

Application by Highways England for a Development Consent Order in relation to the A30 Chiverton to Carland Cross Scheme.

The Examining Authority's supplementary agenda for the Issue Specific Hearing into the Draft Development Consent Order (dDCO) on Wednesday 6 February 2019

The following table comprises the Examining Authority's (ExA) questions and requests for information in relation to the dDCO. Where appropriate, these will be considered at the Issue Specific Hearing (ISH1) to be held on Wednesday 6 February 2019, 2.00 pm at The Alverton Hotel, Tregolls Road, Truro, TR1 1ZQ.

Column 2 of the table indicates which Interested Parties and other persons each question is directed to.

Where an Examination document is referred to within a question, the Examination Library reference is provided in square brackets eg [APP-001]. All document references have been attributed by the Planning Inspectorate and are taken from the live Examination Library which is available here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010026/TR010026-000541-A30%20Examination%20Library%20.pdf>

With regard to areas of disagreement with the application, please provide evidence including any counter proposals.

A list of the acronyms and abbreviations used within this document is provided at Annex A.

Number	Directed to	Question
5		DRAFT DEVELOPMENT CONSENT ORDER (dDCO) <ul style="list-style-type: none"> • The structure of the dDCO. • The appropriateness of proposed provisions. • Relationships with other consents.
1.5.1	Applicant	<p>Paragraph 2 of the Explanatory Memorandum (EM) to the dDCO identifies the proposed scheme as a Nationally Significant Infrastructure Project (NSIP) pursuant to paragraphs 14(1)(h) and 22(1)(a) of the Planning Act 2008 (as amended) (PA2008). This relates to construction of a highway.</p> <p>Section 22(1)(b) PA2008 relates to alteration of a highway and section 22(1)(c) PA2008 to improvement of a highway.</p> <p>Are you satisfied that the application relates entirely to construction of a highway and no part of this application should proceed under either, or both, s22(1)(b) and/or (c)?</p>
1.5.2.	Applicant	<p>Table of contents</p> <p>The table details the page numbers but the individual pages are not numbered.</p> <p>Ensure that the dDCO is paginated (preferred option) or remove the references in the table of contents.</p>
1.5.3.	Applicant	<p>Article 2, Interpretation, 'commence'</p> <p>The definition would permit certain works to be carried out without commencing the development, identified in the EM, paragraph 4.5(a), to be related to preparatory works prior to submission of relevant details for approval under the requirements.</p>

		<p>This appears to provide a wide flexibility with potential impacts on local residents, businesses and visitors to the area depending on the location of the works and the interpretation of 'temporary'.</p> <p>Please provide information on the expected type, scale and duration of such 'exemption works' to fall outside 'commencement', identifying any potential impacts.</p>
1.5.4.	Applicant	<p>Article 2, Interpretation, 'cycle track'</p> <p>The term 'cycle track' is included but does not appear to be relevant to the dDCO. The term 'restricted byway' is not included but appears to be relevant to the dDCO.</p> <p>Please check all interpretations and include those relevant to the dDCO.</p>
1.5.5.	Applicant, Any affected parties	<p>Article 2, Interpretation, 'Secretary of State'</p> <p>Planning Inspectorate Advice Note 15 indicates that "generally, a definition for 'The Secretary of State' should not be provided (government departments ask for a general Secretary of State to be assumed to allow for future changes to government machinery)".</p> <p>Are you satisfied it is appropriate to interpret the Secretary of State as set out?</p>
1.5.6.	Applicant	<p>Paragraph 4.5 (b) of the EM refers to the 'power to maintain in article 5'.</p> <p>Please check that the correct article is referred to in the EM.</p>

1.5.7.	Applicant	<p>Article 4, Disapplication of legislation, etc.</p> <p>In relation to the disapplication of provisions of the Neighbourhood Planning Act 2017 (the 2017 Act) it is noted that that Act (section 18) would (on commencement) give the power to take temporary possession of land, or a new right over land, by agreement or compulsorily.</p> <p>Are you satisfied that the express provision you refer to in the dDCO is appropriate given that the 2017 Act provisions aim to provide a consistent regime for the use of temporary possession powers including additional protection for affected landowners?</p>
1.5.8.	Applicant	<p>Paragraph 4.12 of the EM refers to the temporary possession of land being 'dealt with by articles 32 and 33'.</p> <p>Please check that the correct articles are referred to in the EM.</p>
1.5.9.	Applicant, EA	<p>Paragraph 4.14 of the EM indicates that there are not considered to be any ancillary works in this case. However, Schedule 9, Part 3, article 21 refers to ancillary works.</p> <p>If satisfied that there would be no ancillary works would there be a need for this reference within the dDCO?</p>
1.5.10	Applicant, CC	<p>As explained in paragraph 4.15 of the EM article 5 paragraph (2) of the dDCO would provide that any enactment applying to land within or adjacent to the Order limits would have effect subject to the provisions of the Order.</p> <p>a) Are you satisfied that it would be appropriate to simply refer to the term 'adjacent' without greater clarity on the extent and</p>

		<p>limit?</p> <p>b) Are there any specific enactments causing concern in relation to the proposed Order land?</p>
1.5.11	Applicant, CC	<p>a) In relation to article 7 of the dDCO, are there any known planning permissions within the Order limits?</p> <p>b) If so, is there any reason to suspect that implementation of them may lead to a breach of the Order if granted?</p>
1.5.12	Applicant, CC, EA, Any affected parties	<p>Paragraphs 4.22 – 4.25 of the EM refer to article 8 of the dDCO, which provides for deviation laterally or vertically from the authorised development with respect to certain specified works. Although reference is made to recent example Orders where this was used, it is my understanding that in the M20 and A14 the ability to exceed the maximum limits of deviation was limited to vertical, not lateral and in the M4 no such power was set out.</p> <p>a) Would it be appropriate to exceed the vertical and horizontal limits of deviation without applying for a change to the DCO in accordance with the processes set out under the 2008 Act?</p> <p>b) Given that the limits of deviation are themselves designed to permit flexibility to deviate from the proposed scheme, what processes would be put in place for the Secretary of State to determine whether or not the development proposed, in excess of the limits, would give rise to any new or worse environmental effects? Although there is a process in place for the discharge of requirements set out in Part 2 of Schedule 2 (requirements 16 and 17) there is no similar provision for the submission of any information to the Secretary of State in accordance with article 8.</p>

1.5.13	Applicant, SWWL, WPD, BT, WWUL, IL, L3C, RES, SPR, VDM, VML, VGPLC, SUK	Paragraph 4.27 of the EM provides a list of the works (to fall under article 9 paragraph (2) of the dDCO) and persons considered to benefit. There appear to be discrepancies between the list in article 10(4) and that provided in the EM. Please confirm that the correct information is provided in both the EM and dDCO.
1.5.14	Applicant, SWWL, WPD, BT, WWUL, IL, L3C, RES, SPR, VDM, VML, VGPLC, SUK	Article 10 paragraph (4) of the dDCO sets out that the benefit of the Order could be transferred or leased to others by the undertaker. How can it be confirmed that these parties would be able to meet the CA compensation costs if the DCO permitted transfer of the CA powers and TP powers to these bodies without further consideration by the Secretary of State?
1.5.15	CC	Article 11 allows the undertaker to carry out works to interfere with and execute works in or under the streets within the Order limits. a) Has this been discussed with you as the relevant highway authority? b) Are you satisfied that the provisions of this article would be appropriate?
1.5.16	CC	As explained in paragraph 4.35 of the EM article 12 paragraph (3) of the dDCO provides that certain provisions of the 1991 Act would not apply. Are you satisfied that the disapplication of these provisions is appropriate, given the scale of the proposed works, the specific

		authorisation and the specific provisions in the dDCO regulating the carrying out of the works?
1.5.17	CC	<p>Article 13 places obligations on the highway authority in relation to the construction and maintenance of new, altered or diverted streets and other structures.</p> <p>a) Has this been discussed with you as the relevant highway authority?</p> <p>b) Are you satisfied that the provisions of this article would be appropriate?</p>
1.5.18	Applicant, CC	<p>As explained in paragraph 4.51 of the EM the purpose of article 14 paragraph (9) of the dDCO is to confirm that the matters covered in paragraphs (1) to (7) could be varied or revoked in the future without the need to apply under the 2008 Act for an amendment to the Order.</p> <p>Are you satisfied that this would be appropriate or would it circumvent the provisions of the 2008 Act?</p>
1.5.19	CC	<p>As explained in paragraph 4.57 of the EM article 15(6) of the dDCO provides that a street authority which fails to notify the undertaker (the applicant) of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent.</p> <p>Are you satisfied that deemed consent would be appropriate in order to remove the possibility for delay and provide certainty that the authorised development can be delivered in a timely fashion, without risk of being held up due to a failure to respond to an application for consent?</p>

1.5.20	CC, Any affected parties	<p>As explained in paragraphs 4.64 and 4.65 of the EM article 17 of the dDCO provides that accesses could be created within the Order limits - it is anticipated to provide temporary accesses as required during the construction period - providing the undertaker with a general power to provide means of access, similar to those available under the Highways Act 1980. The provisions of this article confer slightly broader powers than those contained in the 1980 Act.</p> <p>a) Are you satisfied that the provision of such powers would be appropriate to ensure that the authorised development can be carried out expeditiously, allowing the creation of new temporary accesses as, where and when required, particularly in response to requests from landowners, occupiers and other affected parties?</p> <p>b) It appears that the powers would not simply be limited to requests from landowners, occupiers and other affected parties but could enable the applicant to make new accesses where the landowner or occupier did not consent, without any examination of the need for them. Would this be appropriate?</p> <p>c) Is the limit to the power to those that are 'reasonably required' sufficiently certain?</p> <p>d) What processes would be put in place to deal with any dispute as to what was 'reasonably required'?</p>
1.5.21	CC, EA, Any affected parties	<p>As explained in paragraph 4.80 of the EM article 20, paragraph 7 of the dDCO provides that a person who fails to notify the undertaker of their decision in respect of an application for consent within 28 days of the application being made is deemed to have granted consent or given</p>

		<p>approval.</p> <p>Are you satisfied that deemed consent/approval would be appropriate in order to remove the possibility for delay and provide certainty that the authorised development can be delivered in a timely fashion, without risk of being held up due to a failure to respond to an application for consent/approval?</p>
1.5.22	CC	<p>As explained in paragraph 4.82 of the EM article 22, paragraph 6 of the dDCO provides that a highway authority or street authority which fails to notify the undertaker of its decision in respect of an application for consent within 28 days of the application being made is deemed to have granted consent.</p> <p>Are you satisfied that deemed consent would be appropriate in this case?</p>
1.5.23	Applicant, Tregothnan Estate	<p>Taking account of The Cornwall Minerals Safeguarding Development Plan Document (2018) would article 24 of the dDCO, incorporating Parts II and III of Schedule 2, Minerals, to the Acquisition of Land Act 1981 appropriately address the concerns raised by [RR-060]?</p>
1.5.24	Applicant	<p>Article 26 would allow for rights over land to be acquired as well as the land itself, and also for new rights to be created over land, including the power to impose restrictive covenants.</p> <p>a) Please provide justification for this wide power, bearing in mind that the CA tests must be satisfied in order for the DCO to authorise the CA sought.</p> <p>b) Is it the intention to permit the creation of the new rights listed in schedule 5 as well as the creation of any new right over any of</p>

		<p>the order land?</p> <p>c) Would the dDCO achieve this?</p> <p>d) If not, what amendments would be sought?</p>
1.5.25	Applicant	<p>a) In relation to article 30 are you satisfied that this would be appropriate given that the 2017 Act provisions aim to provide a consistent regime for the use of temporary possession powers including additional protection for affected landowners?</p> <p>b) Would it be better to more closely reflect that regime?</p> <p>c) Alternatively could the EM explain why not?</p>
1.5.26	Applicant, Tregothnan Estate	Taking account of The Cornwall Minerals Safeguarding Development Plan Document (2018) would articles 31 and 32 of the dDCO, acquisition of subsoil or airspace only and rights under or over streets, appropriately address the concerns raised by [RR-060]?
1.5.27	Applicant, Any affected parties	<p>Article 33, Temporary use of land for carrying out the authorised development.</p> <p>a) Are you satisfied that the provisions of paragraph 1(a)(ii) of the dDCO would not affect the compensation payable when that land was, eventually, compulsorily acquired?</p> <p>b) As 33(8) permits the CA of new rights in land listed in schedule 7 the CA tests would still have to be met, although this land is described as being for temporary use. Please ensure such justification if provided.</p>

		c) Are you satisfied that this should not reflect the 2017 Act provisions, which aim to provide a consistent regime for the use of temporary possession powers, including additional protection for affected landowners?
1.5.28	Applicant, Any affected parties	Article 37 of the dDCO deals with recovery of costs of new connections in relation to statutory undertakers apparatus. How are private water and sewerage supplies to be dealt with?
1.5.29	Applicant, CC, Any affected parties	Following the Planning Inspectorate's Advice Note 15, Drafting Development Consent Orders, paragraph 22.1 and Good Practice Point 6, in relation to article 39, where it is known that specific hedgerows need to be removed they should be listed in a Schedule and this article amended to refer to that Schedule. An additional paragraph should be added to this article to the effect that any other hedgerows should only be removed once the prior consent of the local planning authority has been obtained. Is there any reason not to include this matter within the DCO?
1.5.30	Applicant	Please provide justification for the powers provided by article 41 in the circumstances of this particular scheme, notwithstanding precedent in other DCOs.
1.5.31	Applicant	What provisions have been put in place to ensure that Schedule 10, as referred to by article 45 of the dDCO, is up to date should changes arise to the documents to be certified?
1.5.32	CC, Any affected parties	As explained in paragraphs 4.167 – 4.171 of the EM article 48 of the dDCO is intended to provide a streamlined process in relation to appeals relating to the Control of Pollution Act 1974.

		Are you satisfied that the intended process would be appropriate to ensure that the authorised development could be carried out expeditiously, whilst still providing appropriate protection, as intended by the 1974 Act?
1.5.33	Applicant	<p>In relation to Schedule 1 to the dDCO and the EM, and notwithstanding the potential for some overlap, please can you clarify the works which form part of the NSIP and the associated development.</p> <p>In particular, there needs to be justification that all of the works would be necessary or expedient and have been subject to EIA.</p>
1.5.34	Applicant, CC	<p>Schedule 2, Part 1, Requirement 12, permits the Secretary of State, following consultation with the relevant planning authority and the local highway authority, to permit the development to be carried out other than in accordance with the preliminary scheme design shown on the works plans and the general arrangement and sections plans, provided that the departure would not give rise to any materially new or materially worse adverse environmental effects. It seems that this could allow development to take place contrary to the works plans and general arrangements and sections plans.</p> <p>Although paragraph 5.29 of the EM says that any variations to the Scheme design must be within the limits of deviation, article 8 permits further deviation from the maximum limits of deviation where the Secretary of State, following consultation with the relevant planning authority and local highway authority, certifies that this would not give rise to any materially new or worse environmental effects than those reported in the ES (see question 1.5.11 above).</p> <p>Is it necessary and appropriate for amendments to be permitted to these key documents and the detailed design of the project without</p>

		consultation or examination?
1.5.35	Applicant, CC, EA	<p>a) Given the comments by the EA [RR-098] in relation to Schedule 9, Part 3 of the dDCO, should this part of the Schedule be removed from the dDCO?</p> <p>b) Given that the proposal crosses ordinary water courses is the appropriate consenting regime addressed and, if so, how?</p> <p>c) If this is not the case how would an appropriate consenting regime be addressed?</p>
1.5.36	Applicant	In relation to applications for consent where the dDCO provides for deemed consent/approval, what measures would be in place to ensure and demonstrate that appropriate consent was sought from the appropriate person/body at the appropriate time?

Abbreviations and glossary

Annex A

BT	BT Group Public Limited Company
CA	Compulsory Acquisition
CC	Cornwall Council
dDCO	Draft Development Consent Order
EA	Environment Agency
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum to the dDCO
IL	Instalcom Limited
L3C	Level 3 Communications Limited
RES	Renewable Energy Systems Limited
SPR	ScottishPower Renewables (UK) Limited
SUK	Sky UK Limited
SWWL	South West Water Limited
TP	Temporary Possession
VDM	Verizon Digital Media Services UK Limited
VGPLC	Vodafone Group Public Limited Company
VML	Virgin Media Limited
WPD	Western Power Distribution Public Limited Company
WWUL	Wales & West Utilities Limited