



Historic England

COMMENTS ON MATTERS REQUIRED

FOR DEADLINE 5

(1st May 2020)

ON BEHALF OF THE

**HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR
ENGLAND**

(HISTORIC ENGLAND)

Application by

Highways England

For an Order granting Development Consent for the

A1 Birtley to Coal House Improvement Scheme, Tyne & Wear

PINS Reference No: TR010031

Historic England Reference No: PL00552195

Deadline 5 Submission

1st May 2020

1. INTRODUCTION

- 1.1. Historic England is more formally known as the “*Historic Buildings and Monuments Commission for England*”. We are the government’s statutory adviser on all matters relating to the historic environment, including world heritage. It is our duty under the provisions of the *National Heritage Act 1983* (as amended) to secure the preservation and enhancement of the historic environment.
- 1.2. We set out below our comments on matters that have arisen from documents submitted for Deadline 4 to this DCO examination. We have sought to focus our attention on those documents which we consider it would be of assistance to the Examining Authority to have our commentary.
- 1.3. We note however that multiple versions of both the dDCO and the Explanatory Memorandum have been submitted for Deadline 4, and that not all are internally consistent across all versions in so far as they relate to provisions which Historic England have engaged with. For example, REP4 – 015 (and REP4 – 077 and REP4 – 079) does not appear to acknowledge the changes that have been made in the dDCO in REP4 – 013 with regards the consultation with Historic England, and the references to further investigation and mitigation in relation to unexpected discoveries. We would be grateful if there could be clarification as to which version is to be carried forward so that we can make further comment as appropriate.
- 1.4. Bearing the above in mind, Historic England are providing comments on the following documents:
 - Revised Draft DCO (REP4 – 013)
 - Updated Outline Construction Environmental Management Plan (REP4 – 023)
 - Applicant’s Responses to ExA’s 2nd Written Questions (REP4 – 052)

- Statement of Common Ground: Historic England (Rev 1) (REP – 027)
- EXA/D4/007 Applicant’s Comments on Submissions to Deadline 3 (REP4 – 057)

2. REVISED DRAFT DCO (REP4 – 013)

- 2.1 The Applicant has made changes to the updated dDCO submitted for Deadline 4 (REP4 – 013). In particular they have now made amendments to Requirement 9 and Schedule 10.
- 2.2 We have provided the comments below based on the provisions for Requirement 9 and Schedule 10 as set out in REP4 – 013 (Rev 3a).

Schedule 2, Part 1, Requirement 9

- 2.3 We welcome the changes to Requirement 9(3) of the Draft DCO (REP4 – 013) to reflect our request in previous submissions (REP1 – 012 and REP3 – 007) that Historic England are now included as a “consultation body” in addition to the “relevant planning authority”. In addition, we note the change made to meet our request during discussions with the Applicant’ agents on 16th April 2020 that the reporting and analysis referred to in this section is carried out as per the FINAL WSI. To provide clarity about the wording for Requirement 9 which we understand to have agreed, we have appended the text of dDCO Rev3a at the end of this document (see Appendix 1).
- 2.4 As requested in our submission REP3 – 007, a change has also been made to 9(6) which now states that if unexpected discoveries are made, then both further investigation and, critically, mitigation shall be discussed and agreed with both the Local Authority and, if in relation to the scheduled monument, with Historic England. This is an important change as it will ensure that unexpected remains which may not be covered by the agreed WSI will not simply be reported to the Local Authority or Historic England, but will be subject to the same level of investigation and where required, mitigation as other archaeological works within the development area.

- 2.5 We also welcome the reference to 9(4) in requirement 9 (5).
- 2.6 The wording therefore in Requirement 9 of the dDCO REP4 – 013 meets our objectives. However, we will reserve final comments until after we have received confirmation that it these provisions are carried forward in the dDCO.

Schedule 10

- 2.7 In the dDCO submitted at Deadline 4 (REP4 – 013), the Applicant has now clearly set out all the works to the Scheduled Monument in Schedule 10 as we have requested in our previous comments (REP1 – 012 and REP3 – 007).
- 2.8 There are three outstanding issues in relation to Schedule 10 arising from our previous comments. Firstly, there is a need to clarify the reinstated access arrangements onto the monument by the realigned PROW/Bridleway - as noted in our submission for Deadline 4 (REP4 – 066 in our response to ExA's Q2: 2.4.12). We are in discussion with the Applicant's agents regarding a drawing (as requested in our Deadline 4 submission REP4 – 066) to show the access arrangements more clearly so as to be able to determine if there is any impact to the monument. If there is no impact, then the reference to the PROW access could be removed from Schedule 10.
- 2.9 Secondly, there may be a nomenclature issue regarding the PROW which would require Schedule 10 to be corrected in relation to a "private" versus "public" Right of Way. We have raised this with the Applicant's agents.
- 2.10 Finally, there is the issue of drainage (see also section 3.6 below). This was a point raised by Gateshead Borough Council as an issue to be resolved, and we note a "new" provision has been included about drainage at the end of Schedule 1 of the dDCO (REP4 – 013). We are seeking clarification on the drainage issue in relation to Schedule 10 in so far as the works might have an impact on the scheduled monument. This will then ensure that any impacts arising on the monument can be addressed through the Final WSI methodology if required. If the drainage does not have an impact on the monument, then the reference to drainage could be removed from Schedule 10.

2.11 These outstanding issues have been discussed with the Applicant's agents in a teleconference on 28th April 2020 and we await further updates on them.

3. UPDATED OUTLINE CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN (REP4-023)

3.1 The Applicant has made changes to the Outline CEMP to the relevant sections of the REAC Table 3-1 which refer to Cultural Heritage.

CH2

3.2 Historic England are disappointed to note a change has been made to the wording of CH2 after previous agreement was reached and which we acknowledged in our response at Deadline 3 (REP3 – 007). The Applicant had accepted the change as noted in their comments in reference number 5.2 of Table 1.3 (p.11) of the document "*Applicant's Comments on Submissions to Deadline 3*" (REP4 – 057) on our submission provided at Deadline 4.

3.3 CH2 now reads (bold has been added for emphasis):

*...Prior to construction, a final archaeological WSI **substantially in accordance with that annexed to this Outline CEMP as Appendix C** will be prepared in consultation with Historic England and the local authority in relation to archaeological works required during construction within the railway cutting associated with the Bowes Railway Scheduled Monument (HA 1003723) and the Scheme Footprint. The Final WSI will be approved in parallel with the Final CEMP in accordance with the Outline WSI annexed to this Outline CEMP and address those actions detailed within CH2, CH3, CH4, CH5, CH6, and N8 of this Outline CEMP...*

3.4 The wording agreed at Deadline 3 stated:

*"Prior to construction, **a final archaeological WSI will be prepared in consultation with Historic England and the local authority** in relation to archaeological works required during construction within the railway cutting associated with the Bowes Railway Scheduled Monument (HA 1003723) and*

the Scheme Footprint. The Final WSI will be approved in parallel with the Final CEMP in accordance with the Outline WSI annexed to this Outline CEMP and address those actions detailed within CH2, CH3, CH4, CH5, CH6, and N8 of this Outline CEMP...

- 3.5 Historic England was not asked about this text and consider that the inclusion of the phrase “substantially in accordance with” introduces uncertainty and contradiction as to the wording of the provision. Whilst having reference to the Outline CEMP in Appendix C can provide clarity as to the final form of the WSI, we consider that this should read “in accordance with”, and the word “substantially” should be deleted. We consider and understand that the Applicant had already agreed in section 5.2 of Table 1.3 in their response to our Deadline 3 comments (REP4 – 057) that the Final WSI will be “in accordance” with the Outline WSI appended to the OCEMP.
- 3.6 We also note that the wording of Requirement 9(1) states that “...*The FWSI shall be in accordance with the mitigation measures included in the REAC and the outline written scheme of investigation...*” which we consider is a clearer, more enforceable phrasing to use and recommend that CH2 should reflect Requirement 9(1) and use the same wording for consistency and the avoidance of confusion.
- 3.7 Historic England asks that the wording in CH2 be corrected to reflect what was previously agreed for CH2. It is important that the FWSI is in accordance with the Outline WSI to ensure that all archaeological works are conducted as agreed, particularly in relation to the scheduled monument.
- 3.8 Historic England had the opportunity to discuss the updated version of the Outline WSI appended to the OCEMP (see REP4 – 022) with the Applicant’s agents via a teleconference on 28th April 2020. This included a request to ensure that the Outline WSI complies with the Cultural Heritage actions points in the OCEMP where reference is made to timings and methodologies being presented in the Final WSI. Currently the text in the Outline WSI is not clear in this regard (see section 5.2 of REP4 – 057). Additionally, we welcome that as per our comments in our Deadline 4 submission (see 2.4.12 in REP4 – 066), the Applicant has provided a drawing showing the location of the access route

from Compound 4 onto the monument as a Figure in the Outline WSI. We have provided tracked changes to the Outline WSI with our comments. We wait to see the latest updated version of the Outline WSI, and may provide further comments once this has been submitted and we have had an opportunity to review it.

CH6

- 3.9 In our appendices to our Written Representations 1 (REP1 – 012) we had requested that a section of the monument retaining wall of equal length that would be removed was to be consolidated, repointed and repaired and that this would be approved by the local authority in consultation with Historic England. The Applicant has made a change to the achievement criteria column of CH6 stating that the WSI is to be approved by the Secretary of State in consultation with Historic England as it is a scheduled monument. We accept this change.

CH7

- 3.10 We welcome the inclusion of a new action in the REAC table. CH7 covers the access from the site compound on the NW side of the monument and sets out how the access will be formed so as not to harm the monument and that the methodology will be informed by the Archaeological Contractor and provided as part of the FSWI. Historic England will be involved through consultation in the approval of the FWSI so we are happy to accept this change.

CH9

- 3.11 Historic England notes that a new action point CH9 has been added to the REAC table. This action relates to drainage works on the land adjacent to the monument in response to a request by Gateshead Council. Drainage works may impact on the monument by connecting the drainage grip by weep holes through the reconstructed sections of the monument wall. The aim is to ensure that any erosion caused by field run-off does not undermine the wall, the cutting or the Bowes Railway scheduled monument.
- 3.12 As noted in paragraph 2.10 above, Historic England has requested clarification regarding the potential impact that this might have on the scheduled monument

and that any works to achieve CH9 which impact on the scheduled monument are to be agreed in consultation with Historic England. Currently the “achievement criteria” states that the CEMP will be approved by the SoS following consultation with the local authority. We suggest that for consistency across the CH Actions, the achievement criteria should be amended to reflect similar wording used for CH7, i.e. “*Method statement for construction of the drainage grip produced in consultation with Local Authority **and Historic England***”. We ask that consideration be made to ensure this consistency and to permit our oversight if the works will impact on the monument.

4. APPLICANT’S RESPONSES TO ExA’S 2ND WRITTEN QUESTIONS (REP4 – 052)

- 4.1 **Ref Q.2.5.4** – Historic England welcomes the changes made to the Outline CEMP as noted in the Applicant’s response to this question.
- 4.2 We thank the Applicant for confirmation that the tunnel over the Bowes Railway will be extended and not replaced as was indicated in the wording of Schedule 10 in Rev 2 of the dDCO (REP2 – 044). It is important the correct version of the dDCO is confirmed (see also section 1.3 above) and we would be grateful for clarification.

5. STATEMENT OF COMMON GROUND: HISTORIC ENGLAND (REV 1) (REP4 – 027)

- 5.1 We note a revised SOCG was submitted at Deadline 4 (REP4 – 027) without discussions with Historic England prior to submission.
- 5.2 Under “ES Chapter 6: Design, Mitigation and Enhancement Measures” Historic England confirm that we provided comments on the first version of the Outline WSI which was then submitted as an appendix to the “clean” Outline CEMP (REP4 – 022). We have subsequently provided additional comments to this version in a teleconference on 28th April 2020 with the Applicant’s Agents. Discussions are therefore on-going in this matter.

5.3 All other issues identified as “under discussion” remain so at this time. We anticipate further discussion with the Applicant in due course.

6. EXA/D4/007 APPLICANT’S COMMENTS ON SUBMISSIONS TO DEADLINE 3 (REP4 – 057)

6.1 We note that the Applicant has provided comments on our Deadline 3 submission (REP3 – 007). We have provided comments in relation to Table 1.3 reference 5.2 above in sections 3.2 – 3.8. We await sight of an updated version of the Outline WSI to ensure it addresses our concerns

APPENDIX 1:

(a) Wording of Requirement 9 in dDCO (rev. 3a) REP4 – 013:

The wording in this tracked changes version of the dDCO reflects what was agreed on 16/04/2020 and this is the wording that we believe we agreed with Highways England:

Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a final written scheme of investigation (FWSI) of areas of archaeological interest has been submitted to and approved in writing by the Secretary of State, in consultation with the relevant planning authority and Historic England on matters related to its function. The FWSI shall be in accordance with the mitigation measures included in the REAC and the outline written scheme of investigation and shall include a programme of archaeological reporting, post excavation and publication including a timescale for such reporting and publication.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1) unless otherwise agreed in writing by the Secretary of State.

(3) A copy of any analysis, reporting, publication or archiving required as part of the FWSI must be agreed with the relevant planning authority and in consultation with Historic England and deposited with the Historic Environment Record of the relevant planning authority within one year of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority or specified in the written scheme referred to in sub-paragraph (1).

(4) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority, and to Historic England in the case of the scheduled monument area, as soon as reasonably practicable from the date they are identified.

(5) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (4) for a period of 14 days from the date of any notice served under sub-paragraph (4) unless otherwise agreed in writing by the relevant planning authority or, in the case of the scheduled monument area, Historic England.

(6) If the relevant planning authority or, in the case of a scheduled monument, Historic England determines in writing that the archaeological remains referred to in sub-paragraph (4)—require further investigation or mitigation, no construction operations are to take place within 10 metres of the remains until provision has been made for such mitigation or the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority or, in the case of a scheduled monument, Historic England.