

**A14**  
**Cambridge to Huntingdon**  
**improvement scheme**  
Development Consent Order Application

HE/A14/EX/141

**TR010018**

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Note on Enforceability of Code of Construction Practice

September 2015

The Infrastructure Planning (Examination Procedure) Rules 2010





## **A14 Cambridge to Huntingdon improvement scheme**

Note on the Enforceability of the Code of Construction Practice

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**10 September 2015**



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# 1 Response

1.1.1 This note summarises the case made by Highways England at the Compulsory Acquisition Hearing of 2 September 2015 in relation to the enforceability of the Code of Construction Practice ('the CoCP') (Applicant reference HE/A14/EX/124, PINS reference REP8-17), following concerns particularly raised by Ms Louise Staples of the National Farmers' Union.

1.1.2 Article 5 of the draft Development Consent Order ('the DCO') (Applicant reference HE/A14/EX/96, PINS reference REP7-030) would grant development consent to 'the undertaker' to carry out the authorised development subject to the requirements in Schedule 2 to the DCO ('the Requirements'). The term 'the undertaker' is defined, by article 2 of the DCO, as Highways England.

1.1.3 Thus, whilst Highways England will employ a contractor to undertake the works which constitute the authorised development, it is Highways England that is ultimately responsible for carrying out the authorised development and for complying with the Requirements.

1.1.4 Compliance with the CoCP is secured by paragraph 4 of the Requirements ('Requirement 4'), which sets out that:

*"The authorised development must be carried out in accordance with the provisions of the Code of Construction Practice".*

1.1.5 As it has responsibility for compliance with this requirement, Highways England must therefore ensure that the authorised development is carried out by its contractors in accordance with the provisions of the CoCP.

1.1.6 The CoCP itself makes provision for this at part 3.4:

*"3.4.1 The provisions of the CoCP will be imposed by Highways England on the main contractors by means of the works contracts. The contracts will incorporate both:*

- *general requirements*
- *site specific requirements, including the requirements of the LEMPs*

*3.4.2 The main contractors and their contractors will be required to comply with the terms of the CoCP and appropriate action will be taken by Highways England/employer's representative as required with the aim to secure compliance."*

- 1.1.7 As this wording is part of the CoCP, and the CoCP is secured by Requirement 4, Highways England is therefore required to take these active steps in ensuring that contractors comply with the terms of the CoCP.
- 1.1.8 It will therefore not be enough for Highways England to pass on any complaints as to a contractor's behaviour back to the contractor and disclaim responsibility for it - it must take actions to ensure that the terms of the CoCP are enforced to ensure compliance with this Requirement.
- 1.1.9 It is vital for Highways England to do this as the terms of the Requirements of a DCO can be enforced by local planning authorities ('the LPAs') under Part 8 of the Planning Act 2008. This Part of the Act gives LPAs the following enforcement mechanisms, with no right of appeal for Highways England:
- Prosecution under section 161 for a breach of the terms of the DCO (which is a criminal offence), which would include the Requirements.
  - Power to serve an 'information notice' under section 167 requiring the recipient to provide information as to the operations or activities taking place on land within the LPA's area.
  - Prosecution under section 168 for failure to respond to an information notice or providing false or misleading information within the notice.
  - If a prosecution under section 161 is successful, the ability to serve a 'notice of unauthorised development' requiring the works to be removed and the land to be restored to its condition prior to the works (under section 169).
  - Under section 170, if the person who has undertaken the works does not comply with the notice, the LPA can enter the land to undertake the remedial works and then claim the monies back from the recipient of the notice.
  - Pursuant to section 171, apply to the Court for an injunction to restrain activities in breach of the terms of the DCO.
- 1.1.10 Given these wide ranging mechanisms, it will be incumbent upon Highways England to ensure compliance with the CoCP is maintained throughout construction of the Scheme to ensure that LPAs do not feel the need to take any of these steps.
- 1.1.11 Landowners are also able to utilise the enquiries and complaints procedure that forms part of the CoCP (Part 4) to highlight any concerns with the performance of contractors in meeting the standards set out in the CoCP.