

A19 Downhill Lane Junction Improvement

Scheme Number: TR010024

7.23 Applicant's Response to Request for Further Information under Rule 17 of the Examination Procedure Rules

Rule 8(1)(b)

Planning Act 2008

Infrastructure Planning (Examination Procedure)

Rules 2010

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

A19 DOWNHILL LANE JUNCTION IMPROVEMENT

The A19 Downhill Lane Junction Development Consent Order 202[]

APPLICANT'S RESPONSE TO REQUEST FOR FURTHER INFORMATION UNDER RULE 17 OF THE EXAMINATION PROCEDURE RULES

Regulation Number:	Rule 8(1)(b)
Planning Inspectorate Scheme Reference	TR010024
Application Document Reference	TR010024/APP/7.23
Author:	A19 Project Team, Highways England Project Team & Jacobs

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ExA's Question in Annex A of Request for Further Information dated 20.12.19	Applicant's Response dated 07.01.20
<p>On the submission Land Plans [APP-007] (Sheet 1 of 2) the notation for the area shaded blue indicated 'Rights of Way permanently extinguished or reinstated (see Note 5).' Note 5 on the LP stated 'Land over which public rights of way are proposed or proposed to be extinguished under the A19/184 Testo's Junction Alteration DCO 2018, are to be extinguished or reinstated under this Scheme. See application documents TRO10024/APP/7.5 for further details.' The reference is to Examination document [APP-054] which is the Revised Plans, Drawings and Sections for the Testo's Scheme. The D5 version [REP5-003] shows the same area shaded blue with the notation altered to read 'Land over which public rights of way are to be extinguished in order to integrate the proposals with the A19 Testo's scheme in accordance with Article 38 of the DCO'. Note 5 from the submission version has now been deleted.</p> <p>1. Clarify why it is proposed to extinguish public rights of way within the area shaded blue on the Land Plans [REP5-003] (Sheet 1 of 2) when there is an existing Bridleway – Public Right of Way (B46) running through the area and which it is proposed to retain.</p>	<p>The Applicant is not proposing to extinguish the entire length of the public right of way B46 in the blue shaded area in the Downhill Lane Junction (DLJ) Land Plans (TRO10024/APP/2.3(1), and the Applicant's proposals do not have this effect.</p> <p>In line with standard practice, the DLJ Land Plans are divided into plots which align with title boundaries, with each plot then given the appropriate shading according to the powers in the dDCO. However, the Applicant would stress that the Land Plans (and associated plot shadings) must also be read in conjunction with the latest versions of the DLJ Streets, Rights of Way and Access Plans, and the dDCO.</p> <p>The DLJ dDCO proposes only to remove Work No. 4 of the Testo's Junction Alteration Development Consent Order 2018 (the Testo's DCO), on commencement of the DLJ Scheme (as per article 36 and Schedule 8 of the DLJ dDCO submitted at Deadline 5 (TRO10024/APP/3.1(6)).</p> <p>When the Testo's DCO was being considered (2017-2018), it was not expected that Work No. 6 would be implemented independently of Work No. 4, as is now the case.</p> <p>Following the implementation of Work No. 6 of the Testo's Order, the bridleway no longer follows the former alignment of the public right of way shown as the dashed blue line between Points 1/Q and 1/N on the DLJ Streets, Rights of Way and Access Plans. Instead, the bridleway now follows the dashed brown line between Point 1/Q and 1/N on the DLJ Streets, Rights of Way and Access Plans.</p> <p>As a result of this, Schedule 8 to the DLJ dDCO amends Schedule 4 of the Testo's DCO so that the public right of way over that <i>part</i> of the B46 which is now obsolete (i.e., the dashed blue line between Point 1/Q and 1/N on the DLJ Streets, Rights of Way and Access Plans) is extinguished.</p>

ExA's Question in Annex A of Request for Further Information dated 20.12.19	Applicant's Response dated 07.01.20														
	<p>The Testo's DCO, as made, already has the effect of extinguishing that part of the B46 denoted with a dashed green line between Points 1/P and 1/N on the DLJ Streets, Rights of Way and Access Plans. This is unaffected by the DLJ Scheme – see further the Applicant's response to Question 5 below.</p> <p>For completeness, the table set out below shows those parts of the B46 which are to be retained and extinguished, depending on whether or not the DLJ Scheme is authorised and commenced:</p> <table border="1" data-bbox="1111 555 2047 1359"> <thead> <tr> <th data-bbox="1111 555 1413 587">Description</th> <th data-bbox="1420 555 1738 587">Absent DLJ Scheme</th> <th data-bbox="1744 555 2047 587">With DLJ Scheme</th> </tr> </thead> <tbody> <tr> <td data-bbox="1111 592 1413 743">B46 north of Point 1/Q (coloured yellow in the DLJ Streets, Rights of Way and Access Plans)</td> <td data-bbox="1420 592 1738 743">Existing public right of way retained (no change proposed under the Testo's DCO)</td> <td data-bbox="1744 592 2047 743">No change</td> </tr> <tr> <td data-bbox="1111 748 1413 1174">B46 between Point 1/Q and 1/P (shown dashed blue on the DLJ Streets, Rights of Way and Access Plans)</td> <td data-bbox="1420 748 1738 1174">Existing public right of way retained – Work No. 4 in the Testo's Order would be constructed and this part of the B46 (coloured purple) would serve as a connection to the Testo's NMU provision.</td> <td data-bbox="1744 748 2047 1174">As the DLJ dDCO removes Work No. 4 from the Testo's DCO, it will not be necessary to connect Work No. 4 to the existing B46. As a result, there will be no NMU provision required between Points 1/Q and 1/P. Accordingly, the existing public right of way between Points 1/Q and 1/P would be extinguished.</td> </tr> <tr> <td data-bbox="1111 1179 1413 1359">B46 between 1/P and 1/N (shown dashed green in the Streets, Rights of Way and Access Plans)</td> <td data-bbox="1420 1179 1738 1359">Extinguished under the Testo's Order (as made) as the public will use the new public right of way over the dashed brown line.</td> <td data-bbox="1744 1179 2047 1359">No change</td> </tr> </tbody> </table>			Description	Absent DLJ Scheme	With DLJ Scheme	B46 north of Point 1/Q (coloured yellow in the DLJ Streets, Rights of Way and Access Plans)	Existing public right of way retained (no change proposed under the Testo's DCO)	No change	B46 between Point 1/Q and 1/P (shown dashed blue on the DLJ Streets, Rights of Way and Access Plans)	Existing public right of way retained – Work No. 4 in the Testo's Order would be constructed and this part of the B46 (coloured purple) would serve as a connection to the Testo's NMU provision.	As the DLJ dDCO removes Work No. 4 from the Testo's DCO, it will not be necessary to connect Work No. 4 to the existing B46. As a result, there will be no NMU provision required between Points 1/Q and 1/P. Accordingly, the existing public right of way between Points 1/Q and 1/P would be extinguished.	B46 between 1/P and 1/N (shown dashed green in the Streets, Rights of Way and Access Plans)	Extinguished under the Testo's Order (as made) as the public will use the new public right of way over the dashed brown line.	No change
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ExA's Question in Annex A of Request for Further Information dated 20.12.19	Applicant's Response dated 07.01.20		
	B46 between 1//N and 1/21 in the Streets, Rights of Way and Access Plans	Existing public right of way	No change
<p>Please explain where in the dDCO the power to extinguish the Public Rights of Way over the land shaded blue on the DLJ Land Plans is contained?</p>	<p>The specific rationale for the proposed extinguishment of <i>only part</i> of the existing B46 is, therefore, effectively clearing an errant public right of way over an area in which there will be no path (the new bridleway will follow the dashed brown line). The wider rationale for the amendment of the NMU provision under the Testo's Order is contained in the Applicant's Response to the ExA's Second Written Questions, in particular the "preliminary comments" contained in the introduction to the Applicant's response to ExQ2.5.5.</p> <p>The extinguishment of public rights of way described above is legally carried out under article 13(1) of the Testo's DCO. Article 13(1) of the Testo's DCO authorises the stopping up of public rights of way in Schedule 4 to that Order. Article 36 of the DLJ DCO (and its associated Schedule 8) would amend Schedule 4 of the Testo's Order so that the extinguishment of Points 1/ P to 1/Q (shown dashed blue) would occur. To achieve this, it is also necessary to amend the Testo's Streets, Rights of Way and Access Plans, and to extend the light blue "stopping up" line on Sheet 1 of those plans so that it runs from Points 1/7 to 1/9 on those plans. Accordingly, Schedule 4 of the Testo's DCO would need to refer to "Point 1/9" in the first row of the first table (page 43 of the Testo's DCO).</p> <p>Under article 36 of the DLJ dDCO, the amendment of the Testo's DCO would only have effect once the DLJ Scheme had commenced.</p>		
<p>The Applicant has acknowledged that a further part of Bridleway B46 would need to be stopped up associated with the implementation of Work No. 6 in the Testo's DCO which is currently under way. The proposed stopping up is between points 1/8 and 1/9 as shown on the Streets Rights of Way and Access Plans (revised D5 version [REP5-004]) in addition to that between points 1/7 and 1/8.</p> <p>2. Under which DCO powers is it proposed to stop-up part of Bridleway B46 between points 1/8 and 1/9 in addition to between points 1/7 and 1/8?</p>	<p>As per the Applicant's response directly above, the extinguishment of public rights of way described above is legally carried out under article 13(1) of the Testo's Order, as amended by the DLJ Scheme DCO, on commencement of the DLJ Scheme.</p>		

ExA's Question in Annex A of Request for Further Information dated 20.12.19	Applicant's Response dated 07.01.20
<p>Would the Applicant confirm the scope of this proposed change i.e. is it minor, material or non-material? Has consultation been undertaken in respect of this proposed change? If not, why not?</p>	<p>This change is minor and not material for the following reasons:</p> <ul style="list-style-type: none"> i. The point between 1/8 and 1/9 is approximately 42 metres. The extinguishment of the existing public right of way over this part of B46 is effectively ensuring that there is no errant public right of way and ensuring the public right of way only attaches to the retained bridleway and the wider NMU provision provided by the combined HE DCO schemes. ii. The Revised Testo's plans, drawings and sections document makes clear that <i>"the proposal to remove Work No. 4, and the extinguishment of a further part of the B46 does not affect the assessments of likely significant effects in the Scheme ES nor the Testo's Scheme ES, thereby not materially changing their conclusions."</i> iii. The Applicant's proposals have always made clear that the DLJ Scheme would amend the Testo's NMU proposals. These were consulted on in November 2018 (see further section 7.4 of the Consultation Report (TR010024/APP/5.1)). The Applicant's proposal to extinguish a further part of the existing B46 does not affect in practical terms the use of the B46. iv. The Applicant has explained these changes to both South Tyneside Council (which is also the relevant landowner) and Sunderland City Council and notes they have no comments or concerns (see further their representations submitted at Deadline 7). v. The Applicant would note these changes were submitted at Deadline 5 and no interested party has raised any concerns. <p>The Applicant does not consider further consultation necessary in light of the above.</p>
<p>3. Does either DCO provide for the improvement of Bridleway B46 between points 1/21 and 1/7? If not, why not?</p>	<p>There is no provision for the improvement of the Bridleway B46 between Point 1/17 to Point 1/N (as shown on the DLJ Streets, Rights of Way and Access Plans) as the current provision between those points is adequate.</p>

ExA's Question in Annex A of Request for Further Information dated 20.12.19	Applicant's Response dated 07.01.20
<p>In the Applicant's response to Q2.5.5. at Deadline 5 [REP5-016] there are a number of references to works being reversed including that, as a consequence of the implementation of Work No. 6 'it is now not necessary to reverse the stopping up of Bridleway B46 between points 1/7 and 1/8'. Similarly, reference is made to extinguishing rights for example 'the part of the B46 which is proposed to be extinguished under the made Testos Order will accordingly, always need to be stopped up' and 'the extinguishment of the public right of way over the B46 proceeds as per the Testos made Order'. Reference is also made to the Testos Order containing the necessary ancillary powers to deal with 'un-doing' any partially completed element of Work No. 4.</p> <p>4. Clarity is sought about the use of 'reverse', 'extinguish' and 'un-doing'. Would the ancillary powers in the Testos Order be sufficient to ensure that the on-site conditions were returned to those which existed, prior to Work No. 4 commencing?</p>	<p>The Applicant confirms that the ancillary powers under the Testos Order (namely lettered works (d), (h) and (o) – ancillary works associated with landscaping and fencing and any other works necessary to deliver the scheme which don't lead to materially new or different environmental effects) would be sufficient for this purpose of reversing and undoing any completed part of Work No. 4.</p> <p>In the Applicant's various submissions on these matters, the terms re-instate / reversal / un-doing have been used interchangeably to mean the same thing.</p> <p>In respect of the public rights of way, no reversal of any extinguishment under the Testos Order will now be required. The Applicant had previously proposed to "re-instate" part of the B46 extinguished under the Testos Order but following the completion of Work No. 6, this is no longer required (whether or not the DLJ Scheme proceeds) – see further directly below.</p>
<p>The change to the Streets Rights of Way and Access Plans is described as 'Removal of the part of the B46 which was previously proposed to be reinstated. This is now shown as extinguished under the Testos Order (as originally anticipated under that Order).'</p> <p>5. The Applicant is asked to clarify the comment above.</p>	<p>The Testos DCO as originally made extinguishes the public right of way between Points 1/N and 1/P shown dashed green on the DLJ Streets, Rights of Way and Access Plans (the Green Line).</p> <p>The Applicant had, as part of the DLJ Scheme, <i>initially</i> proposed to remove Work No. 6 of the Testos DCO. As a result of the removal of this work, the public right of way over the Green Line would have to be re-instated / reversed / undone (as above, these terms are used interchangeably to mean the same thing). Absent the "re-instatement" there would be no designated public right of way over the Green Line, which would be required in circumstances Work No. 6 is not constructed.</p> <p>Following the implementation of Work No. 6 of the Testos DCO, the Applicant no longer proposes to remove Work No. 6 from the Testos DCO. Accordingly, the need to reinstate the public right of way over the Green Line also falls away. An NMU user would use the new part of the bridleway (the brown dashed line on the DLJ Streets, Rights of Way and Access Plans), and then go onto the existing public right of way over the bridleway.</p>