

A14
Cambridge to Huntingdon
improvement scheme
Development Consent Order Application

HE/A14/EX/139

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Note on Approach to use of Requirements and Protective Provisions

September 2015

The Infrastructure Planning (Examination Procedure) Rules 2010



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1 Note on the approach adopted to the use of requirements and protective provisions

1.1 Introduction

1.1.1 This note provides further information to the Examining Authority ("the ExA") in respect of the approach adopted to the use of requirements and protective provisions. This was requested at the second Issue Specific Hearing on the Development Consent Order ("DCO") which took place on 4th September 2015 ("the ISH").

1.2 Approach adopted

1.2.1 Sections 120(1) and (2) of the Planning Act 2008 state the following:

"(1) An order granting development consent may impose requirements in connection with the development for which consent is granted.

(2) The requirements may in particular include

(a) requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development;

(b) requirements to obtain the approval of the Secretary of State or any other person, so far as not within paragraph (a)."

1.2.2 The starting point has been paragraph 4.9 of the National Networks National Policy Statement. This states that:

"The Examining Authority should only recommend, and the Secretary of State should only impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. Guidance on the use of planning conditions or any successor to it, should be taken into account where requirements are proposed."

1.2.3 This is consistent with the National Planning Policy Framework and the National Planning Practice Guidance (in respect of the tests that need to be met for planning conditions), as well as paragraph 17 of the PINS Advice Note 15.

1.2.4 As a result, Highways England has sought to include requirements in the draft DCO that meet these tests - effectively requirements that serve to ensure the parameters of the scheme assumed in the Environmental Statement are effectively and accurately proscribed; or

requirements which serve to protect the general interests of the public and stakeholders, particularly where there is no person or body with any express statutory function or responsibility in relation to the general interest in question.

- 1.2.5 In respect of the protection of the interests (for example, property and statutory functions) of specific persons or classes of person (including statutory bodies), Highways England has sought to secure that protection by way of protective provisions. This is conventionally how protective provisions have been employed in local legislation such as DCOs. This approach has long been adopted for two key reasons:
 - 1.2.5.1 it allows for specifically affected parties to enforce the protections that are to be afforded to them directly against the promoter; and
 - 1.2.5.2 it allows the affected party and the promoter flexibility in implementation of the protective provisions.
- 1.2.6 A good example is the set of protective provisions that are proposed to be included in the DCO for the benefit of Network Rail and its railway undertaking. By their very nature, these provisions protect Network Rail's specific property interests and statutory functions and, as such, an equivalent requirement could not be said to be relevant to planning. Another example is the protective provisions for the benefit of certain statutory utility companies.
- 1.2.7 There may sometimes be overlap between circumstances when protective provisions and requirements could equally be used in a DCO to secure certain matters.
- 1.2.8 For example, Highways England proposes to include sets of protective provisions for the benefit of the Environment Agency, an Internal Drainage Board and Cambridgeshire County Council (in respect of its drainage and flooding functions). Whilst the crux of these provisions (effectively providing a plan approval role in exchange for the disapplication of certain consenting powers) has a particular effect on these bodies so as to protect their interests and statutory functions, those matters are also of a public nature and interest.
- 1.2.9 In such a scenario, Highways England has included matters within protective provisions due to the existence of bodies charged with a statutory duty to be responsible for them. To deal with them by way of a requirement (which might be possible for some of the matters) would be to disenfranchise those bodies of their statutory functions and control. That is why these bodies have requested the inclusion of protective provisions to protect their interests and their statutory role and functions.