphs 26 and 27).</p>	<p>At the Examination stage, an affected landowner can still object to a proposed PROW simply on the basis of it being created in principle by the DCO. At the Definitive Map Modification Order stage, the landowner can then object to its specific design, including its width and other characteristics.</p>

- 1.1.6 As can be seen from the above, it is Highways England's position that the Wildlife and Countryside Act 1981 provides the appropriate process through which CCC will be able to take into account the widths of PROW to be constructed under the DCO consented scheme, once these are known.
- 1.1.7 Under the terms of the agreement currently being negotiated with CCC, Highways England will provide CCC with 'as built' drawings in due course of all highways and PROW that CCC will be responsible for, following detailed design and construction of the scheme. These 'as built' drawings will be in a form compatible with CCC's computerised mapping systems and will therefore then enable CCC to prepare appropriate Definitive Map Modification Order(s). It is therefore not just unnecessary for PROW widths to be specified in the DCO and its certified plans, but also simply not possible given the stage of design the project has reached.
- 1.1.8 Highways England will continue to discuss the design of PROW provision with CCC at the detailed design stage, including determining the widths of such provision, if the DCO is made.
- 1.1.9 It is therefore neither possible nor necessary for PROW widths to be specified in the DCO and on its certified plans.