

The Planning Inspectorate
Temple Quay House
Bristol
BS1 6PN

Helen Apps
Highways England
Lateral
8 City Walk
Leeds
LS11 9AT

Direct Line 0300 470 2705

04 December 2019

Dear Sir / Madam

**PLANNING ACT 2008
HIGHWAYS ENGLAND (“THE APPLICANT”)
APPLICATION FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE PROPOSED
A19 DOWNHILL LANE JUNCTION SCHEME (“THE SCHEME”)
APPLICATION REFERENCE: TR010024**

Further to the Rule 8 letter dated 21 August 2019, this letter sets out matters regarding the above application which the Examining Authority (“the **ExA**”) requested be submitted for Deadline 6 (5 December 2019).

Applicant’s Responses to Deadline 5 Submissions

As there were only two submissions at Deadline 5 (other than those submitted by the Applicant), the Applicant’s responses to them are contained in an Annex to this letter.

Applicant’s final preferred DCO and Validation Report

We would note that in the ExA’s variation to the examination timetable dated 12 November 2019, the ExA requested that the Applicant submit its preferred and final dDCO, along with a validation report, at Deadline 6.

As no comments have arisen since Deadline 5 concerning the dDCO, the Applicant’s dDCO (**TR010024/APP/3.1(6) / REP5-007**) submitted at Deadline 5 should be taken as its final preferred dDCO. A validation report in respect of that dDCO was also submitted (**TR010024/APP3.4(2) / REP5-010**) at Deadline 5.

I trust this is acceptable, but should you have any further queries please let us know.

Yours faithfully



Helen Apps
Project Manager
A19DownhillLaneJunctionImprovement@highwaysengland.co.uk

Annex: Applicant's Responses to Deadline 5 Submissions

ExQ2 Reference	Question	South Tyneside Council (STC) / Sunderland City Council (SCC) Response	Applicant Response
South Tyneside Council (REP5-021)			
Q2.1.2	<p>The Applicant and the local authorities are asked to confirm the position with regard to the SoCG. In addition, please explain why it is necessary for matters relating to the adoption of roads to be subject to a side agreement. It is stated that this is a private agreement and implied that it will not be submitted to the Examination. If this is the correct interpretation explain why it is not appropriate to submit the agreement to the Examination.</p>	<p>The SoCG has been agreed and fully signed by all parties. The applicant will be submitting the completed SoCG for Deadline 5.</p> <p>The Side Agreement has been agreed and is pending completion, and an update will be provided as soon as possible.</p> <p>The agreement contains information relating to the future maintenance of assets to be transferred to the respective local authorities upon satisfactory completion of the scheme.</p>	<p>The Applicant has confirmed to the Planning Inspectorate that the side agreement between the Applicant, STC and SCC has now been completed, and agrees with the submissions made by STC and SCC in respect of the matters included in the side agreement.</p> <p>On the reasons for keeping the document private, see further the Applicant's response to ExQ2.1.2 in Applicant's Responses to ExA's Second Written Questions (application document reference: TR010024/APP/7.22 / REP5-016).</p>
Q2.3.1	<p>Paragraph 7.15 of the Local Impact Report (LIR) [REP2- 021] states that "the delivery of compensation measures, including biodiversity offsets, is likely to involve access to land, or land purchase, outside a scheme footprint and a commitment to long-term management through legal agreements. They therefore require early consideration in project design. The principles of offsetting should be agreed with the competent authority at an early stage, particularly where this is not</p>	<p>We agree in principle that all necessary mitigation measures will be provided within the footprint of the DCO boundary.</p> <p>It is considered that the REAC and outline CEMP will enable an appropriate level of mitigation to be agreed with the respective local authorities.</p> <p>Further dialogue between the applicant and local authorities will be undertaken as part of the detailed design process. This is necessary to meet concerns</p>	<p>Agreed.</p> <p>Agreed.</p> <p>The ExA is directed to paragraphs 9.9.6 to 9.9.13, including Table 9.10, in Volume 1 of the Environmental Statement (ES) (application document reference</p>

ExQ2 Reference	Question	South Tyneside Council (STC) / Sunderland City Council (SCC) Response	Applicant Response
	<p>clearly set out in a policy or biodiversity offsetting strategy.” The Applicant responded [REP3-012], indicating that the scheme will deliver all biodiversity offsetting within the DCO boundary and so does not require access to land outside the scheme footprint.</p> <p>The Applicant is asked to demonstrate where within the scheme boundary biodiversity offsetting is proposed to take place.</p> <p>The Local Authorities are asked to comment on the Applicant’s response to paragraph 7.15 of the LIR.</p>	<p>relating to biodiversity offsetting and securing mitigation measures to address impacts on the local ecology resulting from the proposed scheme.</p>	<p>TR010024/APP/6.1 / APP-020) that provide an explanation on how the habitat created as part of the Scheme, to mitigate for loss of habitat, would achieve a modest net gain in biodiversity through a net gain in habitat types assessed as being of county importance or above. As stated above, this approach is in accordance with DMRB and CIEEM guidance that was applicable at the time of the assessment and accepted by the Councils. Paragraph 7.11 of the Local Impact Report states that both STC and SCC accept the criteria set out for impact assessment methodology and the baseline assessments, therefore it is considered that the package of mitigation measures delivered based on this assessment is commensurate with the impacts.</p> <p>The Environmental Masterplan, which can be found in the final pages of the ES (application document reference TR010024/APP/6.1 / APP-020), illustrates the location of the habitat creation, retention, re-creation / re-establishment and planting proposals within the DCO boundary for the Scheme that will deliver the net biodiversity gain presented in Table 9.10 of the ES.</p> <p>It is agreed that the Applicant will continue to liaise with the local authorities as part of detailed design and in particular through the development of the CEMP and landscaping proposals as secured in Requirements in Schedule 2 of the draft DCO (application document reference TR010024/APP/3.1(6) / REP5-007).</p>

ExQ2 Reference	Question	South Tyneside Council (STC) / Sunderland City Council (SCC) Response	Applicant Response
Q2.3.2	<p>Paragraph 7.16 of the LIR [REP2-021] states that “it is important that [the] scheme is sustainable and that it produces a net gain for biodiversity and nature conservation. National policy promotes the inclusion of measures to enhance biodiversity within development proposals. Enhancement of biodiversity should be an objective of this project.” In response [REP3-012] the Applicant noted that Chapter 9 of the ES [APP-020] outlines the habitat gain and loss of the scheme and demonstrates a net biodiversity gain. The Applicant is asked to confirm how a net biodiversity gain for the scheme has been achieved. The Local Authorities are asked to explain the policy basis for seeking a net biodiversity gain.</p>	<p>Both national and STC local planning policies set out a principle for achieving net gain for biodiversity through planning decisions. The latest NPPF is explicit (para. 175 limb d) using the term net gain, the local policies are less explicit using the terms ‘enhance’ and ‘add to’ biodiversity but this still indicates an increase in biodiversity being required.</p>	<p>The Applicant would draw to the ExA’s attention paragraph 5.25 of the National Networks NPS which states that “<i>The applicant may also wish to make use of biodiversity offsetting...</i>” The accompanying footnote (numbered 75) further states that “<i>The goal of biodiversity offsets is to achieve no net loss and preferably a net gain of biodiversity</i>” - the proposals comply with these policy requirements.</p> <p>On how biodiversity net gain has been achieved, the ExA is directed to the Applicant’s response in the box directly above.</p>
Q2.4.1	<p>At D4 the Applicant and Hellens Land Limited submitted a Joint Statement on the status of discussions between the parties [REP4-004]. The Applicant also set out its position separately [REP4-001] as did Hellens Land Limited [REP4-005].</p>	<p>This is an ongoing matter.</p>	<p>The Applicant’s position on this matter is set out in its Deadline 4 and 5 cover letters dated 5 November 2019 and 28 November 2019 respectively, as well as its submissions contained in the Applicant’s case put orally at the Compulsory Acquisition Hearing (document reference TR010024/APP/7.19 / REP3-016) – see section 4.10 in particular.</p>

ExQ2 Reference	Question	South Tyneside Council (STC) / Sunderland City Council (SCC) Response	Applicant Response
Q2.12.1	Paragraph 14.8.16 of the ES refer to the limited change in water environment risks at the Testo's compound. Please clarify what the risk is?	<p>The SoCG between the Environment Agency and the applicant includes provision to explore and adjust the layout of the water environment and associated habitat in the locality of pond 6. This has been agreed between both parties in the completed SoCG.</p> <p>In our opinion whether or not a proposed change would or would not be non-material could be considered under the relevant dDCO requirement 8 (and noting the caveats in requirement 8 (2) that have relevance).</p>	The Applicant would refer to its response to this question in Applicant's Responses to ExA's Second Written Questions (TR010024/APP/7.22 / REP5-016).
Sunderland City Council (REP5-019)			
Q2.1.2	The Applicant and the local authorities are asked to confirm the position with regard to the SoCG. In addition, please explain why it is necessary for matters relating to the adoption of roads to be subject to a side agreement. It is stated that this is a private agreement and implied that it will not be submitted to the Examination. If this is the correct interpretation explain why it is not appropriate to submit the agreement to the Examination.	The SoCG has been agreed and fully signed by all parties. The applicant will be submitting the completed SoCG for Deadline 5. The Side Agreement has been agreed and is pending completion, and an update will be provided as soon as possible. The agreement contains information relating to the future maintenance of assets to be transferred to the respective local authorities upon satisfactory completion of the scheme.	As per response to STC above.
Q2.3.1	Paragraph 7.15 of the Local Impact Report (LIR) [REP2- 021] states that "the delivery of	Sunderland are content to adopt the approach recommended by South Tyneside, and agree in principle	As per response to STC above.

ExQ2 Reference	Question	South Tyneside Council (STC) / Sunderland City Council (SCC) Response	Applicant Response
	<p>compensation measures, including biodiversity offsets, is likely to involve access to land, or land purchase, outside a scheme footprint and a commitment to long-term management through legal agreements. They therefore require early consideration in project design. The principles of offsetting should be agreed with the competent authority at an early stage, particularly where this is not clearly set out in a policy or biodiversity offsetting strategy.” The Applicant responded [REP3-012], indicating that the scheme will deliver all biodiversity offsetting within the DCO boundary and so does not require access to land outside the scheme footprint.</p> <p>The Applicant is asked to demonstrate where within the scheme boundary biodiversity offsetting is proposed to take place.</p> <p>The Local Authorities are asked to comment on the Applicant’s response to paragraph 7.15 of the LIR.</p>	<p>that all necessary mitigation measures will be provided within the footprint of the DCO boundary. Further dialogue between the applicant and local authorities will be undertaken as part of the detailed design process. This is necessary to meet concerns relating to biodiversity offsetting and securing mitigation measures to address impacts on the local ecology resulting from the proposed scheme.</p>	
2.3.2	<p>Paragraph 7.16 of the LIR [REP2-021] states that “it is important that [the] scheme is sustainable and that it produces a net gain for biodiversity and nature conservation. National policy promotes the inclusion of measures to</p>	<p>Sunderland are content to adopt the approach recommended by South Tyneside.</p>	<p>As per response to STC above.</p>

ExQ2 Reference	Question	South Tyneside Council (STC) / Sunderland City Council (SCC) Response	Applicant Response
	<p>enhance biodiversity within development proposals. Enhancement of biodiversity should be an objective of this project.” In response [REP3-012] the Applicant noted that Chapter 9 of the ES [APP-020] outlines the habitat gain and loss of the scheme and demonstrates a net biodiversity gain. The Applicant is asked to confirm how a net biodiversity gain for the scheme has been achieved. The Local Authorities are asked to explain the policy basis for seeking a net biodiversity gain.</p>		
2.3.3	<p>Paragraph 15.6.5 of the ES [APP-020] notes that Sunderland City Council raised a concern regarding temporary impacts on farmland birds and the ability to displace into adjacent habitats. However, the Applicant concluded that the contribution to the effect by the scheme did not justify the need for mitigation. Can the Council confirm that it is content with this finding?</p>	<p>Please refer to the response to Q2.3.1 above.</p> <p>In terms of the design, mitigation and enhancement measures the Council initially raised concerns about the temporary impact the construction phase will have on farmland birds.</p>	<p>The arable habitat present within the temporary and permanent footprint of the Scheme is generally of poor quality for breeding and wintering farmland birds – please see the low value status of the arable habitat stated in Tables 9-5 and 9-8 in Volume 1 of the ES (application document reference TR010024/APP/6.1). Given the total available arable habitat resource available in the local area it is unlikely that significant effects on birds would occur as a result of the proposals. The Applicant would refer to Table 9.4-e in Appendix 9.4 of the ES (application document reference TR010024/APP/6.3 / APP-036) which sets out the residual effects on wintering birds as a result of the Scheme is not significant.</p>

ExQ2 Reference	Question	South Tyneside Council (STC) / Sunderland City Council (SCC) Response	Applicant Response
		<p>It is considered that the REAC and outline CEMP will enable an appropriate level of mitigation to be agreed with the respective local authorities.</p>	<p>Agreed.</p>
2.12.1	<p>Paragraph 14.8.16 of the ES refer to the limited change in water environment risks at the Testo's compound. Please clarify what the risk is?</p>	<p>The SoCG between the Environment Agency and the applicant includes provision to explore and adjust the layout of the water environment and associated habitat in the locality of drainage catchment referred to as pond 6. This has been agreed between both parties in the completed SoCG. In terms of the principle of a non-material design change, any potential change could be considered under requirement 8 of the DCO. It is noted that this feature is located within South Tyneside.</p>	<p>As per response to STC above.</p>