



The Planning Inspectorate

National Infrastructure
Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer 0303 444 5000 Services:
e-mail: A19DownhillLaneJunction@planninginspectorate.gov.uk

All Interested Parties, Statutory Parties
and Other Persons

Your Ref:

Our Ref: TR010024

Date: Friday 12 July 2019

Dear Sir/ Madam

Planning Act 2008 – Section 88 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 6 etc

Application by Highways England for an Order Granting Development Consent for the A19 Downhill Lane Junction Improvement

Appointment of the Examining Authority

I write to you following my appointment by the Secretary of State as the Examining Authority (ExA) to carry out an examination of the above application by Highways England ('the Applicant'). A copy of the appointment notice can be viewed at: <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-downhilllane-junction-improvement/?ipcsection=docs>

I would like to thank those of you who submitted Relevant Representations. These representations have assisted me when preparing my proposals regarding how to examine this application.

Invitation to the Preliminary Meeting

This letter is an invitation to the Preliminary Meeting to discuss the Examination procedure. It contains a number of important supporting annexes.

Date of meeting: Tuesday 13 August 2019

Seating available from: 9.30am

Meeting begins: 10.00am

Venue: **Clarion Hotel Boldon
Boldon Business Park
Boldon Colliery
Tyne and Wear
NE35 9PE**

Access and parking: **Free parking available at the venue**

Note: Given the volume and frequency of letters the Planning Inspectorate needs to send to Interested Parties during an Examination, we aim to communicate with people by email wherever possible as electronic communication is more environmentally friendly and cost effective for the Inspectorate as a government agency. If you have received a postcard but are able to receive communications by email, please confirm this with the Case Team using the contact details at the top of this letter, as soon as possible.

Purpose of the Preliminary Meeting

The purpose of the Preliminary Meeting is to enable views to be put to me about the way in which the application is to be examined. At this stage I am looking at the procedure and not the merits of the application. The merits of the application will only be considered once the Examination starts; which is after the Preliminary Meeting has closed.

I wish to run a fair, efficient and effective meeting so that all relevant views can be heard. As such, I strongly encourage groups of individuals who have similar views on the procedure to choose one representative to speak for the group.

The agenda for the meeting is at **Annex A**. This has been set following my Initial Assessment of Principal Issues arising from my reading of the application documents and the Relevant Representations received. That assessment is set out in **Annex B**. As a result of this assessment I wish to hear at the meeting from the Applicant, Interested Parties, Statutory Parties and local authorities where they consider changes may be needed to the draft Examination Timetable set out in **Annex C**.

Up-to-date information about the project and the Examination can be obtained from: <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-downhilllane-junction-improvement/?ipcsection=overview>

This is the address for the project webpage on the National Infrastructure Planning website, from which the Planning Inspectorate will make copies of all Examination Documents available to the public. As the Examination process makes substantial use of electronic documents, it will be useful for you to become familiar with this resource.

Further information on the Examination process is given in Advice Note 8.4, which is available on the National Infrastructure Planning website.

Attendance at the Preliminary Meeting

If you wish to attend the Preliminary Meeting please contact the Case Team using the details set out at the top of this letter. Please confirm this **no later than Tuesday 6 August 2019**.

It will help the management of the meeting and benefit everyone if as part of the above confirmation you also:

- tell us whether you wish to speak at the meeting and on which agenda items, listing points you wish to make; and
- notify us of any special requirements you may have (eg disabled access, hearing loop etc).

The Preliminary Meeting provides a useful introduction to the Examination process. I will use it to make Procedural Decisions that will affect everyone participating in the Examination. The meeting provides you with an opportunity to have your say about procedural issues before these decisions are finalised. If you intend to play an active part in the Examination or you have questions about procedure it is useful to attend the meeting.

However, please note that **you are not required to attend the Preliminary Meeting in order to participate in the Examination**. If you are an Interested Party you will still be able to make a Written Representation and comments on the Written Representations made by other Interested Parties. You will also be able to participate in any hearings that are arranged. Should you no longer wish to be an Interested Party and do not wish to be involved in the Examination process, you can notify the Case Team of this in writing.

After the Preliminary Meeting

After the Preliminary Meeting you will be sent a letter setting out the finalised Examination Timetable. An audio recording and a note of the meeting will also be published on the project webpage on the National Infrastructure Planning website.

Interested Parties have the right to request an Open Floor Hearing (OFH) and those persons affected by any request for Compulsory Acquisition or Temporary Possession of their land or rights may request a Compulsory Acquisition Hearing. Any other Issue Specific Hearings (ISHs) are held at the discretion of the Examining Authority and will be arranged if I feel that consideration of oral representations would ensure an issue is adequately examined. My initial suggestions for ISHs are set out in the draft timetable at **Annex C** with particular topics indicated, although you will see further below that I have made a Procedural Decision to proceed with my first ISH into the draft Development Consent Order (DCO) on Tuesday 13 August 2019. I have also decided to hold an OFH on the same day.

My Examination will comprise consideration of Written Representations about the proposal and oral representations made at any hearings. It will also address the application documents, policy and legal positions, site inspections and any other matters I consider to be relevant and important.

All relevant and important matters will be taken into account when I make a recommendation to the Secretary of State for Transport, who will take the final decision in this case.

Notification of Hearings

I have made a Procedural Decision to hold an Issue Specific Hearing (ISH) into the DCO on Tuesday 13 August 2019 at 2.00pm shortly after the close of the Preliminary Meeting. Important information about this ISH is contained within **Annex D** with an Agenda provided at **Annex E** and a Schedule of the ExA's Issues and Questions relating to the ISH included in **Table 1 to Annex E**.

I have also made a Procedural Decision to hold an Open Floor Hearing (OFH1) at 6.30pm on Tuesday 13 August 2019. **Annex D** provides notice of this decision and an Agenda is provided at **Annex F**.

If you wish to make oral representations at either of these hearings, please contact the Case Team using the contact details at the top of this letter. We will need to receive notice of your attendance **no later than Tuesday 6 August 2019**.

Other Procedural Decisions made by the Examining Authority

In addition to the hearings notified above, I have made some further Procedural Decisions which are set out in full at **Annex G**. These include:

- the setting of deadlines for the submission of:
 - comments on Relevant Representations;
 - Written Representations;
 - summaries of any representations exceeding 1500 words;
 - submissions of Statements of Common Ground;
 - comments on any updated application documents submitted by the Applicant;
- the notification by Interested Parties of their wish to be heard at an Open Floor Hearing;
- the notification by Interested Parties of their wish to attend an Accompanied Site Inspection and their nomination of locations including justifications for the consideration of the ExA for their nominations;
- the notification by Statutory Parties, or certain Local Authorities of their wish to be considered as an Interested Party by the ExA;
- the provision of additional information by the Applicant and comments upon this; and
- the submission and acceptance of post-application documents.

These Procedural Decisions are set out in full at **Annex G** and should be read carefully, alongside the draft Examination Timetable in **Annex C**. Some of my Procedural Decisions provide you with the opportunity to take action before the date for the Preliminary Meeting and/or set dates that require you to take action shortly after that date. If you have questions or wish to discuss any aspect of these decisions,

please attend the Preliminary Meeting. I will give careful consideration to all matters raised there before confirming the Examination Timetable and Procedural Decisions for this Examination.

Your status in the Examination

This letter has been sent to you because you (or the body you represent) fall within one of the categories in s88(3) of the Planning Act 2008 (PA2008).

If you have made a Relevant Representation, have a legal interest in the land affected by the application, or are a relevant Local Authority where the development is proposed within your boundary (reference numbers beginning with 'A19D-000', 'A19D-AFP', 'A19D-S57' or '2002'), you have a formal status as an Interested Party in the Examination.

Interested Parties will receive notifications from the Planning Inspectorate about the Examination throughout the process and may make written and oral submissions regarding the application. If you are a Statutory Party (ie body specified in the relevant regulations supporting the PA2008) or a Local Authority bordering the Local Authorities in which the development is proposed; but have not made a Relevant Representation (reference number beginning with 'A19D-SP') you will not automatically be an Interested Party. However, following the Preliminary Meeting, you will have a further opportunity to notify the ExA that you wish to be treated as an Interested Party.

If you are not sure whether you are an Interested Party, please contact the Case Manager using the details at the top of this letter. Information regarding the formal status of Interested Parties and how you can get involved in the process is set out in the Planning Inspectorate Advice Note 8 Series on the National Infrastructure Planning website: <https://infrastructure.planninginspectorate.gov.uk/legislation-andadvice/advice-notes/>

Award of costs

I also draw your attention to the possibility of the award of costs against Interested Parties who behave unreasonably. You should be aware of the relevant costs guidance 'Awards of costs; examinations of applications for development consent orders' which applies to Nationally Significant Infrastructure Projects. This guidance is available at: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/guidance/>

Management of information

The Planning Inspectorate has a commitment to transparency. Therefore, all information submitted for this project (if accepted by the ExA) and a record of any advice which has been provided by the Planning Inspectorate, is published and available within the Examination Library at: <https://infrastructure.planninginspectorate.gov.uk/projects/northeast/a19-downhill-lane-junction-improvement/?ipcsection=overview>

All Examination Documents can also be viewed electronically at the locations listed in **Annex H**. Physical copies of some documents are available at some locations and these are identified in the annex.

Please note that in the interest of facilitating an effective and fair Examination, I consider it necessary to publish some personal information. To find out how we handle your personal information, please view our [Privacy Notice](#).

I look forward to working with all parties in the examination of this application.

Yours faithfully

Kevin Gleeson

Examining Authority

Annexes

- A** Agenda for the Preliminary Meeting
 - B** Initial Assessment of Principal Issues
 - C** Draft Examination Timetable
 - D** Notification of Hearings
 - E** Agenda for Issue Specific Hearing into the draft Development Consent Order
 - F** Agenda for Open Floor Hearing
 - G** Other Procedural Decisions made by the Examining Authority
 - H** Availability of Examination Documents
- Table 1 to Annex E:** Schedule of ExA Issues and Questions Relating to the dDCO

This communication does not constitute legal advice.

Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.

Agenda for the Preliminary Meeting

Date: **Tuesday 13 August 2019**

Seating available from: **09.30am**

Meeting start time: **10:00am**

Venue: **Clarion Hotel Boldon
Boldon Business Park
Boldon Colliery
Tyne and Wear
NE35 9PE**

9.30am	Seating available
Item 1 (10.00am)	Welcome and introductions
Item 2	The Examining Authority's (ExA's) remarks about the examination process
Item 3	Initial Assessment of Principal Issues – see Annex B
Item 4	<p>Deadlines for submission of:</p> <ul style="list-style-type: none"> • Comments on Relevant Representations; • Written Representations; • Comments on post-application submissions from the Applicant and local authorities; • Local Impact Reports; • Responses to the ExA's Written Questions; • Statements of Common Ground; • Notifications relating to hearings; • Nominations of suggested locations with justifications for site inspections; and • Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting or by Tuesday 6 August 2019.

<p>Item 5</p>	<p>Hearings and Accompanied Site Inspection (ASI):</p> <ul style="list-style-type: none"> • Procedure, matters and issues for Issue Specific Hearing (ISH) into the draft Development Consent Order on Tuesday 13 August 2019, see Annexes D and E and Table 1; • Procedure, matters and issues for Open Floor Hearing on Tuesday 13 August 2019, see Annex F; • Date and arrangements for an ASI to application site and surrounding area; • Dates reserved and arrangements for other OFH; • Dates reserved and arrangements for other ISHs; • Dates reserved and arrangements for Compulsory Acquisition Hearing(s); and • Procedural requests relating to these items that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting or by Tuesday 6 August 2019.
<p>Item 6</p>	<p>Any remaining submissions regarding procedural matters not set out in the agenda that have been submitted to the Planning Inspectorate in advance of the Preliminary Meeting or by Tuesday 6 August 2019</p>
<p>Item 7</p>	<p>Any other matters</p>
<p>Close of the Preliminary Meeting</p>	

Please note: Please be available from the start and throughout the meeting. The agenda is subject to change at the discretion of the ExA. The ExA will conclude the meeting as soon as all relevant contributions have been made. If there are any additional matters to be dealt with or submissions take a considerable amount of time the ExA may change the order of the agenda items and may introduce breaks in the proceedings.

Initial Assessment of Principal Issues

This is the Initial Assessment of the Principal Issues prepared under s88(1) of the Planning Act 2008 (PA2008). This initial assessment has had regard to consideration by the Examining Authority (ExA) of the application documents and of Relevant Representations received in respect of the application.

It is not a comprehensive or exclusive list of all relevant matters. The ExA will have regard to all important and relevant matters during the Examination and in writing a Recommendation Report to the Secretary of State for Transport after the Examination has concluded.

The order of the issues listed is alphabetic and does not imply any order of prioritisation or importance.

The policy and consenting requirements and documents associated with the PA2008 are an integral part of the Examination and are therefore not set out as separate Principal Issues.

It should be noted that a number of the Principal Issues set out below have an interrelationship and overlap and these will be reflected in the Examination.

It should also be noted that:

- whilst the effects of the proposal on the achievement of sustainable development including the mitigation of, and adaption to, climate change are not listed as specific Principal Issues; and
- whilst the effects of the proposal in relation to human rights and equalities duties are not listed as specific Principal Issues;

the ExA will conduct all aspects of the Examination with these objectives in mind.

Air Quality and Emissions - to include

- Adequacy of baseline assessment.
- Construction effects including dust.
- Operational effects of the development on human and ecological receptors.

Biodiversity, Ecology and Natural Environment - to include

- Adequacy of baseline assessment.
- The effects on habitats and species including impacts on the ecological value, quality and capacity of land and water.
- Implications for European/international sites and their qualifying features.
- Implications for statutorily and locally protected sites.
- Effects on specific fauna and flora species and their habitats (including European protected species).
- Timing of works and potential seasonal effects.
- Adequacy of proposed mitigation and monitoring.

Compulsory Acquisition and /or Temporary Possession - to include

- The need for the land proposed to be subject to compulsory acquisition and / or temporary possession and whether a compelling case in the public interest has been established.
- Effects on infrastructure and infrastructure providers.
- Alternatives in relation to individual plots.
- Effects on Statutory Undertaker land and apparatus.
- Adequacy and security of funding for compensation.
- Whether the proposals meet the requirements of the 2008 Act in all other respects.

Draft Development Consent Order (dDCO) - to include

- The structure of the dDCO.
- The appropriateness of proposed provisions.
- Relationships with other consents.
- Protective provisions.
- Amendment and modification of the A19 Testo's DCO.
- Whether the dDCO is satisfactory in all other respects.

Economic and Social Effects - to include

- Alternatives to the submitted scheme.
- Economic and employment effects on the local and wider economy, during construction and operation.
- Effects on local communities including on agriculture, business and nearby residents, during construction and operation.

Historic Environment - to include

- Adequacy of baseline assessment
- Effects on designated and non-designated heritage assets and their settings.

Landscape and Visual Effects - to include

- Design of the Proposed Development.
- Artificial lighting.
- The effects on landscape character.
- Long-term and short-term visual effects.
- Cumulative effects.
- The impact of temporary construction compounds.

Noise and Vibration - to include

- Adequacy of baseline assessment.
- Construction effects.
- Operational effects.
- Management and monitoring of operational noise effects

Other Strategic Projects and Proposals - to include

- The relationship of the proposal to other known major projects nearby (including, but not limited to, the A19 Testo's project, A1 Birtley to Coalhouse project and the International Advanced Manufacturing Park (IAMP) proposals).
- Cumulative and in-combination effects on and with other major projects and proposals.
- The effect of the use of the A19 Testo's construction site.

Transportation and Traffic - to include

- Scheme context – strategic vision, objectives and alternative design solutions.
- The case for and benefits of the scheme.
- Construction effects on the surrounding road network.
- Co-ordination with other major construction projects.
- Construction effects on the use of the Public Right of Way (PRoW) network.
- Operational effects on traffic movements and the safety of users.
- The effect on non-motorised users both during construction and when operational.

Water Environment - to include

- Construction effects on groundwater, water courses and water bodies.
- Water abstraction and drainage.
- Operational effects.
- Compliance with the requirements of the Water Framework Directive
- The impact of the proposed development on flood risk.

Draft Examination Timetable

The Examining Authority (ExA) is under a duty to complete the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.

The examination of the application primarily takes the form of the consideration of written submissions. The ExA will also consider any oral representations made at hearings.

Item	Matters	Due Dates
1	Preliminary Meeting	Tuesday 13 August 2019 (10.00am)
2	Issue Specific Hearing 1 (ISH1) ISH1 on the draft Development Consent Order (dDCO)	Tuesday 13 August 2019 (2.00pm)
3	Open floor Hearing (OFH1)	Tuesday 13 August 2019 (6.30pm)
4	Issue by the ExA of: <ul style="list-style-type: none"> • Examination Timetable • The ExA's Written Questions (ExQ1) 	As soon as practicable following the Preliminary Meeting
5	Deadline 1 For receipt by ExA of: <ul style="list-style-type: none"> • Comments on any updates to application documents submitted by the Applicant before or at the PM • comments on Relevant Representations (RRs) • summaries of all RR's exceeding 1500 words • Written Representations (WRs) by all Interested Parties (IPs) 	Tuesday 27 August 2019 (12 noon)

	<ul style="list-style-type: none"> • summaries of all WRs exceeding 1500 words • Statements of Common Ground (SoCG) requested by ExA – see Annex G • notification by Statutory Parties of their wish to be considered as an IP by the ExA • notification of wish to speak at any subsequent Issue Specific Hearings (ISH) • notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • notification of wish to speak at any subsequent Open Floor Hearing (OFH) • notification of wish to attend an Accompanied Site Inspection (ASI) • provision of suggested locations and justifications for site inspections for consideration by the ExA • post-hearing submissions including written submissions of oral cases and • notification of wish to have future correspondence received electronically 	
<p>6</p>	<p>Deadline 2 For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on WRs • any revised/updated SoCGs • Local Impact Reports (LIR) from any Local Authorities • responses to ExA’s Written Questions (ExQ1) • comments on any updates to Application Documents submitted by the Applicant • the Applicant’s revised dDCO • post-hearing submissions including written submissions of oral cases • response to any further information requested by the ExA for this deadline • comments on any additional information/submissions received by Deadline 1 	<p>Tuesday 10 September 2019</p> <p>(12 noon)</p>

7	Accompanied Site Inspection (ASI) Date reserved to hold an ASI (if required)	Tuesday 15 October 2019
8	Open floor Hearing (OFH2) (if required)	Tuesday 15 October 2019 (evening)
9	Issue Specific Hearing 2 (ISH2) ISH2 on the Interrelationship of major proposals in the Area, Environmental & Landscape/Visual Issues	Wednesday 16 October 2019
10	Compulsory Acquisition Hearing (CAH1)	Thursday 17 October 2019 (morning)
11	Issue Specific Hearing 3 (ISH3) ISH3 on the draft Development Consent Order (dDCO)	Thursday 17 October 2019 (afternoon)
12	Deadline 3 For receipt by ExA of: <ul style="list-style-type: none"> • any revised/updated SoCGs • comments on LIRs • Comments on responses to ExA's Written Questions (ExQ1) • post-hearing submissions including written submissions of oral cases • the Applicant's revised dDCO • responses to any further information requested by the ExA for this deadline 	Tuesday 29 October 2019 (12 noon)

	<ul style="list-style-type: none"> • comments on any additional information/submissions received by Deadline 2 	
13	<p>Deadline 4</p> <p>For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on the Applicant's revised dDCO • comments on any revised/updated SoCGs (if any) • comments on any additional information/submissions received by Deadline 3 • responses to any further information requested by the ExA for this deadline 	<p>Tuesday 5 November 2019</p> <p>(12 noon)</p>
14	<p>Publication by ExA of:</p> <ul style="list-style-type: none"> • Further Written Questions (ExQ2) (if required) • the ExA's preferred dDCO or dDCO commentary (if required) • Report on the Implications for European Sites (RIES) (if required) 	<p>Tuesday 19 November 2019</p>
15	<p>Deadline 5</p> <p>For receipt by ExA of:</p> <ul style="list-style-type: none"> • responses to ExQ2 (if issued) • comments on the ExA's preferred dDCO or dDCO commentary (if issued) • comments on any additional information/submissions received by Deadline 4 • responses to any further information requested by the ExA for this deadline 	<p>Thursday 28 November 2019</p> <p>(12 noon)</p>
16	Issue Specific Hearing 4 (ISH4)	Tuesday

	ISH4 on any outstanding issues (if required)	10 December 2019
17	Compulsory Acquisition Hearing (CAH2) CAH2 (if required)	Wednesday 11 December 2019 (morning)
18	Issue Specific Hearing 5 (ISH5) ISH5 on the draft Development Consent Order (dDCO) (if required)	Wednesday 11 December 2019 (afternoon)
19	Deadline 6 For receipt by ExA of: <ul style="list-style-type: none"> • comments on the ExA's RIES (if required) • post-hearing submissions including written submissions of oral cases • any revised/ updated SoCGs • comments on any additional information/submissions received by Deadline 5 • responses to any further information requested by the ExA for this deadline 	Tuesday 17 December 2019 (12 noon)
20	Deadline 7 For receipt by ExA of: <ul style="list-style-type: none"> • comments on any revised/updated SoCGs • comments on responses to ExQ2 (if required) • the Applicant's Final Preferred DCO in the SI template validation report • comments on any additional information/submissions received by Deadline 6 • responses to any further information requested by the ExA for this deadline 	Tuesday 7 January 2020 (12 noon)

21	<p>Deadline 8</p> <p>For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on the Applicant’s Final Preferred DCO • comments on any additional information/submissions received by Deadline 7 • responses to any further information requested by the ExA for this deadline 	<p>Tuesday 14 January 2020</p> <p>(12 noon)</p>
22	<p>The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.</p> <p>The ExA may close the examination before the end of the six month period if he is satisfied that all relevant matters have been addressed and discussed.</p>	<p>Thursday 13 February 2020</p>

Publication dates

All information received will be published on the project webpage on the National Infrastructure Planning website as soon as practicable after the deadlines for submissions. An Examination Library will be kept up to date throughout the Examination and can be accessed via the ‘Documents’ tab on the project webpage. Each document will be given a unique reference. These references will be used by the ExA during the Examination:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-downhill-lane-junction-improvement/?ipcsection=docs>

Report on the Implications for European Sites (RIES)

Where an applicant has provided a No Significant Effects Report or a Habitats Regulations Assessment (HRA) Report with the application, the ExA may decide to issue a RIES during the Examination. The RIES is a factual account of the information and evidence provided to the ExA on HRA matters during the Examination up to the date of the publication of the RIES, for the purposes of enabling the Secretary of State, as competent authority, to undertake its HRA. It is not the ExA’s opinion on HRA matters. Comments on the RIES will be invited by the ExA and any received will be taken into account as part of the ExA’s Recommendation to the relevant Secretary of State.

The Secretary of State may rely on the consultation on the RIES to meet its obligations under Regulation 63(3) of The Habitats Regulations 2017 and/or Regulation 28 of The Offshore Marine Regulations.

Notification of Hearings

The first Issue Specific Hearing (ISH1) and Open Floor Hearing (OFH1) will be held as follows:

Date	Hearing	Start time	Venue	Access and parking
Tuesday 13 August 2019	Issue Specific Hearing into the draft Development Consent Order (dDCO) (ISH1)	2.00pm	Clarion Hotel Boldon Boldon Business Park Boldon Colliery Tyne and Wear NE35 9PE	Free parking available at the venue
Tuesday 13 August 2019	Open Floor Hearing	6.30pm	Clarion Hotel Boldon Boldon Business Park Boldon Colliery Tyne and Wear NE35 9PE	Free parking available at the venue

Information about hearings is included in the Planning Inspectorate's 'Advice Note 8.5: The examination: hearings and site inspections', available on the National Infrastructure Planning website here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

If you wish to attend any of these hearings please contact the Case Team using the details at the top of this letter **no later than Tuesday 6 August 2019**, stating:

- whether you wish to speak at the hearing and the issues about which you wish to make oral representations; and
- notifying us of any special needs you may have (eg disabled access, hearing loop etc).

Seating will be available at the venue 30 minutes prior to the start of the hearing to enable a prompt start. The hearing will finish as soon as the Examining Authority (ExA) deems that all those present have had their say and all matters

have been covered. Depending on the numbers wishing to speak at the hearing, it may be necessary for the ExA to limit the time allocated to each speaker.

Hearing agendas

Please note that generally for Issue Specific Hearings and Compulsory Acquisition hearings the ExA will aim to publish a detailed draft agenda on the project website at least five working days in advance of the hearing date. However, the actual agenda on the day of each hearing may be subject to change at the discretion of the ExA.

The agenda for the Issue Specific Hearing (ISH1) into the draft Development Consent Order is attached as **Annex E** and the agenda for the Open Floor Hearing (OFH1) is at **Annex F**.

Agenda for the Issue Specific Hearing into the draft Development Consent Order (ISH1)

This document sets out the agenda for the Issue Specific Hearing into the draft Development Consent Order (dDCO) as notified by the Examining Authority (ExA) in **Annex D**.

Date: Tuesday 13 August 2019
Time: 2:00pm, room opens from 1:30pm
Venue: Clarion Hotel Boldon
Boldon Business Park
Boldon Colliery
Tyne and Wear
NE35 9PE

Access and Parking: Free parking available at the venue.

Background

This early hearing on the dDCO is being held to address matters, issues and questions identified by the ExA during the Initial Assessment of Principal Issues as listed in **Annex B**. The ExA will not examine matters arising from the content of individual Relevant Representations (RRs) at this hearing. These are matters that will be the subject of consideration as the examination progresses, in writing or orally as required, following the submission of Written Representations (WRs).

The ExA considers that it is expedient to examine some matters, issues and questions orally at the outset of the examination in order to ensure that technical and legal matters arising from the dDCO are identified and considered as early as possible. This hearing, and any subsequent hearings, will be held without prejudice to the ExA's consideration of the broader planning merits of the Application.

All IPs are invited to attend the hearing and each IP is entitled to make oral representations at the hearing.

The ExA requests that the following attendees participate in ISH1 into the dDCO:

- **Highways England (the Applicant)** - including representatives of the Applicant who are in a position to discuss the matters on the agenda;
- **South Tyneside Council (STC);**
- **Sunderland City Council (SCC);**
- **IAMP LLP (IAMP);**
- **Environment Agency (EA); and**
- **Any other Interested Parties (IPs)** - with an interest in the drafting of the DCO, the implementation or discharge of proposed articles, requirements or other provisions.

Participants may be legally represented if they wish, but the hearing will be conducted to ensure that legal representation is not required.

Guidance under the Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 provide that it is the ExA that will probe, test and assess the evidence through direct questioning of persons making oral representations at hearings. Questioning at the hearing will be led by the ExA.

The following agenda is indicative and may be amended by the ExA at the start of the hearing session. Furthermore, the ExA may wish to raise other matters arising from submissions, and pursue lines of inquiry in the course of the discussion which are not on the agenda.

Purpose of the Issue Specific Hearing

The ExA will examine the dDCO within the framework of the matters set out below to consider:

- How the draft responds to the project definition;
- The approach taken to principal, associated and further development;
- The Applicant's response to guidance in PINS Advice Notes, particularly AN13 and AN15¹;
- The justification for any changes from established practice;
- The need for changes to other legislative provisions;
- The need for protective provisions and their scope;
- The need for any commercial agreements, planning obligations or equivalent side provisions; and
- The need for Crown, statutory undertaker or any other consents.

In addition to the matters identified above, the ExA will review detailed issues and questions about individual dDCO provisions that have been identified and included in **Table 1: Schedule of ExA Issues and Questions relating to the dDCO** which is attached. Additional issues and questions arising from IPs that have not been identified in the schedule will not be discussed at this time. However, these will be considered as the examination progresses, in writing or orally as required.

This hearing will not examine the detailed content of provisions relating to the compulsory acquisition of land or rights or temporary possession of land. The draft examination timetable proposes separate Compulsory Acquisition Hearings on these topics and they may also be returned to in subsequent DCO ISHs.

All Examination documents are provided with a unique identification number for referencing purposes shown in square brackets []. The application version of the dDCO (Revision 0) has the reference [APP-011]. Following the acceptance of the application the Applicant submitted a number of revised documents which I have accepted including a further dDCO (Revision 1) which has the reference [AS-002].

¹ The Planning Inspectorate's Advice Notes can be found at:
<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Agenda

1. **Welcome, introductions and arrangements for the Issue Specific Hearing**

2. **Purpose of the Hearing**

3. **The function and structure of the dDCO [AS-002]**

The ExA will ask the Applicant about:

- a) the proposed articles;
- b) the proposed project description (Schedule 1) and its relationship with other major projects particularly the A19 Testo's Junction Alteration and the IAMP Project;
- c) the proposed requirements (Schedule 2);
- d) the need for and progress on protective provisions (Schedule 7);
- e) the means of recording documents to be certified (Schedule 9);
- f) the need for and progress on any planning obligations and/or side agreements;
- g) the need for and progress on any other consents; and
- i) progress on Statements of Common Ground relevant to the DCO.

4. **Discharge of requirements and conditions, appeals and disputes**

The ExA will ask IPs and particularly South Tyneside Council and Sunderland City Council whether they have any significant concerns in principle with the proposed approaches taken to the discharge of requirements, or for managing appeals or disputes under the dDCO.

5. **Specific issues and questions bearing on the dDCO, raised by the ExA**

A schedule of issues and questions is attached to this agenda (see **Table 1**). Questions will be put to the Applicant and views will be sought from IPs. Where they are relevant to the discussions under matters 3 and 4 above, the questions in Table 1 may be drawn out within those matters. Any remaining questions that have not been addressed there will be examined individually here.

6. **Review of issues and actions arising**

The ExA will address how any actions placed on the Applicant are to be met and consider the approaches to be taken to the examination of the dDCO and any changes to it, in the light of issues raised.

7. **Next steps**

8. **Any other business**

9. **Closure of the Hearing**

Agenda for Open Floor Hearing

This document sets out the agenda for the Open Floor Hearing as notified by the Examining Authority (ExA) in **Annex F**.

Date: Tuesday 13 August 2019
Time: 6:30pm, room opens from 6:00pm
Venue: Clarion Hotel Boldon
Boldon Business Park
Boldon Colliery
Tyne and Wear
NE35 9PE

Access and Parking: Free parking available at the venue.
Attendees: Interested Parties who wish to participate or observe.

Agenda

1. Welcome, introductions and arrangements for the Open Floor Hearing

Each Interested Party (IP) in attendance and wishing to speak will be invited to put oral submissions to the Examining Authority (ExA). The ExA may ask questions of IPs about matters arising from written and oral submissions.

2. Representations by Interested Parties

3. Closure of the Hearing

Notes on participation, conduct and management of the hearing

Each IP is entitled to make oral representations at the hearing subject to the ExA's power to control the hearing. Individuals who have not registered in advance may participate at the discretion of the ExA. You are advised not to repeat in your oral evidence material that has already been included in your Relevant Representation. This has been read by the ExA. You are also advised that any new evidence that you present in your oral representation should be included in post-hearing submissions (including written submissions of oral cases) by Tuesday 27 August 2019 (D1). This ensures that it has been recorded accurately.

Other Procedural Decisions made by the Examining Authority (ExA)

The ExA has made the following Procedural Decisions under Section 89(3) of the PA2008:

1. Issue Specific Hearing into the draft Development Consent Order

I have made a Procedural Decision to commence oral examination of the draft Development Consent Order (dDCO) by holding my first Issue Specific Hearing (ISH1) shortly after the close of the Preliminary Meeting (PM) on Tuesday 13 August 2019. **Annex D** provides notice of this decision.

For the purposes of Rule 13(1) and (6) of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (the EPR), the periods of not less than 21 days with reference to which I must provide notice of a hearing and the Applicant must publicly notify and advertise the hearing arrangements no later than **Monday 22 July 2019**. This is a date before the start of the Examination, but it ensures that the required statutory 21 days' notice period has been provided for this hearing.

In light of this ISH commencing shortly after the PM, I have also decided that any person intending to participate in this ISH should notify the Case Manager of their intention to attend by **Tuesday 6 August 2019**, as advised in **Annex D**.

2. Open Floor Hearing

I have made a Procedural Decision to hold an Open Floor Hearing (OFH1) on Tuesday 13 August 2019. **Annex D** provides notice of this decision. I have also decided that any person intending to participate in this OFH should notify the Case Manager of their intention to attend by **Tuesday 6 August 2019**, as advised in **Annex D**.

3. Deadline for comments on Relevant Representations

I have made a Procedural Decision to seek comments on Relevant Representations (RR) by **Tuesday 27 August 2019** being **Deadline (D)1**.

The RRs were published by 24 April 2019 and so there is sufficient time for them to have been read and responded to by the deadline I propose to set.

4. Deadline for submission of Written Representations

I have made a Procedural Decision to seek Written Representations (WRs) by **Tuesday 27 August 2019 (D1)**. WRs provide Interested Parties (IP) with the opportunity to amplify and provide evidence for the matters set out in their RRs.

For the purposes of Rule 10(2) of the EPR, the 'period of 21 days' with reference to which I must provide notice for the submission of WRs commences on Tuesday 9 July 2019 (as dated on the cover of the Rule 6 letter). This is a date before the start of the Examination, however as the deadline for submission of WRs as set for Tuesday 27 August 2019 is more than the statutory requirement of 21 days' notice, I am satisfied that IPs have been permitted sufficient time in which to draft and submit WRs.

By providing early notice, I am ensuring that all IPs will have a reasonable time period in which to draft their WRs, before the deadline for submission.

5. Deadline for summaries of Representations

My Procedural Decisions (3) and (4) above also seek the early submission of summaries pertaining to RRs and WRs exceeding 1500 words. It is normal for ExAs to request that summaries are provided of RRs, comments to RRs and WRs, where these original representations exceed 1500 words in length. I have therefore also made a Procedural Decision to request the submission of summaries by **Tuesday 27 August 2019 (D1)**.

6. Notification by Statutory Parties, or certain Local Authorities² of their wish to be considered as an Interested Party

I have made a procedural decision that, in order to facilitate a timely start to the examination, Statutory Parties and certain Local Authorities¹ must have decided whether they wish to be considered as an IP and notified the Planning Inspectorate of their decision by **Tuesday 27 August 2019 (D1)**.

Note:

If persons attending the Preliminary Meeting (PM) seek additional time to be provided for in any of my procedural decisions made above (3 to 6) for good reasons, I will consider the reasons for any such requests before I decide whether to confirm these decisions. I will provide oral advice on my concluded decisions before the close of the PM.

² a Local Authority without direct responsibility in the proposed development area.

7. Accompanied Site Inspection – Nominations, Requests and intent to attend

The Applicant, IPs and other persons will be provided with an opportunity to provide comments to me on the approach that I should take to site inspections at the PM. Subject to this discussion, they are invited to nominate sites that I should inspect, the features that I should observe there and whether the inspection should be on an accompanied or an unaccompanied basis, by **Tuesday 27 August 2019 (D1)**.

Site inspections can be carried out on an accompanied or an unaccompanied basis. In principle, inspections need to be carried out on an accompanied basis in the following circumstances:

- where the land is private and consent is required for the ExA to enter it;
- where there are health and safety or other regulatory considerations that require any visitor to a location to be accompanied; and / or
- where there are particular features that an IP wishes to ensure are pointed out to the ExA.

Where these considerations do not apply, it will normally be appropriate for a site inspection to be carried out by the ExA on an unaccompanied basis.

Before agreeing to hold site inspections at particular locations, I will consider the degree to which it is necessary to visit a site that has been nominated for an inspection to inform me about the application. I may decide not to visit nominated locations where I may have already visited the location, or I consider that it is not necessary to see the features to be observed there. I may decide not to hold an Accompanied Site Inspection (ASI) if all relevant features can be observed and understood from locations in the public domain on an Unaccompanied Site Inspection (USI).

Provisional arrangements for ASIs are included in the Examination Timetable, but these will only proceed should it appear that such inspections are necessary.

8. Statements of Common Ground (SoCG)

In relation to some of the Principal Issues identified in Annex B, the ExA would be assisted by the preparation of SoCGs between the Applicant and certain Interested Parties. The draft Examination Timetable at Annex C therefore provides a deadline for submission of SoCGs. This is Tuesday 27 August 2019 D1.

The aim of a SoCG is to agree factual information and to inform the ExA and all other parties by identifying where there is agreement and where the differences lie at an early stage in the examination process. It should provide a focus and save time by identifying matters which are not in dispute or need not be the subject of further evidence. It can also usefully state where and why there may be disagreement about the interpretation and relevance of the information. The reasons for the differences and interpretation of the implications of a difference can then be expanded in the evidence. Unless otherwise stated or agreed, the SoCG should be agreed between the Applicant and the other relevant Interested Party or parties and submitted by the Applicant.

SoCGs are requested to be prepared between the Applicant and:

A. South Tyneside Council, to include:

- Development Consent Order
- Economic and Social impacts
- Environmental Impact Assessment, including issues related to Cumulative effects
- Noise and disturbance including construction and operational
- Landscape and visual impact
- Air quality
- Ecology, habitats and nature conservation effects
- Traffic and transport
- Effects on motorised road traffic
- Effects on the Public Rights of Way (PRoW) network and on cyclists, pedestrians and horse riders
- Construction Environmental Management Plan.

B. Sunderland City Council, to include:

- Development Consent Order
- Economic and Social impacts
- Environmental Impact Assessment, including issues related to Cumulative effects
- Noise and disturbance including construction and operational
- Landscape and visual impact
- Air quality
- Ecology, habitats and nature conservation effects
- Traffic and transport
- Effects on motorised road traffic
- Effects on the Public Rights of Way (PRoW) network and on cyclists, pedestrians and horse riders
- Construction Environmental Management Plan.

C. Natural England, to include:

- Development Consent Order
- Ecology, habitats and nature conservation, including issues related to:
 - Protected sites
 - Protected species

- European sites and features relevant to Habitat Regulations Assessment
 - Air quality
 - Water Quality
- D. **The Environment Agency**, to include:
- Development Consent Order
 - Environmental Permits
 - Water environment effects including abstraction and discharge, drainage, flooding and the Water Framework Directive
 - Contaminated land
 - Construction Environmental Management Plan
- E. **IAMP LLP**, to include:
- Development Consent Order
 - The evolving relationship between IAMP and the Proposed Development
- F. **National Grid Electricity Transmission PLC and National Grid Gas**, to include
- Protective Provisions

The SoCGs should cover the following topics where relevant:

- Methodology for Environmental Impact Assessment including assessment of cumulative effects
- Data collection methods
- Baseline data
- Data/ statistical analysis, approach to modelling and presentation of results (including forecast methodologies)
- Full expression of expert judgements and assumptions
- Identification and sensitivity of relevant features and quantification of potential impact
- Likely effects (direct and indirect) on special interest features of sites designated or notified for any nature conservation purpose
- Feasible and deliverable mitigation and method for securing such mitigation within the Development Consent Order

9. Post-submission documents

Following the acceptance of the application, the Applicant submitted correspondence on 5 March 2019 to the Planning Inspectorate in response to s51 advice [[PD-003](#)] issued on 22 February 2019.

The letter provided by the Applicant outlines the revised documents submitted in response to the matters raised in advice issued by the Planning Inspectorate. I have made a Procedural Decision to accept the documentation, which has now been published to the project page of the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-downhill-lane-junction-improvement/>

The revised/amended documents submitted by the Applicant are as follows:

- 1.4(1) - Application Document Tracker - Section 51 Response Document [AS-001]
- 3.1(1) - Draft Development Consent Order - Section 51 Response Document [AS-002]
- 3.1(1) - Draft Development Consent Order (Tracked Changes) - Section 51 Response Document [AS-003]
- 3.2(1) - Explanatory Memorandum - Section 51 Response Document [AS-004]
- 3.2(1) - Explanatory Memorandum (Tracked Changes) - Section 51 Response Document [AS-005]
- Update document letter to PINs 05032019 - Section 51 Response Document [AS-006].

I have also made a Procedural Decision to accept letters from South Tyneside Council and Sunderland City Council responding to a letter from the Applicant dated 1 March 2019 notifying them that the application had been accepted for examination by the Planning Inspectorate. These documents are also available on the project page of the National Infrastructure Planning website and are referenced as follows:

- Letter from South Tyneside Council [AS-007]
- Letter from Sunderland City Council [AS-008]

Interested Parties are asked to submit any comments they may have on any of the revised documents submitted by the Applicant on 14 June 2018, by **Tuesday 27 August 2019 (D1)**.

I will consider procedural questions arising from these documents by the Applicant at the PM at Agenda Item 5 (see **Annex A**).

Availability of Examination Documents

The application documents and Relevant Representations are available on the project webpage on the National Infrastructure Planning website: <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-downhill-lane-junction-improvement/?ipcsection=overview>

All further documents submitted in the course of the Examination will also be published at the above location.

For ease of navigation, please refer to the Examination Library (EL) which is accessible via a blue button under the 'Documents' tab. The EL is updated regularly throughout the Examination.

The EL records and provides a hyperlink to:

- each application document;
- each representation made to the Examination; and
- each Procedural Decision made by the Examining Authority.

Each document is given a unique reference which will be fixed for the duration of the Examination. A hyperlink to each document on the project webpage is also provided. Please use the unique reference numbers applied in the EL when referring to any Examination Documents in any future submissions that you make.

Documents can be viewed electronically, free of charge, at the following locations. Please note that you may need to bring a form of identification to use a computer at these locations.

Electronic deposit locations

Local authority	Library/ address	Opening hours
South Tyneside Council	Hebburn Central Glen Street Hebburn NE31 1AB	Monday: 9.30am – 7pm Tuesday: 9.30am – 7pm Wednesday: 9.30am – 7pm Thursday: 9.30am – 7pm Friday: 9.30am – 5pm Saturday: 10am – 4pm Sunday: CLOSED
South Tyneside Council	Jarrow Library Cambrian Street Jarrow	Monday: 9.30am – 7pm Tuesday: 9.30am – 7pm Wednesday: 9.30am – 7pm

Annex H

	NE32 3QN	Thursday: 9.30am – 7pm Friday: 9.30am – 5pm Saturday: 10am – 4pm Sunday: CLOSED
South Tyneside Council	The Word 45 Market Place South Shields NE33 1DX	Monday: 9am – 7pm Tuesday: 9am – 7pm Wednesday: 9am – 7pm Thursday: 9am – 7pm Friday: 9am – 5pm Saturday: 10am – 4pm Sunday: 10am – 4pm
Printing costs	Black and white	Colour
A4	Single-sided: 10p per sheet	Single-sided: 50p per sheet
A3	Single-sided: £1.00 per sheet	Single-sided: £1.00 per sheet
Link to all council library locations		
<p>https://www.southtyneside.gov.uk/article/34340/Library-at-Hebburn-Central https://www.southtyneside.gov.uk/article/34341/Jarrow-Focus-Library https://www.southtyneside.gov.uk/article/56249/The-Word-Library</p>		



Application by Highways England for the A19 Downhill Lane Junction Improvement

Schedule of Examining Authority Issues and Questions relating to the draft Development Consent Order

The issues and questions set out below expand on the Examining Authority's (ExA's) identification of the draft Development Consent Order (DCO) (Revision 0) as submitted [[APP-011](#)] as a matter for examination in the initial assessment of principal issues. They will be referred to in the first issue-specific hearing (ISH1) into the dDCO on **Tuesday 13 August 2019**. They are principally addressed to the Applicant but observations from other interested parties (IPs) attending the hearing are welcome.

Abbreviations Used

PA2008	<i>The Planning Act 2008 as amended</i>	LPA	<i>Local planning authority</i>
Art	<i>Article</i>	MP	<i>Model Provision (in the MP Order 2009)</i>
ALA 1981	<i>Acquisition of Land Act 1981</i>	MP Order	<i>The Infrastructure Planning (Model Provisions) (England & Wales) Order</i>
BoR	<i>Book of Reference [APP-017]</i>	NPS	<i>National Policy Statement</i>
CA	<i>Compulsory Acquisition</i>	NSIP	<i>Nationally Significant Infrastructure Project</i>
CPO	<i>Compulsory Purchase Order</i>	R	<i>Requirement</i>
dDCO	<i>Draft DCO (Revision 1) [AS-002]</i>	SI	<i>Statutory Instrument</i>
EM	<i>Explanatory Memorandum [APP-012]</i>	SoS	<i>Secretary of State</i>
ES	<i>Environmental Statement [APP-020 – APP-043]</i>	SoR	<i>Statement of Reasons [APP-015]</i>
ExA	<i>Examining authority</i>	Testo's Order	<i>The A19/A184 Testo's Junction Alteration Development Consent Order, 2018</i>
LIR	<i>Local Impact Report</i>	TP	<i>Temporary Possession</i>

The Examination Library

References in these questions set out in square brackets (eg [APP-011]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010024/TR010024-000173-A19%20Exam%20Library%20PDF.pdf>

It will be updated as the examination progresses.

Citation of Questions

Questions in this table should be cited as follows:

Hearing reference: question number, eg **ISH1:1** – refers to question 1 in this table.

Q No.	Part of DCO	Drafting example (where relevant)	Question
1.	General: Order Format and Tracking of Changes		The Applicant is asked to supply subsequent versions of the draft Development Consent Order (dDCO) in both .pdf and Word formats and in two versions, the first forming the latest consolidated draft and the second showing changes from the previous version in tracked changes, with comments outlining the reason for the change. The consolidated draft version in Word is to be supported by a report validating that version of the dDCO as being in the SI template and with updated revision numbers.
2.	General: Plan or Document Changes and Revision Numbers		The Applicant is asked to ensure that all application or subsequent plans and documents referred to in the dDCO in whatever provision are identified by Drawing or Document and Revision Numbers in subsequent versions of the dDCO. Where revisions are prepared to plans and documents, these should be reflected in the latest version of the dDCO. The Applicant should undertake a final audit of plans and documents referred to in the dDCO prior to submitting its final preferred dDCO to the Examination. Where it is necessary to refer to document numbers the Applicant should use the Examination Library system.
3.	General: List of Plans or Documents to be Certified.		The Applicant is asked to confirm that Schedule 9 (Documents to be Certified) will be updated in each subsequent version of the dDCO provided during the Examination. This should accompany an update to the Applicant's Document Tracker recording the latest version of each plan and documents.

Q No.	Part of DCO	Drafting example (where relevant)	Question
4.	General: drafting approach to principal, associated and further development		<p>Section 3 of the EM [APP-012] describes the Applicant’s approach to drafting in respect of associated development. Paragraphs 3.4 and 3.5 indicate that the Applicant has chosen not to distinguish between the principal development of the NSIP and associated development within the meaning of s115 of PA2008. This is justified by the Applicant on the basis that <i>“there is no requirement for a development consent order to distinguish between these two categories”</i>. The EM also makes reference to the DCLG Guidance on associated development.³ Schedule 1 of the dDCO describes the authorised development set out in Works Nos. 1-25 with the description of <i>‘further development’</i> following.</p> <p>If no distinction is made between the principal and associated development how can it be demonstrated that the DCLG Guidance has been adhered to? Furthermore, what is the rationale for the identification of further development?</p>
5.	General: drafting approach to footnotes		<p>A number of footnotes referenced in the dDCO are not identical to the respective footnotes in the Testo’s DCO. The Applicant is asked to review the two documents for consistency and where a different footnote is appropriate, to explain why that is the case. Examples of differences other than those specifically identified below include, but are not limited to, Art 2(1), Art 16(6) footnotes (a) and (b), Art 19(1)(c), Art 26(7) footnote (a), Art 39(1) footnote (c) and Schedule 1 of the dDCO.</p> <p>Paragraph 7 of PINS Advice Note 15 provides guidance on the use of footnotes.</p>

³ Planning Act 2008, Guidance on associated development applications for major infrastructure projects, DCLG, April 2013

Q No.	Part of DCO	Drafting example (where relevant)	Question
6.	Preamble	<i>“[The application was examined by a single appointed person...]”</i>	The Applicant is asked to draft the Preamble to the next version of the dDCO to confirm that the application has been examined by a single appointed person appointed by the Secretary of State by removing the square brackets. The square brackets extending around the following two paragraphs should also be removed.
7.	Art 2(1)		<p>Article 2: Interpretation</p> <p>Footnotes (a), (d) and (e) include details about amendments to the respective Acts. With respect to (a) the Applicant is asked to confirm whether the list of amendments is complete. In respect of all three, the Applicant is asked to explain why it is necessary to include such qualifications within the Order.</p>
8.	Art 2(1)	<i>“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations, non-intrusive investigations for the purpose of assessing ground conditions, pre-construction ecology surveys, pre-construction ecological mitigation and works under mitigation licences, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements and “commencement” is to be construed accordingly;”</i>	<p>The effect of this definition is to permit a wide range of works before discharge of the pre-commencement requirements. The EM [APP-012] states at para 1.2.1 that the works excluded from the definition of commencement are either “<i>de minimus</i>” or “<i>have minimal potential</i>” for adverse effects. It is unclear how this is secured within the definition.</p> <p>Notwithstanding the Applicant’s comments about the definition, how are these exclusions from the statutory definition of commencement justified? Moreover, it is noted that such exclusions were not part of the Testo’s DCO. Clarification is also sought about the extent of works involved in the “<i>pre-construction</i>” surveys permitted by the definition and whether these should be defined themselves in the DCO.</p> <p>Is such flexibility necessary? If so, please provide reasons and consider whether it is more appropriate that the works are controlled by a requirement relating to preliminary works.</p>
9.	Art 2(1)	<i>“maintain...includes to inspect, repair, adjust, alter, remove or reconstruct...”</i>	The Applicant is asked to confirm whether the impacts of the various activities listed have all been assessed in the ES?

Q No.	Part of DCO	Drafting example (where relevant)	Question
10.	Art 2(1)	<i>“the Testo’s plans” means the revised Testo’s plans, drawings and sections submitted with the application for this Order and certified by the Secretary of State for the purposes of this Order and for the purposes of the A19/A184 Testo’s Junction Alteration Development Consent Order 2018;</i>	The Applicant is asked to clarify whether this is intended to be the documents referenced TR010024/APP/7.5 [APP-054]. If this is correct the Applicant should include the document reference in Schedule 9 – Documents to be Certified.
11.	Art 2(2)		The Testo’s DCO makes reference to Neighbourhood Planning Act 2017. Should it be similarly referenced here?
12.	Art 2(1)		Is it necessary/appropriate to define “ <i>requirement</i> ”?
13.	Art 3(2)	<i>“(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order;”</i>	<p>Article 3: Development consent etc. granted by the Order</p> <p>Notwithstanding the Applicant’s statement in the EM [APP-012] that there is precedent for Article 3(2) the Applicant is asked to clarify:</p> <ul style="list-style-type: none"> • why this extensive provision is necessary and justified for the scheme; • what enactments might apply to land within the Order limits that may affect the authorised development; • why it should apply to land outside the Order limits; and • how this article will ensure “<i>consistency with legislation more generally</i>”.
14.	Art 3(3)		<p>Art 3(3) of the Testo’s Order sets out that nothing in the Order prevents the carrying out of various operations immediately upon the Order coming into force.</p> <p>Why has it been decided not to include such a provision in this dDCO?</p>
15.	Art 6	<i>In carrying out the authorised development the undertaker may—</i>	<p>Article 6 Limits of Deviation</p> <p>The Applicant is asked to explain the need for a vertical deviation of 0.5m upwards and downwards. Justification for this level of flexibility is required for this scheme notwithstanding that the approach has</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
		<p><i>(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</i></p> <p><i>(b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 0.50 metres upwards or 0.50 metres downwards,</i></p> <p><i>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, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects from those reported in the environmental statement."</i></p>	<p>been adopted in other DCOs including the Testo's DCO. The applicant refers to precedent in the Testo's DCO but the need for this level of flexibility must be justified for this scheme in consideration of the circumstances of this case.</p> <p>The Applicant is asked to explain why it is necessary and appropriate to permit amendment to the maximum limits of vertical deviation by the SoS at a later date without applying to amend the Order under the provisions in schedule 6 of PA2008.</p> <p>Furthermore, what process is in place for the SoS to determine whether exceeding the vertical limits would not give rise to any materially new or materially worse adverse environmental effects?</p> <p>The Applicant is also asked to comment on the final part of Art 6 which is in effect a tailpiece provision. PINS Advice Note 15 para 17.3 – 17.6 is relevant in this regard.</p>
16.	Art 7 (2)	<p><i>"Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development."</i></p>	<p>Article 7: Benefit of Order</p> <p>The EM [APP-012] states that the purpose of paragraph (2) is to "clarify the exceptions where the order will "self-evidently" benefit others". Nevertheless, the Applicant is asked to identify the works to which Art 7(1) will not apply. Might the result of this be to grant CA or TP powers to unspecified persons who may not be of sufficient financial standing to pay the compensation costs? Consequently, should CA and TP powers be excluded from article 7(2)?</p>
17.	Art 9(3)		<p>Article 9: Application of the 1991 Act</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
		<p><i>“The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order - ...</i></p> <p><i>section 73(e) (power to require undertaker to re-surface street);</i></p> <p><i>Schedule 31(i) restriction on works following substantial street works);...”</i></p>	<p>In the case of footnote (e), text is repeated, whilst the reference in footnote (i) does not match that of the Testo’s Order. The Applicant is asked to clarify/explain.</p>
18.	Art 9(7)	<p><i>“Nothing in article 10 (construction and maintenance of new, altered or diverted streets)- ...</i></p> <p><i>(b) the undertaker is not by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act: or...</i></p>	<p>The Applicant is asked to look at the drafting of Art 9(7)(b) following from the wording of the introductory clause.</p>
19.	Art 11(1)	<p><i>“On the date on which a street described in Schedule 3 is completed and open for traffic -”</i></p>	<p>Article 11: Classification of roads, etc.</p> <p>The Applicant is asked to explain why the qualification relates to ‘a street described in Schedule 3’ instead of ‘the authorised development?’</p>
20.	Art 11(1)	<p><i>“(b) a road described in columns (1) and (2) of Part 2 (classified roads) of Schedule 3...</i></p> <p><i>(c) a non-motorised user route described in Part 3 (other public rights of way) of Schedule 3...-”</i></p>	<p>Part 2 of Schedule 3 is headed ‘other classified roads’ whilst Part 3 is headed ‘non-motorised user routes’. The Applicant is therefore asked whether the wording of Art 11(1)(b) and (c) (or alternatively the respective Schedule Part) require amendment?</p>
21.	Art 11(2)	<p><i>“From such day as the undertaker may determine no person is to drive any motor vehicle at a speed exceeding the limit of 40 miles per hour on the roads described in columns (1) and (2) of Part 4 of Schedule 3 (classification of roads, etc.).”</i></p>	<p>The Applicant is asked to explain the reason for the imposition of a speed limit of 40mph on the roads identified in Part 4 of Schedule 3.</p>
22.	Art 11(3)	<p><i>“The application of paragraph (1) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.”</i></p>	<p>The Applicant is asked to provide further justification for Art 11(3) which provides that the matters covered in the previous subsections can be varied or revoked in the future using existing enactments for</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
			such matters, without the need to apply under PA2008 for an amendment to the Order.
23.	Art 12(2)	<i>“Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site.”</i>	Article 12: Temporary stopping up and restriction of use of streets. Should the term ‘ <i>working site</i> ’ be defined in Article 2? How is ‘ <i>working site</i> ’ to be interpreted in terms of the following articles of the dDCO and Testo’s Order: Art. 29 (temporary use of land for carrying out the authorised development); Art. 30 (temporary use of land for construction compounds); and Art 31 (temporary use of land for maintaining the authorised development)?
24.	Art 12(6),	<i>“If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.”</i>	Is this 28-day deemed approval period which also appears in Articles 16 (11), 17(9), 19(6) appropriate? These articles all contain provisions deeming consent to be granted if the consenting body does not respond within 28 days. Has the Applicant checked that the consenting bodies in each case are content with this? Do IPs wish to comment?
25.	Art 14	<i>“The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.”</i>	Article 14: Access to works The Applicant is asked to provide further justification for this general power which permits the creation of accesses. Paragraph 5.52 of the EM [APP-012] refers to the need for Highways England to create new <u>temporary</u> accesses, but the power in Art 14 is not limited to temporary access and could include permanent accesses. Whilst noting the title of Art 14, should the article be specifically limited to temporary access?
26.	Art 15(2)(c)(iii)		Article 15: Clearways Should the reference be to ‘ <i>person’s control</i> ’?

Q No.	Part of DCO	Drafting example (where relevant)	Question
		<i>“prevented from proceeding by circumstances outside the persons control.”</i>	
27.	Art 17 (2)	<i>“...dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991.”</i>	<p>Article 17: Discharge of water</p> <p>Should there be a footnote relating to section 106 as per the Testo’s Order?</p>
28.	Art 17(8)		Should Art 17(8) reflect the fact that the Homes and Communities Agency is now known as Homes England?
29.	Article 23(1)	<i>“(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence. ”</i>	<p>Article 23: Compulsory acquisition of rights and restrictive covenants</p> <p>Art 23 grants wide powers for the creation of new rights and restrictive covenants over all of the Order land. It is not limited to the creation of specific rights and restrictions and there does not appear to be any description of new rights/restrictive covenants sought in the BoR [APP-017]. Furthermore, the land plans show the land to either be for land to be acquired to use permanently or land to be acquired temporarily and no not include any land in which new rights/restrictive covenants are to be created.</p> <p>The Applicant is asked to include a schedule detailing each of the new rights or restrictions it seeks or to ensure that the description of each new right and restriction is clearly set out in the BoR. The Applicant is also asked to identify the plots on the Land Plans where new rights and restrictive covenants are to be created.</p> <p>In responding, the Applicant should have regard to paragraph 24 and good practice point 9 in PINS Advice Note 15.</p>

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30.	Art 25(2) and (3)	“...substitute “section 118() (legal challenges...”	<p>Article 25: Modification of Part 1 of the 1965 Act</p> <p>The Applicant is asked to check the references to footnotes in respect of Art 25(2) and (3) and to explain the empty bracket after section 118.</p>
31.	Art 26(7)	“...for subsection (1)(b)() for “section 15...”	<p>Article 26: Application of the 1981 Act</p> <p>The Applicant is asked to explain the empty bracket after the reference to subsection (1)(b).</p>
32.	Art 29(9)	<p>“(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—</p> <p>(a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights and restrictive covenants); or</p> <p>(b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only).”</p>	<p>Article 29: Temporary use of land for carrying out the authorised development</p> <p>Art 29(9) limits the undertaker’s CA powers in the land listed in schedule 6 to the acquisition of any part of the subsoil under Art 27 and the acquisition of new rights under Art 23. Under Art 23 the creation of new rights is permitted over all of the Order land. The effect of this is that all of the land in schedule 6 will be subject to CA but the SoR [APP-015] implies that some land will only be subject to temporary possession (see Table 2 of Annex A). If some land will only be used temporarily the Applicant must ensure that this is secured in the DCO by excluding the land in schedule 6 from the scope of CA or the Applicant should provide justification for CA of the land in schedule 6 with reference to the relevant legal tests even though it is described as being “temporary possession”.</p> <p>The Applicant is also asked to provide evidence that all persons with interests in the land listed in schedule 6 were consulted correctly in respect of the powers sought over that land.</p>
33.	Art 30	“(1) The undertaker may only enter on and take temporary possession of the land identified as plot reference 2/1, 2/2a and 2/2b shown on the land	<p>Article 30: Temporary use of land for construction compound</p> <p>Art 30(2) prevents the undertaker from <u>carrying out construction activities</u> on plot 1/14b at the same time as it is in possession of plots 2/1, 2/2a and 2/2b. It does not explicitly prevent the exercise of</p>

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		<p><i>plans for the purposes of the authorised development if the development authorised by the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (the "Testo's Order") has commenced and the main construction compound referred to as Work No. 31 in Schedule 1 to the Testo's Order has not been vacated at the commencement of development authorised by this Order.</i></p> <p><i>(2) The undertaker may not carry out construction activities on the land identified as plot reference 1/14b shown on the land plans at the same time as it is in possession of the land identified as plot reference 2/1, 2/2a and 2/2b on the land plans for the purposes of this Order. "</i></p>	<p>temporary possession powers or CA powers over that land. "Construction activities" are undefined in the order. The purpose for which temporary possession may be taken of the plot is described as being "the main site compound to include but not limited to site office, welfare facilities, parking provisions, storage of plant and materials and the treatment of site generated waste". It is uncertain whether these are all "construction activities", and therefore the Applicant is asked to clarify the position.</p> <p>As presently drafted, it would be possible for all plots 2/1, 2/2a, 2/2b and 1/14b to be used temporarily, potentially at the same time, and definitely at different times.</p> <p>The Applicant is asked to clarify their intentions in respect of plot 1/14b and ensure that the drafting secures the parameters used for relevant assessments in the ES.</p> <p>If the Applicant's intention is that plot 1/14b will not be used if plots 2/1, 2/2a and 2/2b are used then the drafting of this article should be amended to secure this.</p>
34.	Art 33(8)	<p><i>"(8) In this article – "apparatus" ... "relocation works" ...; and "statutory utility" ..."</i></p>	<p>Article 33: Apparatus and rights of statutory undertakers in stopped up streets</p> <p>The Applicant is asked to explain why, in this article, it is necessary to define "apparatus" when it is defined in Art 2 and why "relocation works" and "statutory utility" are not defined in Art 2 instead of Art 33?</p>
35.	Art 35		<p>Article 35: Felling or lopping of trees and removal of hedgerows</p> <p>As set out in paragraph 22.1 and good practice point 6 in PINS Advice Note 15, where it is known that specific hedgerows need to be removed they should be listed in a schedule. This article should then be amended to refer to the schedule.</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<p>The Applicant is also asked to consider an addition to the article being a subsection requiring any other hedgerows only be removed once the prior consent of the local planning authority has been obtained.</p> <p>In addition, the Applicant is asked to clarify whether any mitigation would be provided in respect of the felling or lopping of trees or the removal of hedgerows and if so, how this would be secured through the DCO.</p>
36.	Art 36	<p><i>“(1) The A19/A184 Testo’s Junction Alteration Development Consent Order 2018 is modified in accordance with Schedule 89, where— (a) column 1 sets out where the amendment is to be made; (b) column 2 sets out how the amendment is to be made; and (c) column 3 sets out the text to be substituted, inserted or omitted.</i></p> <p><i>(2) The provision of the Neighbourhood Planning Act 2017... article 30 (temporary use of land for construction compounds)...</i>”</p>	<p>Article 36: Disapplication of legislative provisions</p> <p>Clarification is sought from the Applicant as to whether the proposed amendments to the Testo’s DCO can be made on the basis of the Testo’s works commencing before the SoS makes a decision on this DCO.</p> <p>In the EM (para 5.126) the Applicant states that the removal of the non-motorised user route in the Testo’s scheme could be carried out under requirement 3 in schedule 2 to the Testo’s DCO. The Applicant is asked to expand upon the means by which the DCO would provide for removal of the non-motorised route in the Testo’s scheme.</p> <p>Reference to construction compounds does not correspond with the title of Art 30 which refers to the singular.</p>
37.	Art 38	<p><i>“Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.”</i></p>	<p>Article 38: Operational land for the purposes of the Town and Country Planning Act 1990</p> <p>Notwithstanding precedent in other DCOs, the Applicant is asked to explain why this power is necessary in the circumstances of this particular NSIP. The Applicant is also asked to identify the permitted development rights that will be made available.</p>

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38.	Schedule 1	<i>“A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008, and associated development as defined in section 115 of the 2008, comprising-.”</i>	<p>Schedule 1: Authorised development</p> <p>‘Act’ appears to be missing from the final line.</p> <p>The Schedule at items (a) to (o) contains a very extensive list of further development that may be carried out in addition to the numbered Works. Justification is sought from the Applicant as to the need for the works and to confirm whether they have been subject to EIA.</p> <p>Are all works (a) – (o) limited to works which do not give rise to any materially new or material different environmental effects to those assessed within the ES, rather than simply work (o)?</p>
39.	Schedule 2,		In presentational terms the layout of headings differs from the approach used in the Testo’s Order. The Applicant is asked to ensure that the dDCO is in the SI template form.
40.	Schedule 2, R1	<i>“HEMP” means the handover environmental management plan, to be developed and completed by the end of the construction, commissioning and handover stage of the authorised development which is to contain ...”</i>	<p>R1: Interpretation</p> <p>The definition of HEMP in this dDCO is far more extensive than the definition in the Testo’s Order with the difference appearing to be that the Testo’s Order included much of the additional text in R4(4) and (5). The Applicant is asked to explain this difference in approach.</p>
41.	Schedule 2, R3	<i>“(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to</i>	<p>R3: Detailed design</p> <p>The Applicant is asked to explain the use of the term highlighted which differs from the approach adopted in the Testo’s Order which referred to “different” environmental effects. The term “<i>materially new or material different environmental effects</i>” is also included in work (o) in Schedule 1.</p> <p>R2(1) also contains a tailpiece (see PINS Advice Note 15 para 17.3 – 17.6).</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
		<i>the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the environmental statement."</i>	The Applicant is asked to explain why it is necessary and appropriate for the Order to permit amendment to the detailed design drawings, upon which the DCO has been examined, by the SoS at a later date without applying to amend the Order under the provisions contained in schedule 6 of PA2008 and without consultation or examination.
42.	Schedule 2, R4(4)	<i>"The authorised development must be operated and maintained in accordance with the HEMP."</i>	R4: Construction environmental management plan Unlike the Testo's Order the dDCO does not require the HEMP to be developed and completed in accordance with the process set out in the approved CEMP. Should this be included in the dDCO?
43.	Schedule 2, R4, 7, 8 & 10	<i>"No Part of the authorised development is to commence until for that part ..."</i>	It is unclear what a "part" of the development is. This would appear to enable the undertaker to discharge the requirements on a piecemeal and undefined basis. Further explanation and justification are sought from the Applicant. In addition, the views of the discharging LPA's on this matter would be helpful.
44.	Schedule 2, R8(2)	<i>"The surface and foul water drainage...would not give rise to any materially new or materially worse adverse environmental effects...."</i>	R6: Surface and foul water drainage As with R3, the Applicant is asked to explain the use of the term highlighted rather than the use of 'different' environmental effects.
45.	Schedule 2, Part 2		Part 2: Procedure for discharge of requirements The Applicant is asked to explain why the template for discharge of requirements in Appendix 1 of Advice Note 15 has not been used and to justify the use of the version proposed.
46.	Schedule 2, R13(3)		R13: Applications made under requirements In contrast with earlier examples where the term " <i>materially worse adverse environmental effects</i> " is used, R13(3) does not include

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		<i>“Where ...(c) the application is accompanied... would give rise to any materially new or <u>materially worse environmental effects</u>....”</i>	'adverse'. What is the reason for this change from the previous approach?
47.	Schedule 7		<p>Schedule 7: Protective Provisions</p> <p>The Applicant is asked to provide regular updates throughout the Examination to confirm whether or not protective provisions have been agreed with the relevant statutory undertakers.</p>
48.	Explanatory Note		Is the reference to West Bolden the most appropriate location and should the note also refer to Sunderland?