

FRIENDS OF THE EARTH (ENGLAND, WALES AND NORTHERN IRELAND)

WRITTEN REPRESENTATION

HIGHWAYS ENGLAND'S RESPONSE

Summary of oral representation made on Thursday 11th February 2016 by Jenny Bates, representing Friends of the Earth (England, Wales and Northern Ireland) on air quality/air pollution issues.

We welcome the opportunity to have been able to address the Panel directly to help address the questions posed (Issue specific hearing dealing with matters relating to the environment), and now to follow up with this summary.

I believe the following covers the main points made at the oral hearing, but we would be pleased to forward any further information, or clarification which may be helpful.

1. TRAFFIC ISSUES

1.1 On the traffic forecasts and uncertainty, we are of the opinion that HE should re-run figures using the more conservative LTT line compared to the LTT_{E6} one.

Highways England Response

1.1.1 Highways England acknowledges the comment made by Friends of the Earth, but considers that its position on LTT curves has been already been addressed in previous responses by Highways England to the Examination.

1.2 Friends of the Earth referred to how traffic levels have been found to be considerably increased when schemes open and that this can be at levels greater than expected.

We refer the Panel to the report mentioned at the oral hearing: [Beyond Transport Infrastructure: Lessons for the future from recent road projects and its follow up for the A34 Newbury bypass: an analysis of the A34 Newbury bypass, and in addition to an article written by Transport Consultant John Elliott in World Transport Policy and Practice \(volume 21, number 4 of February 2016 <http://worldtransportjournal.com/wp-content/uploads/2016/02/9th-Feb-final-opt.pdf> pages 37 to 41\).](#)

1.3 We also refer the Panel to the directly relevant evidence recently submitted by Campaign for Better Transport on the M25 traffic Smart Motorway and All Lane Running studies which show considerable traffic increases.

1.4 Reference was also made to how TfL revealed that for the Thames Gateway road bridge traffic would grow for a further 5 years after TfL's figures (http://www.foe.co.uk/resource/media_briefing/thames_gateway_bridge_07.pdf section 1 on traffic,

first bullet point). It should be noted that the unreliability of the traffic figures was a key factor in the Inspector at the Public Inquiry recommending refusal for that scheme: <http://stopcityairportmasterplan.tumblr.com/post/42442210102/thames-gateway-bridge-inspectors-report-by> (conclusions are at Chapter 9). At the hearing HE stated that indeed traffic volumes could increase over time, but that improvements in the fleet mix etc could or would (without checking the audio I am not sure of the exact words) offset that. This however seems very optimistic, as fleet mix may not offset further traffic increases.

- 1.5 *All of the above increase uncertainties and risk and add weight to the concerns over the robustness of the HE M4 case.*

Highways England Response

- 1.5.1 The approach undertaken for the assessment of the forecast level of induced traffic arising from the M4 Junctions 3 to 12 Smart Motorway scheme (the “Scheme”) has been detailed in the Traffic Forecasting Report and assessed at less than 1% over a typical weekday. The papers and reports referenced by Friends of the Earth describe case studies where post-opening evaluation has identified traffic flows to be higher than had been forecast during the appraisals. Amongst the reasons suggested for these discrepancies between forecast and outcome is a failure to follow the advice given in the 1994 report of the Standing Advisory Committee on Trunk Road Assessment (“SACTRA”). In section 2 of its response to the Campaign for Better Transport submitted at Deadline VII, Highways England provided an explanation of how the use of a variable demand model (of the type recommended by SACTRA) had addressed the three main circumstances in which consideration of induced traffic was most important.
- 1.5.2 The reports into the A34 Newbury Bypass, referenced by Friends of the Earth, suggest a further source of induced traffic that was not recognised during that scheme’s appraisal came from additional development that occurred in the vicinity of that scheme. This could be considered as “indirect” induced traffic as it arises as a result of development that takes advantage of the scheme rather than the scheme itself. For example, it was suggested that development was able to take advantage of capacity released on the local highway network by the bypass, citing the case of the headquarters for Vodafone plc with the assertion that consent might not have been granted for that development in the absence of the bypass. In developing the traffic forecasts for the Scheme, Highways England took full account of planned development in line with the guidelines set out in Transport Analysis Guidance (“TAG”) Unit M4 Forecasting and Uncertainty including, for example, major housing development proposals in Wokingham and the University of Reading’s science park development. Full consideration was also given to the development proposals set out in the published Local Plans for each local planning authority in the vicinity of the Scheme.

Accordingly, Highways England considers that it has taken sufficient account of traffic associated with forecast development.

- 1.5.3 The reports into the proposed Thames Gateway scheme, referenced by Friends of the Earth, focus on an apparent disconnect between Transport for London's ("TfL") traffic case (based on the assumption that the levels of population and employment are the same in both do-minimum and do-something) and the development case that assumed the scheme would generate significant additional employment through regeneration. Whilst the core forecasts for the M4 traffic model share the assumption that the levels of population and employment remain consistent between the with and without Scheme cases (in line with the National Trip End Model ("NTEM")), consideration has also been given to the potential regeneration effects. In paragraph 6.2.11 of the Socio Economic Report (Application Document Reference 7-2, APP-090), the results of an analysis of changes in accessibility to defined Regeneration Areas ("RA") are summarised. From the analysis, it was concluded that the largest change in travel time occurs in the Slough area, where travel time within the 30-60 minute category for travel to or from RA, is reduced by 10% (i.e. 3 to 6 minutes). All other travel time changes are less than 5%. The overall conclusion of the analysis is that the Scheme does have a slight beneficial impact on travel times in relation to RA which are close to the Scheme. On this basis, improvements to accessibility of this magnitude are, in themselves, not likely to result in large-scale development that has not already been taken into account in the traffic forecasts.

1.6

- a) *Further it seems that from evidence being submitted by Reading Friends of the Earth to this deadline, based on material supplied by HE, that over the wider area average speeds would be lower and average journey time longer in 2037 than they were in 2009. Yet the very start of the J5-7 report cites as one of the things Smart motorways are designed to do is to lead to shorter journey times:*

"Background

Smart motorways are central to the modernisation of England's motorways and have been designed to reduce congestion, improve journey time reliability and lead to shorter journey times, while at the same time maintaining safety."

- b) *Thus it seems that a key purpose of the scheme is invalidated by its own data.*

Highways England Response

1.6.1 The assessment of the Scheme has demonstrated that it will achieve its objectives of reducing congestion, improving journey time reliability and reducing journey times for the in excess of 130,000 drivers who will use the Scheme each day, together with net benefits across the wider area. To suggest that the case for the Scheme is invalidated because it does not alone address the results of growth up to 2037 which will affect the other 42,000 links and over 5,000 junctions across the model's study area is, at best, misconceived.

2. AIR POLLUTION ASSESSMENT ISSUES

2.1 *As the Panel has set out, unreliability and uncertainty in traffic figures is crucial due to the direct link to air pollution impacts and consequently health impacts (early deaths and ill health).*

Highways England Response

2.1.1 Highways England responded to the questions raised by the Examining Authority on how it takes account of uncertainty within the traffic forecasting process through following published guidance within TAG guidance. Furthermore, through the application of guidance within Interim Advice Note ("IAN") 185/15 'Updated traffic, air quality and noise advice', the issues of some of the acknowledged shortcomings of the traffic model in respect of forecasting future speeds at the individual link level have been addressed and the assessment provided in support of the Environmental Statement ("ES") demonstrated to be robust. The IAN 185/15 assessment was submitted at Deadline VII.

2.1.2 The air quality effects of the Scheme have been assessed in line with best practice to minimise uncertainty and significant air quality effects are not predicted overall as set out in Table 6.22 of Chapter 6 of the ES (Application Document Reference 6-1, APP-146).

2.2

a) *Friends of the Earth referred (right at the end of the day) to a study done by Kings College London on the A206 in SE London (<http://www.sciencedirect.com/science/article/pii/S0048969714010900>):*

"Highlights

- *Local air quality deteriorated after completion of a road widening scheme in south London.*
- *The EU PM₁₀ limit value (LV) was breached during construction.*
- *NO₂ LV was breached after scheme due to increased cars, taxis and LGVs.*

- Increase of pro-oxidant components in the PM coarse mode after the road widening.
 - Mean PM_{10} emission factor for the construction phase was $0.0022 \text{ kg m}^{-2} \text{ month}^{-1}$.”
- b) *The paper includes the following which shows impacts worse than expected: “The deterioration in air quality following the completion of the works is in stark contrast to the pre-scheme environmental impact assessment. No change in PM_{10} concentrations were predicted at the receptor close to the AQMS-N and NO_2 was predicted to decrease by $0.8 \mu\text{g m}^{-3}$. Close to AQMS-S a very slight increase was predicted in PM_{10} ($0.1 \mu\text{g m}^{-3}$) and NO_2 ($0.2 \mu\text{g m}^{-3}$) but overall the assessment concluded that changes would be “marginal” and the NO_2 Limit Value would continue to met by under typical meteorological conditions (Babtie-Bexley, 2001). It is likely that the observed increase in NO_2 was in part due to more primary emissions from NO_2 from road traffic in the UK from approximately 1998 onwards (Carslaw, 2005 and Carslaw et al., 2011). However, the measured increase in air pollution from the road, and the increased residential concentrations, were not predicted in the environmental impact assessment.”*

Highways England Response

- 2.2.1 This paper and its conclusions are noted, but Highways England considers them to be irrelevant to the Scheme. The air quality assessment for the A206 scheme analysed in this paper was carried out in 2001. The underlying data and methodologies for the assessment of road traffic impacts have changed substantially since 2001.
- 2.2.2 Without access to the original assessment for the A206 scheme, it is impossible to identify exactly which aspects of the assessment methodologies and datasets are the same as those used in the M4 assessment and which are different. However, given the time that has passed since that assessment, the following are aspects which are all likely to have changed since 2001:
- Background concentrations (currently based on 2011 measurement data);
 - Emission rates (most recently updated in 2014);
 - Highways England methodologies:
 - Air Quality section of the Design Manual for Roads and Bridges methodology published in 2007;
 - IAN 170/12, long-term trends approach originally published in 2012 with revised LTT_{E6} issued in 2014; and

- Verification may not have been undertaken at all, and if it was it would likely have followed a different methodology.

2.2.3 All these aspects of the assessment process and datasets that have been updated contribute to assessment processes that lead to more reliable results compared to earlier methodologies.

2.3

a) *Friends of the Earth made reference to an issue which if not already taken into account would fundamentally change the air quality assessment, and should mean figures should be re-done – and that is the issue of Defra’s revised baseline compliance date for meeting EU legal limits for NO₂.*

b) *The date the London Air Quality Zone is due to comply has changed from sometime after 2030, to by 2030, and the SE Zone from by 2025 to by 2020:*

- *previous baseline for NO₂ compliance* http://uk-air.defra.gov.uk/assets/documents/no2ten/140708_NO2_projection_tables_FINAL.pdf (July 2014)

- *Defra’s Air Quality Plan:*

Draft (September 2015): https://consult.defra.gov.uk/airquality/draft-aq-plans/supporting_documents/Draft%20plans%20to%20improve%20air%20quality%20in%20the%20UK%20%20Overview%20document%20September%202015%20final%20version%20folder.pdf

(from <https://consult.defra.gov.uk/airquality/draft-aq-plans>) Page 9, TABLE 2, and NB Note 9 - Final (December 2015)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486636/aq-plan-2015-overview-document.pdf

(from <https://www.gov.uk/government/publications/air-quality-in-the-uk-plan-to-reduce-nitrogen-dioxide-emissions>) Page 11 Table 3, and NB the Note

c) *The importance of this is that while the London and the SE Zones are due to comply sooner than previously expected (and sooner still with Defra’s plans) this changes everything as far as assessing the scheme – and it could be that somewhere affected by the scheme could now be below limits without the scheme, but be taken over them by the scheme (which would not be acceptable).*

Highways England Response

2.3.1 The continuing dialogue with the EU concerning air quality infractions is a matter for the Department for Environment, Food and Rural Affairs (“Defra”). The final air quality action plan “Air Quality Plan for the achievement of EU air quality limit value for nitrogen dioxide (NO₂) in Greater London Urban Area (UK0001)”, and equivalent for the South East and Reading and Wokingham Urban Areas zones, published in December 2015 sets out Defra’s plans for achieving compliance within these zones. The implementation of the Scheme has been evaluated and a low compliance risk has been identified and this remains the case with the updated plans, which show that the Greater London Urban area will remain non-compliant for 3 years following the opening year of the Scheme.

2.4

- a) *It should be noted that Clean Air in London have stated that any 0.1 microgram/cubic meter change in concentration is significant.*
- b) *The reliance on guidance which screens out of increases below certain levels is something which does not seem to be compatible with EU law, in which requirements are absolute.*

Highways England Response

2.4.1 Clean Air in London is a single-issue campaigning group, and not an authoritative source. The position it has adopted is not the position of any guidance document for highways assessments, or otherwise.

2.4.2 The Design Manual for Roads and Bridges (“DMRB”) and associated IANs identify a change of more than 0.4 µg/m³ of nitrogen dioxide or particulate matter (PM₁₀), 1% of the respective objective values, as a change to be considered in the overall evaluation of significance.

2.4.3 This is also the change identified by the Environment Agency and Natural England, who screen out changes of less than 1% in annual mean concentrations as insignificant. Indeed, the current Environment Agency H1 Annex F Air Emissions document provides further rationale on the selection of a 1% threshold for screening out changes in air quality, including the judgment that:

- it is unlikely that an emission at this level will make a significant contribution to air quality since process contributions will be small in comparison to background levels, even if a standard is exceeded; and

- the proposed 1% threshold is two orders of magnitude below the standard and provides a substantial safety margin to protect health and the environment.

2.4.4 On the basis of the above, a change of 1% or 0.4 µg/m³ should continue to reflect a change in annual mean concentrations which is imperceptible and not significant.

2.4.5 Highways England is required to follow published guidance, as set out in DMRB and associated IANs. If Friends of the Earth has a concern as to the guidance, it may challenge that guidance. However, no such challenge was made following the publication of that guidance, which has been adopted and correctly used to assess this, and other highways schemes. Consequently, it is not now open to Friends of the Earth to challenge that approach.

3. **APPLICATION OF EU LAW**

3.1 *Friends of the Earth referred to how EU law applies everywhere in a zone, and that there can be no averaging or balancing of areas which might be improved against those which are worsened. The document referred to was supplied to HE during the oral hearing, and provided here for the Panel: Clarification to Clean Air in London (http://cleanair.london/legal/clean-air-in-london-obtains-gc-opinion-on-air-quality-law-including-at-heathrow/attachment/cal-304-letter-of-clarification-from-the-commission-190214_redacted-5/)*

Highways England Response

3.1.1 Highways England acknowledges the comment made by Friends of the Earth, but considers that its position on the application of EU law has been addressed in previous responses by Highways England to the Examination.

3.1.2 In particular, a letter from an European Commission Head of Unit from 2014 is not judicial authority as to the interpretation of EU law, and can be afforded very little weight by the Examining Authority.

3.2

a) *The NN NPS test for compliance was referred to by Friends of the Earth. We stated that we were not arguing that the NPS was not current, nor that it was unlawful – but rather that the Panel can and should weigh that with other material considerations including overarching imperatives such as the EU Ambient Air Quality Directive, and recent developments such as the requirement for Defra’s new plans to meet legal limits in the shortest time possible.*

b) *HE relies on the compliance test for the scheme from the National Networks NPS, which we consider is not adequate, given the overarching requirement to comply with the EU Ambient*

Air Quality Directive. The test relies on whether the scheme would delay compliance of the Zone with NO2 legal limits and would allow the scheme to worsen air pollution if elsewhere in the Zone would have even worse pollution.

- c) *Friends of the Earth considers that there should be no worsening of air pollution allowed – the Ambient Air Quality Directive has a non-deterioration principle for areas within limits, and as well as a breach not being allowed, nor should worsening of air already breaching.*
- d) *The NPS approach was addressed by the legal opinion of McCracken QC for Clean Air in London, as previously referred to (from paragraph 58 of the opinion), and found to not be sound. The example was the Airports Commission which relied on the same test.*
- e) *Since then there have been 2 further developments:*

- f) a) *The Environmental Audit Committee (EAC) report of 1st December 2015 on aviation*

(<http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2015/airports-commission-report-15-16/>)

Committee Chair Huw Irranca-Davies MP said “Increased pollution should certainly not be permitted on the grounds that other areas of London are even more polluted.”

- g) b) *London Plan parking standards relaxation*

There have been recent Minor Alterations to the London Plan (MALP) (<https://www.london.gov.uk/what-we-do/planning/london-plan/minor-alterations-london-plan/minor-alterations-london-plan-2015>) and the Inspector’s report (<https://www.london.gov.uk/file/576100/download?token=lecCfrDS>) has a section on Air Quality from paragraph 48.

- h) *The MALP Inspector’s report makes clear (paragraph 48) that both the McCracken opinion, and another QC opinion prepared by TfL (<http://cleanair.london/legal/clean-air-in-london-obtains-qc-opinion-on-air-quality-law-including-at-heathrow/attachment/cal-322-stephen-tromans-qc-legal-opinion-on-lp-parking-280915/> from <http://cleanair.london/legal/clean-air-in-london-obtains-qc-opinion-on-air-quality-law-including-at-heathrow/>) have been taken into account.*
- i) *However the Inspector is clear that those proposals should not be allowed to worsen air pollution: “Therefore, provided it can be clearly demonstrated, through appropriate modelling and monitoring mechanisms, that mitigation measures outweigh the predicted 0.5% decrease in air quality that may arise from the implementation of the MALP (Parking Standards), I*

consider that the way forward being espoused by the Mayor is reasonable.” (from paragraph 52)

- j) *The London Assembly passed a motion on 10th February (<https://www.london.gov.uk/press-releases/assembly/assembly-raises-concerns-with-minor-alterations>) on this issue and the importance of the need to ensure mitigation. This followed Clean Air in London’s letter (CAL letter 31 January 2016 <https://t.co/XrQtDGgRdb>) which also made clear that mitigation measures for the scheme had to be new.*
- k) *Friends of the Earth referred at the M4 oral hearing to the fact that mitigation measures would have to be additional to relevant. We stated that mitigation would have to be required for what is already known in terms of worsening of air as a result of the scheme, plus other options to cover impacts worse than anticipated.*
- l) *Thus our view is that at the very least the scheme must not worsen air pollution, and indeed the NPPF at paragraph 124 is clear that “Planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants...”*

Highways England Response

3.2.1 Highways England acknowledges the comment made by Friends of the Earth, but considers that its position on the applicability of the National Policy Statement for National Networks (“NN NPS”) to the Application under the Planning Act 2008, and the Scheme’s compliance with the NN NPS have been addressed in previous responses by Highways England to the Examination (see, for example Deadline VI (REP6-18)). Further, Highways England has previously commented on the barrister’s opinion including the lack of disclosure of the instructions to which it is a response.

3.2.2 In addition, Defra has indicated that it considers that the publication of the revised national air quality action plan satisfies the Supreme Court judgement in the case of *R (ClientEarth) v SSEFRA* [2015] UKSC 28, as set out in “*Consultation on draft plans to improve air quality. Tackling nitrogen dioxide in our towns and cities*” published in September 2015:

“Submission of the air quality plans to the Commission will also satisfy the requirements of the ruling by the Supreme Court.” [paragraph 14].

3.3 *An additional reference is provided below - on how worsening of air pollution has been deemed unacceptable in the past by an Inspector – in the report on the Thames Gateway Bridge in East London:*

“9.416Turning to environmental impacts, the noise and air quality assessments are based on a traffic model of limited reliability. Subject to that, the noise effects of the scheme seem to me to be limited. I also have no difficulty regarding the impact of the scheme on flora and fauna or the issue of design. But

I have concerns about air quality. It is accepted by the promoters that air quality would be worse in 2016 with the bridge than without the bridge. In an area in which air quality has historically been low, and where it is identified as a current problem, I do not regard that as acceptable.”

<http://stopcityairportmasterplan.tumblr.com/post/42442210102/thames-gateway-bridge-inspectors-report-by>

Highways England Response

3.3.1 Highways England considers that an Inspector's report from 2006, under the Town and Country Planning Act 1990, can have very little relevance to a scheme subject to the Planning Act 2008 in 2016. This is particularly so when policies from that era have been superseded by the NN NPS. Each scheme must be judged on its own merits and the particular circumstances that exist in relation to it.

3.3.2 If more relevant comparators are required, Highways England considers that other Highways England schemes that have recently been granted consent through the Development Consent Order (“DCO”) process for Nationally Significant Infrastructure Projects, such as the A556 Knutsford to Bowdon Scheme and the A160-A180 Port of Immingham Improvement Scheme would be more suitable.

3.4 *The London Plan also has its Air Quality Neutral policy within Policy 7.14, and it is not clear why HE consider this does not apply to highway schemes, and whether the Panel has satisfied itself on this matter.*

Highways England Response

3.4.1 Highways England made its position clear at the February Issue Specific Hearing for Air Quality (and in the written summary provided at Deadline VII). The Greater London Authority (“GLA”) guidance on developments being Air Quality Neutral is not applicable to highways schemes. Air Quality Neutral Planning Support Update: GLA 80371 published in April 2014 by Air Quality Consultants notes at paragraph 2.9 that:

“Major transport infrastructure development, such as that proposed by TfL, is assessed using the Transport Advisory Guidance (TAG) methodology, which estimates changes to NO_x and PM emissions, and then applies an economic valuation. It is therefore suggested that it would be inappropriate to apply the air quality neutral policy to these types of development.”

4. SUPREME COURT RULING

4.1 *As we have stated before, we consider that the ruling which requires legal limits for NO₂ to be met in the shortest time possible, means that all possible measures must be taken to bring down pollution, and that deliberately adding to the problem should not be allowed.*

In these special circumstances (due to failure to address the problem adequately up till now) full mitigation or Air Quality Neutral is not even adequate, so that all possible measures proposed as mitigation must be pursued, but not the scheme which would add emissions.

Highways England Response

4.1.1 As set out above, Defra has indicated that it considers that the publication of the revised national air quality action plan satisfies the Supreme Court judgement in the case of *R (ClientEarth) v SEFRA* [2015] UKSC 28, as set out in "*Consultation on draft plans to improve air quality. Tackling nitrogen dioxide in our towns and cities*" published in September 2015:

"Submission of the air quality plans to the Commission will also satisfy the requirements of the ruling by the Supreme Court." [paragraph 14]

4.1.2 The national air quality action plan is the appropriate mechanism to address the air quality effects that Friends of the Earth have identified. The requirement for the Scheme is that it complies with the policy set out in the NN NPS, which, as Highways England has explained to the Examination, it does.

5. CONCLUSION

5.1

a) *Sustainable development is the key principle underpinning planning and is defined in the NPPF (between paragraphs 5 and 6)*

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69412/pb10589-securing-the-future-050307.pdf from <https://www.gov.uk/government/publications/securing-the-future-delivering-uk-sustainable-development-strategy>)

b) *Chapter 1 (sections 3 and 4) set out the guiding principles and how solutions should be 'win, win, win'*

"We want to achieve our goals of living within environmental limits and a just society, and we will do it by means of a sustainable economy, good governance, and sound science."

Highways England Response

5.1.1 Highways England acknowledges the comment made by Friends of the Earth, but considers that its position on sustainability and the National Planning Policy Statement (“NPPF”) have been addressed in previous responses by Highways England to the Examination.

5.1.2 Highways England does not consider the Scheme to be unsustainable. The benefits of the improvement of national networks, by projects such as the Scheme, are set out by the Government in Chapter 2 of the NN NPS. The Scheme helps to meet the need set out at sections 2.1 - 2.11 of the NN NPS.

5.2 *Friends of the Earth considers that HE should instead pursue a Managed Motorway with Dynamic Hard Shoulder Running for the M4 which should have considerably better outcomes, and that the current scheme should not go ahead.*

Highways England Response

5.2.1 Highways England has addressed this point, which has been made repeatedly by Friends of the Earth, previously, particular in its responses to representations made by Friends of the Earth throughout the Examination.

5.2.2 Most recently, Highways England stated at the Traffic Safety Issue Specific Hearing held in November 2015 that the NN NPS (Section 2.23) states that the Government’s wider policy is to bring forward improvements and enhancements to the existing Strategic Road Network. Under the NN NPS, enhancements to the existing national road network will include implementing “*smart motorways to increase capacity and improve performance*”. The NN NPS also explicitly acknowledges the implementation of all lane running (“ALR”) schemes in footnote 29, which notes that the hard shoulder is transformed into a permanent additional running lane.

5.2.3 On that basis, there is no policy support for a smart motorway (formally known as a ‘managed motorway’) with dynamic hard shoulder running, and a scheme promoting such a development would not comply with policy as set out in the NN NPS, and so offend section 104(3) of the Planning Act 2008.