

PLANNING ACT 2008

**INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**WRITTEN REPRESENTATIONS REGARDING THE A303
AMESBURY TO BERWICK DOWN (HIGHWAYS ENGLAND)
DEVELOPMENT CONSENT ORDER 201 [...]**

PLANNING INSPECTORATE REFERENCE NO TR010018

WRITTEN STATEMENT OF NATIONAL FARMERS UNION

DATE OF STATEMENT 3 MAY 2019

1. Introduction

1. This is the Written Statement of the National Farmers Union (“NFU”) in respect of the application for a Development Consent Order by the Secretary of State for Transport and Highways England (HE) identified as the A303 STONEHENGE Amesbury to Berwick Down Development Consent Order 201 [...] (“the DCO”). The NFU is making a case on behalf of its members, who are affected by the DCO.

2. The NFU represents 47,000 farm businesses in England and Wales, and additionally has 40,000 countryside members with an interest in the farming and the country.

3. The objectives of the NFU are to champion farming in England and Wales and to provide professional representation and service to its members. The matters raised in this Statement are matters not only of concern to the farming owners of agricultural land affected by the DCO, but also of concern to, and raise points of principle that will affect, members of the NFU having farm holdings that may be affected by similar highway and other infrastructure schemes.

2. Compelling case requirement: the legal and policy framework

4. The HE must show a “*compelling case in the public interest for the land to be acquired compulsorily*”: see section 122(3) of the Planning Act 2008 Act. Article 1 of the First Protocol of the Convention for the Protection of Human Rights provides: “*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*”

5. Policy guidance is found in paras 8 and 12-16 of the DCLG *Planning Act 2008 - Guidance related to procedures for the compulsory acquisition of land*, February 2013 (“the Guidance”): see the Appendix to these submissions, below. Para 45 of the Guidance states that ODPM Circular 06/2004 *Compulsory Purchase and the Criche Down Rules* contains further general guidance on matters related to compulsory acquisition: paras 17 and 24-25 are also in the Appendix below. Accordingly the ExA should be considering Circular 06/2004.

6. Whilst there is no direct legal authority on the meaning of a “*compelling case*”, the following agreed examples of where a compelling case could not be made

out were put in, and referred to by Sullivan LJ, in R (FCC Environment (UIK) Ltd) v Secretary of State for Energy and Climate Change [2015] Env LR 22 at para [11] without disapproval:

(1) The land proposed to be acquired compulsorily may, on proper analysis, be found to be excessive because the development proposals can be constructed without needing that land to be acquired ...;
(2) The acquisition of a right over the land, rather than its acquisition, might suffice; and
(3) The land may be necessary but, during the course of the Panel's consideration of the application, the owner may agree to sell it willingly rather than by compulsion (a common scenario in compulsory purchase inquiries)."

7. In Hall v First Secretary of State [2007] EWCA Civ 612, Carnwath LJ said at [15]:

"It is well-established that a clear case is required, both under domestic law and under the European Convention of Human Rights, to justify depriving a private owner of his land in the public interest.

In considering the obligation of an acquiring authority to explore alternatives, Carnwath LJ then said at [21]:

... to satisfy himself that there is a "compelling case" for compulsory acquisition, particularly where objectors are unrepresented, fairness may require [the Secretary of State] to consider at least any obvious alternatives"

8. There is no reason to believe that Carnwath LJ, in referring to any obvious alternatives, was excluding the alternative of taking some lesser interest in land rather than its permanent acquisition.

9. Further, the guidance as to negotiations either before or parallel with formal processes may well give rise to a "legitimate expectation" that such will occur, and a failure to conduct such negotiations deprives landowners of the benefit that negotiations may have brought, especially in relation to the Additional land, where different locations and lesser rights might have been achieved: as to the principles

see Council of Civil Service Unions v Minister for the Civil Service[1985] AC 374, per Lord Diplock at 408-409.

10. In relation to the compulsory acquisition of land for a highway scheme, the application of the "compelling case" requirement embraces, inter alia, the following considerations:

- (1) At a strategic level, in taking land compulsorily, what is the balance between private interests and the public interest;
- (2) whether compulsory acquisition is necessary if negotiations would or may succeed;
- (3) whether all the land within DCO is actually required for the scheme;
- (4) whether there are alternatives to taking land permanently, and some lesser interests would suffice, and might have been achieved through negotiations.

11. In relation to compulsory acquisition of land, and in the use of that ordinary English word, a compelling case exists if attempts had been made to negotiate for the acquisition of the Public Highway Land and/or the Additional Land, or an interest in land, and these had failed.

12. On the basis that the relevant paragraphs in the Guidance and in Circular 06/2004 reflect Government policy and are relevant considerations in putting forward an Application for a DCO, and in processing the same, a failure to take these into account could give rise to grounds for judicial review.

13. Whilst Circular 06/2004 contains guidance against the background of compulsory purchase orders, the Guidance (para 45) directs that the Circular contains further guidance on compulsory acquisition. Paras 24-25 of Circular 06/2004 are therefore applicable, with any appropriate modifications, to DCOs. There is no distinction of principle between the making of a CPO and the DCO procedure in relation to the application of the guidance in paras 24-25. Further, paras 24 and 25 plainly raise a legitimate expectation that negotiations will take place, at least in parallel with the formal process.

14. Of course linear schemes, such as roads, are unlikely to be achieved without compulsory acquisition. Para 24 recognises the need, where appropriate, to parallel negotiations with the formal procedures. But that has not taken place. Negotiations may embrace the grant of lesser rights adequate for HE's purposes. The affected landowners have been denied the legitimate expectation raised by paras 24 and 25 of

the 06/2004 to negotiate, and potentially, to alter the location and/or to secure lesser rights.

15. The NFU and the land agents acting believe that no meaningful negotiations have taken place alongside the formal procedures for compulsory purchase. Formal consultation has taken place but no meaningful negotiations have taken place to reach a voluntary agreement.

16. The current DCO Application provides the opportunity for the ExA to recommend that unless the guidance identified above can be shown to have been followed, a compelling case cannot be made out and powers of acquisition should not be granted.

3. Biodiversity and Ecological Conservation

17. Highways England (HE) have stated that they would like to compulsory purchase land that is designated for ecological mitigation and in particular areas of land are to be taken to create new chalk grassland and for tree planting. HE have not formerly stated who will be responsible for management and maintenance of mitigation areas. NFU contend that there is no necessity to acquire the necessary land compulsorily as the areas can be managed by the present owners subject to restrictive covenants and/or lease terms, as has occurred in connection with other HE schemes.

18. In consequence of the above, there can be no compelling case to acquire land compulsorily for mitigation areas where landowners are content to accept management arrangements, as above. HE has failed to consider whether lesser rights might suffice, or to engage with affected owners adequately or at all.

4. Allington Track

19. The Applicant is seeking to compulsory acquire the following from Beacon Hill Land Limited

- i. The freehold of a section of the existing Byway Amesbury 1 (ref.11-08) in order to convert its status to a footpath.

- ii. The freehold of an existing private track (ref.11-28) in order to create an adopted highway linking the Allington Track with Equinox Drive.

20. In consequence of the above, there can be no compelling case to acquire land compulsorily as it is in no way necessary to achieve the Applicant's stated objective. The Applicant's aspirations to downgrade the byway to footpath status and create a new adopted highway to divert the existing Allington Track can be achieved by reasonable alternatives.

5. Soils

21. NFU contends that bringing soils back to agricultural use after the construction of a major project is very difficult. It is stated in the Outline Environmental Management Plan (page 54) that the main works contractor shall produce a detailed Soils Management Strategy that will identify the nature and types of soil that will be affected and the methods that will be employed for stripping soil and the restoration of agricultural land. Liaison with Landowners has been highlighted on page 65 in regard to restoration which is essential.

22. HE should: (a) undertake aftercare for a 10-year period to bring the soil back to its condition and quality before the works took place; (b) carry out additional survey work before any soils are stripped so that a soil statement can be set up of the soil condition pre construction. An aftercare plan should be included in the OEMP which will be linked to the CoCP. Please see wording that the NFU would like to be included in the OEMP at Appendix A.

6. Field Drainage

23. Land drainage is always one of the main issues which landowners and tenants are concerned about when land is taken for construction purposes of major infrastructure. To date no detail has been provided by Highways England on how it will treat field drainage during construction and carry out reinstatement post construction. This is particularly important were land will be returned to agricultural use.

24. No information has been found within the Outline Environmental Management Plan on how field drainage will be reinstated as part of the DCO application. Highways England need to address this issue and agree to general terms

of how field drainage should be treated. The NFU has set out wording that it would like to see agreed with HE and included in the OEMP at Appendix B.

7. Private Water Supplies

25. Landowners directly affected by this proposed scheme are very concerned about what affect the boring of the tunnel will have on private water supplies and ground water. There are four farm businesses which rely solely on private water supplies from boreholes; the farms include a large outdoor pig unit, a significant suckler cow herd and a large dairy unit. It is imperative that these farms are guaranteed a permanent water supply to replace their private borehole supplies if they are contaminated or supply is affected in anyway during the construction of the new tunnel or after construction during operation.

24. The wording highlighted in the Outline Environmental Management Plan under ‘Management of Impact on Abstraction Boreholes’ at page 61 is not a sufficient guarantee that main works contractors will have to provide an alternative supply. Accordingly the NFU has requested HE as a minimum requirement that the following wording is included in the OEMP:

Agricultural Private Water Supplies

- *Where an existing private water supply to a farm is adversely and directly, affected by the construction of the Proposed Works, the Developer will, if requested by the farmer or landowner to do so, provide or procure or meet the reasonable cost of the provision of an alternative supply of water*
- *Where the supply is so affected temporarily by the construction of the Proposed Works, then the alternative supply need only be supplied for the period during which it is so affected.*
- *Where a request is made by the farmer or landowner for a permanent supply due to permanent severance of the existing supply caused by the construction of the Proposed Works the Developer will where provision of an alternative means of supply can be demonstrated by the land owner/farmer to be reasonably required for his business, provide or procure or meet the reasonable cost of a permanent means of alternative supply of water.*

8. Agricultural Liaison Officer

25. Liaison with landowners, tenants and agents is highlighted in the Outline Environmental Management Plan on page 65 but this is not adequate. The NFU would like to see that the main works contractors will have to employ an agricultural liaison officer to carry out liaison with landowners. The role we would like to see the ALO undertake is set out below at Appendix C.

9. Waste and Spoil

26. Highways England have highlighted within the scheme that an area of land to the west of the underpass (B3083) and east of the Parsonage Down National Nature Reserve is to be compulsory purchased to take the waste chalk excavated from the creation of the tunnel. It is not acceptable for Highways England to state that this avoids potential significant adverse effect with transporting the waste spoil/arising off site. It actually creates a very significant effect by taking 135 acres out of arable production and has a significant financial effect on a farm business. The area is 21% of the total arable area of the farm.
27. Again the Applicant should not be authorised to acquire more land than is needed for the highway scheme itself and the waste should be taken off site.
28. Land should also not be acquired for soil re-profiling either side of the new tunnel.

10. Green Bridges No.4 (Cut and Cover Tunnel)

29. The NFU believes very strongly that it is not necessary to create green bridge no.4 as a cut and cover tunnel located to the east of the A360. It will be a cut and cover tunnel as it is proposed to be 150m in width and not a green bridge as first proposed. Where the new road and the western entrance to the tunnel are to be built the land on either side of the development has been designated to be new chalk grassland. It will be far easier to graze and manage livestock on either side of the new road and over the tunnel entrance if green bridge 4 is located on the original line of the A360. Please see page 26, figure 5.16 in the consultation booklet, February 2018.

30. It would be possible to fence off and gate the area as one with no new restricted byway running through the western end which is proposed with the cut and cover tunnel. It will be very difficult to manage the chalk grassland or to carry out any livestock grazing with the cut and cover design with the new restricted byway. The new restricted byway and the proposed private agricultural access should be provided on a green bridge 4 as first proposed following the A360. The highway route is already there and known and is far less intrusive on agricultural land.

11. Creation of Public Rights of Way

31. The NFU believes strongly that the powers that Highways England are granted to carry out this project should not include powers to create new public rights of way (PRoW) including the creation of cycle tracks and bridleways. Under this proposed scheme new public rights of way are proposed to

- the west of green bridge no.1 on both sides of the new road,
- to the west of the new Longbarrow Junction running into Winterbourne Stoke,
- to the east of Longbarrow Junction to the A360 and on to the new green bridge 4 (the new cut and cover tunnel).
- to the north and south of Longbarrow Junction parallel to A360 to Druids Lodge and the Stonehenge Visitor Centre.

32. These proposed new public rights of way will take further land out of agricultural production. The Applicant should not be authorised to acquire more land than is needed for the highway scheme itself.

33. There is concern that the new A303 scheme will result in the intensification of the use of the PRoW network and increase improper and illegal use of the byways. Unauthorised fly-tipping, hare coursing, parking, camping and motorhomes parking up on the byways is already an issue. The new rights of way are likely to spread the problem further afield. HE must consider how these issues in the final design will be controlled.

34. It has been stated by Highways England that fences will be erected along the new proposed public rights of way. Whose responsibility will it be to maintain these fences in the future? It should not fall to the landowner.

35. Further description is needed over the Kent Carriage Gaps and what type of gates will be provided along the old A303 between A360 and West Amesbury.

12. Construction Compound Sites

36. Highways England has identified some large areas of land to be taken for construction compound sites. The NFU would like to see the detail of use for each compound site being detailed in the DCO particularly within Schedule 7. At the present time it is stated that the areas will be used to provide temporary storage, laydown areas and working space. Working space needs to be clarified as there is concern over the chalk waste from the tunnel being treated within one of the compound sites.
37. 4.2 Further the two largest compound sites 05 -07 and 05 -15 have been highlighted under Schedule 4 “Land in which only New Rights ETC May Be Acquired” and the description only highlights the purpose for which rights over land may be acquired or restrictive covenants may be imposed. There is no description referring to the treatment of waste soil.
38. 4.3 The NFU would like to see the description of works being explicitly detailed for each compound under Schedule 4 and 7 of the DCO.

13. Decommissioning of the A303

39. It has been stated that the existing A303 to the east of Longbarrow roundabout will be converted in to a green byway. In particular the byway will still provide farm access to adjacent fields and therefore it is very important that the new surface is suitable for agricultural vehicles. The surface dressing of the existing tarmac will need to be to a standard suitable for continuous use by agricultural vehicles.
40. 16.2 Clarification is need on who will be responsible for the maintenance of this private access route.

14. Statements of Common Ground

41. The NFU is working with HE on a Statement of Common Ground to cover issues that have been raised on behalf of its members.

Appendix A

Soils

Pre-construction survey work: Pre-construction detailed soil survey work will be undertaken by a competent person (e.g. a soil scientist) in order to produce specific soil resource topsoil and subsoil unit plans and restoration specifications for areas of agricultural land within individual land holdings that will be occupied by Highways England. These surveys will form the basis of the pre-construction condition assessments of the land prior to soil stripping operations and will be used to monitor the progress of soil handling and restoration operations. The surveys will provide a baseline schedule of soil condition against which the restoration of the soil post-construction will be assessed.

Aftercare –

- 1) A schedule of aftercare maintenance, to include soil testing, appropriate to the soil specification for a period of up to five years (subject to paragraph 2) following completion of the relevant construction work; and a final report to determine the final handover condition of the agricultural soil.
- 2) Should the target specification not be met by the expiry of the period of five years for aftercare maintenance mentioned in paragraph 1 (“the initial period”), then, if the landowner has fully complied with a schedule of aftercare, the Contractor, informed by a suitably qualified agricultural soils scientist or practitioner, has reasonable grounds to believe that the target specification could be met within a further period (being no longer than a further period of five years), and the initial period shall be extended by that period.
- 3) The reasonable cost of compliance by the relevant landowner with the schedule of aftercare shall be borne by the Contractor save where such cost has been compensated under the compensation code.
- 4) The agricultural soils plan will be incorporated in and prepared as part of the OEMP.
- 5) Any cultivations will be subject to discussion with the landowner prior to implementation.
- 6) During the aftercare period, there will be annual monitoring of physical soil characteristics and soil nutrient levels to set aftercare management requirements for the following year.
- 7) The land will be handed back to the owner at the earliest opportunity once the restored land is in a suitable condition to be returned to its former use.

Appendix B

Agricultural Land Drainage

1. Particular care will be taken to ensure that the existing land drainage system is not compromised as a result of construction. Land drainage systems will be maintained during construction and reinstated on completion.
2. The ALO will coordinate drainage surveys to establish the existing drainage position including any related farm drainage that may be affected by the scheme. The services of a suitably qualified drainage consultant will be employed by the Applicant to act as a drainage expert during the detailed design process and liaise with landowners or occupiers (through the ALO) to consult on the pre and post drainage schemes required. This will include the design of any land drainage works required during construction, and on the design and timing of any land drainage works required for the subsequent restoration of the land. This process will take due regard of any local and site-specific knowledge.
3. Subject to the consultation existing agricultural land drains, where encountered during the construction of each phase, will be appropriately marked. The location of drains cut or disturbed by the construction works will be photographed, given a unique number and logged using GPRS coordinates. The actual condition and characteristics (e.g. depth of installation, pipe type and diameter) of the existing drainage will also be recorded upon excavation.
4. During the construction works, temporary drainage will be installed either side of the cable trenches, within the onshore cable corridor working width, to intercept existing field drains and ditches in order to maintain the integrity of the existing field-drainage system during construction and ensure existing flow is not channelled by the onshore cable corridor. Such measures will also assist in reducing the potential for wet areas to form during the works, thereby reducing the impact on soil structure and fertility. Drainage systems however will not be installed into areas where they are not currently present, e.g. environmental wetlands.
5. Any field drainage intercepted during the cable installation will either be reinstated following the installation of the cable or diverted to a secondary channel. Landowners and occupiers will be informed of the design of drainage works required during construction and following installation of the cables and associated works, including: pipe layout, falls, dimensions and outfalls (if required). The drainage would be reinstated in a condition that is at least as effective as the previous condition and will follow best practice for field drainage installations taking into account site specific conditions.

- 6 Where it is reasonable for the reinstatement of drainage to involve works outside of the order limits it will be done subject to the agreement of the landowner.
- 7 Landowners and occupiers will be provided with the opportunity to inspect land drainage works as they progress, subject to health and safety considerations. Furthermore, records of existing and remedial drainage will be maintained by the Applicant with copies provided to the Landowner (and the Occupier, if applicable) following the completion of construction works in each phase.
- 8 A dispute resolution process will be established including the appointment of a jointly agreed Independent Expert for drainage design and implementation, where required. Where agreement cannot be reached on the appointment of the expert the matter will be referred to the President of the Institution of Civil Engineers.

Appendix C

Agricultural Liaison Officer

- 1.1. The Agricultural Liaison Officer (ALO) will be appointed by the Applicant prior to the commencement of pre-construction activities and will be the prime contact for ongoing engagement about practical matters with landowners, occupiers and their agents before and during the construction process. There may be more than one ALO if required.
- 1.2. The ALO will have relevant experience of working with landowners and agricultural businesses and will have knowledge of the compulsory acquisition process (if required) and working on a linear infrastructure project.
- 1.3. The ALO (or their company) will be contactable from 7am to 7pm during the construction phase to landowners, agents and occupiers and will provide 24-hour team or company contact details for use in the event of emergency.
- 1.4. Post-construction the ALO will remain in place for up to one year in order to manage remediation issues.
- 1.5. After that year the Applicant will ensure that ongoing contact details are provided in order for landowners and occupiers to seek consent, if required, in respect of restrictive covenants for the lifetime of the project or to highlight any defects. Information in relation to the process of management of restrictive covenants will be issued to landowners and occupiers upon any change in the person/s responsible for the process on behalf of the Applicant or the OFTO.
- 1.6. The ALO will have responsibility for liaising with landowners, agents and occupiers in respect of the following:-
 - Coordinating drainage surveys and sharing pre and post-construction drainage schemes with landowners or occupiers in advance for their consideration;
 - Coordinating the provision of a detailed pre-construction condition survey to include a soil survey as detailed in paragraph XXXX of the OEMP as well as a record of condition of the following elements;
 - existing crop regimes;
 - the position and condition of field boundaries;
 - the condition of existing access arrangements;

- the location of private water supplies (as far as reasonable investigations allow);
 - the type of agricultural use taking place;
 - the yield of crops;
 - the quality of grazing land; and
 - the existing weed burden.

- Advising on risks relating to the translocation of soil diseases and ensuring appropriate protective provisions are implemented;

- Ensuring that landowners and occupiers are consulted in respect of requirements relating to field entrances and accesses across the construction strip and land-locked or severed land parcels;

- Arrange quarterly meetings with agent representatives of landowners;

- Undertake pre-construction and day-to-day discussions with affected parties to minimise disruption, where possible, to existing farming regimes and timings of activities;

- Undertake site inspections during construction to monitor working practices and ensure landowners' and occupiers' reasonable requirements are fulfilled;

- Discussing and agreeing reinstatement measures following completion of the work

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AND IN THE MATTER OF THE
NATIONAL FARMERS UNION

WRITTEN STATEMENT

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