

A14
Cambridge to Huntingdon
improvement scheme
Development Consent Order Application

HE/A14/EX/1(\$

TR010018

HE/A14/EX/140

Note on Certification Provisions in the draft Development Consent Order

September 2015

The Infrastructure Planning (Examination Procedure) Rules 2010



A14 Cambridge to Huntingdon improvement scheme

Note on the use of a certification provision in article 7 of the draft
DCO

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1 Note on the use of a certification provision in article 7 of the draft Development Consent Order

1.1 Introduction

1.1.1 This note provides further information to the Examining Authority ("the ExA") in respect of precedents for 'certification' provisions such as the one contained in article 7 of the draft Development Consent Order ("DCO"). This was requested at the second Issue Specific Hearing on the DCO which took place on 4th September 2015 ("the ISH").

1.1.2 The relevant wording in article 7 as currently drafted is as follows (our emphasis):

"In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and

(b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections—

(i) to a maximum of 0.5 metres upwards or downwards; or

(ii) in respect of the excavation of the borrow pits or the flood compensation areas, to a maximum of 0.5 metres downwards but to any distance upwards to ground level,

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environment effects from those assessed in the environmental statement."

1.1.3 As explained in paragraph 6.8 of the *Explanatory Memorandum to Draft Development Consent Order* (Applicant Ref: 3.2; PINS Ref: APP-009), Highways England considers that the wording of article 7 is necessary in order to give it the necessary flexibility it needs when constructing the scheme (reducing the risk that unforeseen circumstances mean it cannot be implemented) but ensuring that this flexibility would not result in any greater adverse environmental effects.

1.1.4 As stated at the ISH, Highways England is aware that there is no precedent in DCOs made to date for the precise mechanism currently

included in respect of development beyond the vertical limits of deviation. However, this note sets out where a procedure involving certification by the Secretary of State or other authority has been included in DCOs previously as well as in a wider legislative context.

1.2 Certification in DCOs

- 1.2.1 A number of DCOs have included certification procedures in the context of approving certain approvals or details.
- 1.2.2 For example, article 30 of the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015, article 29 of the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 and article 30 of the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 make provision for the relevant or local planning authority to certify that a scheme for the provision of replacement land as open space or common land has been implemented to its satisfaction, prior to any special category land vesting in the undertaker.
- 1.2.3 Article 33 of the National Grid (North London Reinforcement Project) Order 2014 contains similar provisions, although in that instance it is the Secretary of State who certifies that such a scheme is satisfactory.
- 1.2.4 In a slightly different context, article 19 of the Able Marine Energy Park Development Consent Order 2014 and article 11 of the Willington C Gas Pipeline Order 2014 make provision for the local highway authority to certify that alternative rights of way have been implemented to a certain standard before existing rights of way are extinguished.
- 1.2.5 A certification process has also been included in requirements in some DCOs made to date. For example, the requirement contained in paragraph 34 of Schedule 2 to the North Blyth Biomass Power Station Order 2013 makes provision for the local planning authority to certify (following consultation with the Environment Agency) that certain works include specified elements before the development can be brought into use. Further, the requirement contained in paragraph 12 of Part 2 of Schedule 1 to the Network Rail (Redditch Branch Enhancement) Order 2013 makes provision for the relevant planning authority, following consultation with Natural England, to certify that certain ecological mitigation works have been carried out to its satisfaction.
- 1.2.6 As a result, it is clear that the concept of 'certification' as an approvals process has precedent in DCOs and has therefore been found to be acceptable and appropriate by the Secretary of State for inclusion.

1.3 Certification in a wider legislative context

- 1.3.1 As well as in DCOs, the certification process also has precedent in a wider legislative context.
- 1.3.2 Under sections 127 and 131 of the Planning Act 2008 as originally enacted, the Secretary of State had to certify that he or she was satisfied of certain matters relating to a statutory undertakers' land (s.127) and commons, open spaces and the like (s.131) before a DCO could be made. Whilst the certification requirement was repealed by the Growth and Infrastructure Act 2013, the original provisions show that the concept of the Secretary of State certifying something to confirm his or her acceptance of a matter is acceptable for inclusion in legislative provisions.
- 1.3.3 This is further reiterated in certain provisions of the Acquisition of Land Act 1981. For example, section 19 states that a compulsory purchase order will be subject to special parliamentary procedure if commons, open spaces and the like are included in the order unless the Secretary of State certifies that he or she is satisfied of certain matters.

1.4 Conclusion

- 1.4.1 As can be seen from the examples given above, the concept of 'certification' has precedent in both primary and secondary legislation, including DCOs. As such, Highways England considers such a procedure to be appropriate for inclusion in article 7 of the DCO.
- 1.4.2 The Secretary of State cannot certify something unless he or she acts in a proper and reasonable way. As a result, this should give comfort that any deviation beyond the stated vertical limits of deviation would not cause any additional adverse environmental effects.