

A14
Cambridge to Huntingdon
improvement scheme
Development Consent Order Application

HE/A14/EX/135

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Justification for the Exercise of Powers of Compulsory Acquisition
to Facilitate the Delivery of new Public Rights of Way

September 2015

The Infrastructure Planning (Examination Procedure) Rules 2010



A14 Cambridge to Huntingdon improvement scheme

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Contents

Contents	3
1 Introduction	4
1.1 Introduction	4
2 Legislative and Policy Context.....	4
2.1 Planning Act 2008.....	4
2.2 ODPM Circular 06/04.....	6
2.3 DCLG Guidance related to procedures for the compulsory acquisition of land	6
3 Planning Policy Context.....	6
3.1 Transport Planning	6
3.2 Land Use Planning	8
4 Scheme objectives.....	9
4.1 Compatibility of scheme objectives with relevant policy objectives.....	9
5 Balancing the delivery of public benefits and the protection of private rights	10
5.1 Does the public benefit outweigh the private loss?	10
6 Powers sought in the DCO to enable the creation of public rights of way on land acquired for that purpose	10
6.1 Combination of powers in article 20 (compulsory acquisition of land) and article 24 (public rights of way)	10
7 Conclusion.....	12

1 Introduction

1.1 Introduction

- 1.1.1 This submission responds to a request from the Examining Authority made during the Compulsory Acquisition Hearings held on 1-3 September 2015 in respect of the A14 Cambridge to Huntingdon improvement scheme ('the scheme'). It sets out Highways England's views on how and why the exercise of powers of compulsory acquisition, to facilitate the delivery of proposed new public rights of way, would be justified – notwithstanding the resulting interference with the private rights of those whose land would be affected if such proposals were delivered.
- 1.1.2 This submission sets out, briefly, the legislative and policy context within which the scheme is being promoted, and considers the extent to which the objectives of the scheme are compatible with those policy objectives. It also considers the proportionate balance which is required to be achieved between the delivery of public benefits and the protection of private rights of individuals, and notes that such balance is a matter for the decision maker in relation to any grant of development consent which includes powers to acquire land compulsorily. It concludes by setting out Highways England's view that, in the case of the scheme, such a balance is achieved and that therefore the exercise of powers of compulsory acquisition to facilitate the delivery of public rights of way would be justified.
- 1.1.3 This note also identifies the articles of the draft development consent order ('DCO') pursuant to which land would be acquired and public rights of way created and secured thereon for the purposes of the scheme, should development consent for the scheme be granted; and, finally it explains the legal rationale underlying the application of those articles.

2 Legislative and Policy Context

2.1 Planning Act 2008

- 2.1.1 As is noted in the Applicant's *Statement of Reasons* (Applicant's document reference HE/A14/EX/43; PINS reference REP2-017) (at section 3), section 122 of the Planning Act 2008 states that "*an order granting development consent may include provision authorising the compulsory acquisition of land*" if certain conditions are met. Those conditions, which are set out in section 122, are that the land "*is required for the development to which the development consent relates; [or] is required to facilitate or is incidental to that development; [...]*" (section 122(2)).

- 2.1.2 Highways England considers that in respect of land required for the provision of new or diverted/replacement public rights of way forming part of the scheme, the above-mentioned condition in section 122 is met, in that the public rights of way provision forms an integral part of the scheme and is therefore part of "*the development to which the development consent relates*". As such, the land required for the public rights of way provision is "*required for the development to which the development consent relates*" (section 122(2)(a)).¹ This view is supported by the fact that the rights of way provision helps to meet a number of the core objectives of the scheme; further explanation on this is set out in section 4 below.
- 2.1.3 The second condition in section 122 of the Planning Act is "*that there is a compelling case in the public interest for the land to be acquired compulsorily*" (section 122(3)).
- 2.1.4 It is Highways England's position that this second condition is also met in relation to the proposed compulsory acquisition of land to facilitate the provision of public rights of way which form an integral part of the scheme. For the reasons set out in general terms in the *Statement of Reasons* (document references as above) and in more specific terms in the *Case for the Scheme* (Applicant's document reference 7.1; PINS reference APP-755) (see specific cross-references in section 5 below) Highways England considers that there is a compelling case in the public interest for the inclusion of public rights of way in the scheme, and for the exercise of powers of compulsory acquisition to secure the land on which those public rights of way may be delivered.
- 2.1.5 This view is based on the fact that the core objectives of the scheme require public rights of way to be provided alongside and in addition to the proposed highway improvements. Highways England considers that it is in the public interest for the scheme to make network provision for and improve facilities for all types of road user – not just vehicular users, but also pedestrians, cyclists and equestrians (referred to collectively in the application documentation as 'non-motorised users' or 'NMUs').
- 2.1.6 Highways England recognises that where such public interest benefits cannot be secured without interference with the private rights of individuals, the balance between these two competing elements must be legitimate, necessary and proportionate and there must be clear evidence that the public benefits that would be

¹ However, even if it were argued that this was not the case and that the 'development' was in fact only the improvement of the A14 highway itself, the public rights of way provision in the scheme would still be "*required to facilitate or [be] incidental to that development*" (section 122(2)(a)).

secured through the compulsory acquisition of land would outweigh the private loss suffered by those whose land was to be acquired.

2.2 ODPM Circular 06/04

2.2.1 Paragraph 17 of ODPM Circular 06/04 *Compulsory Purchase and the Criche! Down Rules* ('the Circular') sets out the established principle that is now, as noted above, included in section 122(3) of the Planning Act 2008, as a condition precedent to the exercise of powers of compulsory acquisition, namely that: "*A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.*"

2.3 DCLG Guidance related to procedures for the compulsory acquisition of land

2.3.1 Paragraphs 8 to 10 of the *DCLG Guidance related to procedures for the compulsory acquisition of land* (September 2013) ('the DCLG Guidance') reiterate the requirements set out in paragraph 17 of the Circular (as noted above), and explain that in order for the compulsory acquisition of land to be authorised in the context of a development consent order, the purposes for which such powers over land are required must be "*legitimate and sufficient to justify interfering with the human rights of those with an interest in the land affected*" (paragraph 10).

2.3.2 In observing the advice in the Circular and in the DCLG Guidance, Highways England has had regard to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and Article 8 of the Convention, as is explained in section 9 of the *Statement of Reasons* (document references as above).

3 Planning Policy Context

3.1 Transport Planning

3.1.1 Paragraph 5.184 of the *National Networks National Policy Statement* ('NNNPS') provides that "*Public rights of way, National Trails, and other rights of access to land (e.g. open access land) are important recreational facilities for walkers, cyclists and equestrians. Applicants are expected to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other*

public rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve access. In considering revisions to an existing right of way consideration needs to be given to the use, character, attractiveness and convenience of the right of way."

- 3.1.2 Highways England has taken account of the requirement in paragraph 5.184 of the NNNPS, as is explained in its document *Designation of the National Policy Statement for National Networks – Update to the Case for the Scheme* (Applicant's document reference HE/A14/EX/21; PINS reference APP-784) ('the NPS Tracker'), which notes that "*Chapter 15 – Effects on All Travellers – of the Environmental Statement (Applicant's document reference 6.1; PINS reference APP-346) confirms that the scheme design seeks to mitigate effects on rights of way and national trails by including bridges or types of crossing points to cross the new highway and landscaping to minimise landscape effects. In many locations the access to public rights of way is improved as the proposed new shared use cycle track/pedestrian route links rights of way that were historically truncated or severed by the A14 dualling. Consideration has also been given in the assessment to the amenity for Non-Motorised Users.*" Clearly, the deliver of such benefits would be in the public interest.
- 3.1.3 In response to paragraph 5.206 of the NNNPS, which requires an applicant to carry out a "proportionate assessment of the transport impacts [of the scheme] on other networks" (i.e. public rights of way networks), Highways England notes in the NPS Tracker that "*Chapter 15 (Effects on All Travellers) of the Environmental Statement at paragraph 15.20.3 states that during operation, the proposed Huntingdon Southern Bypass would permanently alter the public rights of way network in the rural area south of the existing A14 between the Offords and Conington. [Therefore,] new routes, footbridges and footways would be provided to ensure continued connectivity in the public rights of way network north and south of the new road.*"
- 3.1.4 Also, in relation to the suggestion in paragraph 5.175 of the NNNPS that green infrastructure (which includes public rights of way networks) should be "*strengthened or integrated*" by development proposals, Highways England notes in the NPS Tracker that "*Environmental Statement (document ref 6.1) Chapter 10 Landscape refers to the Cambridgeshire Green Infrastructure Strategy June 2011 which identifies the network of green infrastructure across Cambridgeshire. The strategy is made up of a group of overarching [and related] themes which include [inter alia] rights of way [...].* The NPS Tracker goes on to explain that "*The scheme has been designed to minimise impact on green infrastructure with mitigation including landscape planting, wildlife corridors and non-motorised*

vehicle routes which help to maintain and enhance the green infrastructure network."

3.1.5 In addition to the above, Highways England notes the Government's commitment to sustainable transport, as set out in paragraphs 3.15, 3.16 and 3.17 of the NNNPS, and in particular the commitment to *"providing people with options to choose sustainable modes and making door-to-door journeys by sustainable means an attractive and convenient option"* (paragraph 3.15).

3.1.6 If development consent for the scheme was granted and the scheme implemented, it would contribute to the achievement of the Government's commitment to sustainable transport, and would align with the Government's policy (set out in paragraph 3.16 of the NNNPS) of *"investing in developing a high-quality cycling and walking environment to bring about a step change in cycling and walking across the country."*

3.1.7 Paragraph 3.17 of the NNNPS states that: *"There is a direct role for the national road network to play in helping pedestrians and cyclists. The Government expects applicants to use reasonable endeavours to address the needs of cyclists and pedestrians in the design of new schemes. The Government also expects applicants to identify opportunities to invest in infrastructure in locations where the national road network severs communities and acts as a barrier to cycling and walking, by correcting historic problems, retrofitting the latest solutions and ensuring that it is easy and safe for cyclists to use junctions."*

3.1.8 In setting the objectives for the scheme (in particular those objectives relating to connectivity and legacy) and in ensuring that public rights of way and NMU provision has a key function in the scheme design – simultaneously reducing both historic and potential severance, encouraging walking and cycling, and enhancing the safety of routes and crossings – Highways England's approach to public rights of way provision meets each of the challenges set for applicants in paragraph 3.17 of the NNNPS (above).

3.1.9 Highways England's approach to public rights of way provision as part of the scheme is compliant with the transport planning policy requirements relating to rights of way networks, as set out in the above-mentioned paragraphs of the NNNPS.

3.2 Land Use Planning

3.2.1 In terms of public rights of way in the context of land use planning, the *National Planning Policy Framework* (DCLG, March 2012) ('the NPPF') states, at paragraph 75, that *"Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for*

users, for example by adding links to existing rights of way networks..."

- 3.2.2 Highways England's approach to public rights of way provision as part of the scheme is compliant with the land use planning policy requirement relating to existing rights of way networks, as set out in paragraph 75 of the NPPF.

4 Scheme objectives

4.1 Compatibility of scheme objectives with relevant policy objectives

- 4.1.1 Details of transport planning policies and land use planning policies with relevance to public rights of way provision within the scheme proposals are set out above. The scheme objectives, and the ways in which those objectives are met by the various elements and characteristics of the scheme, are explained in detail in Highways England's *Case for the Scheme* (document references as above) (and for the purposes of brevity that explanation is not reiterated here). In the context of public rights of way provision, however, two of the five scheme objectives are of particular relevance to the transport planning and land use planning policy objectives identified above. Those two objectives are to:

- **connect people:** by placing the right traffic on the right roads and freeing up local capacity for all types of road user, including pedestrians, cyclists and equestrians; and
- **create a positive legacy:** recognising the wider benefits of the road improvement scheme for local communities and businesses.

- 4.1.2 It is Highways England's view that the public rights of way provision included in the scheme plays a vital role in meeting these two overarching scheme objectives, which, in turn, contribute to the scheme's compliance with the transport planning and land use planning policy objectives outlined in the NNNPS and the NPPF.

- 4.1.3 In this context, Highways England considers that the inclusion of public rights of way provision in the scheme would, if the scheme were implemented, deliver public benefits aligned with Government policy objectives. The condition in section 122(3) of the Planning Act 2008, which requires the delivery of public benefits in order to evidence a compelling case in the public interest, is therefore satisfied. The question of whether or not such benefits outweigh the loss suffered as a result of the consequential interference with the private rights of those whose land is required to facilitate the delivery

of public rights of way as part of the scheme, is considered in the following section of this paper.

5 Balancing the delivery of public benefits and the protection of private rights

5.1 Does the public benefit outweigh the private loss?

- 5.1.1 Highways England understands that the decision maker in relation to any grant of development consent which includes powers to acquire land compulsorily is required to ensure that a proportionate balance is achieved between the delivery of public benefits and the protection of the private rights of individuals.
- 5.1.2 This balancing exercise in the DCO context is reflective of the established regime under the Highways Act 1980, which provides statutory powers for local highway authorities to create public rights of way. There is an expectation that in exercising such powers, a local highway authority will seek to balance the public need for public rights of way against the effects on landowners of providing such public rights of way.
- 5.1.3 The public benefits which would arise from the inclusion of public rights of way in the scheme, secured – if necessary – through the exercise of powers of compulsory acquisition, are set out in Highways England's Case for the Scheme (document references as above – see in particular paragraphs 2.6.4, 6.5.16, 7.1.7 and Table 7.1) and are therefore not reiterated here. Highways England considers that the positive effects of these public benefits, which would contribute to the achievement of the scheme objectives relating to connecting communities, improving NMU facilities and delivering a positive scheme legacy, would outweigh the private loss that would be suffered if land was acquired compulsorily to enable the delivery of the public benefits.

6 Powers sought in the DCO to enable the creation of public rights of way on land acquired for that purpose

6.1 Combination of powers in article 20 (compulsory acquisition of land) and article 24 (public rights of way)

- 6.1.1 If development consent was granted and the DCO made, article 20 would provide Highways England with a power to "*acquire compulsorily so much of the Order land as is required for the*

authorised development, or to facilitate or is incidental to it." As discussed in section 2 above, the condition in section 122(2) of the Planning Act 2008 would be met by the land required for rights of way within the scheme. It therefore follows that the land required for the creation of rights of way could reasonably be acquired pursuant to the power in article 20 (compulsory acquisition of land).

- 6.1.2 Article 24 (public rights of way) provides a power for the extinguishment of existing public rights of way. Where existing public rights of way are extinguished, there is no requirement for land to be acquired pursuant to article 20; in a scenario where the land is not required for the delivery of other elements of the scheme, it can simply be subject to powers of temporary possession to enable the carrying out of any works associated with the stopping up.
- 6.1.3 However, the situation is different where new public rights of way are to be created (either as replacements for those which have been stopped up, or separately as brand new public rights of way). Such public rights of way would be created pursuant to Schedule 1 to the DCO (which sets out the 'authorised works' which comprise the scheme and which includes both new and replacement public rights of way) and in accordance with Schedule 4 to the DCO (which lists all of the new and replacement public rights of way which would be delivered if the DCO was made).
- 6.1.4 In this scenario, the land required for the provision of the public rights of way would be acquired pursuant to article 20. The acquisition of land is necessary to enable the delivery of the public right of way, which would then be adopted and become publicly maintainable pursuant to article 11 of the DCO.
- 6.1.5 A power to acquire land compulsorily is necessary where new public rights of way are being created, on the basis that new/replacement public rights of way (including NMU routes) are a form of new highway (provided for certain types of non-motorised user) and it is both established practice and necessary in practical terms for Highways England, in its capacity as an acquiring authority and a highway authority, to acquire the land on which new highway is proposed to be constructed.
- 6.1.6 This is because Highways England would need to own the land on which the public right of way was located in order to be able to dedicate it as a public highway/right of way. Whilst it is possible that a landowner might agree to dedicate land as a public right of way, for the purposes of ensuring that there were no impediments to the implementation of the scheme (in the event that it was consented) Highways England would need the certainty afforded by a power to acquire the land compulsorily to enable dedication of the land as highway.

6.1.7 This approach, which effectively combines negotiations to acquire land by agreement with an application for powers of compulsory acquisition as a contingency measure, is compliant with the advice in paragraph 24 of the Circular, which advocates that "*acquiring authorities should consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations.*" Further, it reflects the advice in paragraph 25 of the DCLG Guidance, which states, in respect of "*long, linear schemes*", that "*it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.*"

7 Conclusion

7.1.1 For the reasons set out above, Highways England considers that the inclusion in the DCO of powers to acquire land compulsorily to facilitate the delivery of public rights of way would be wholly reasonable, legitimate, proportionate, necessary and justified.