

Application by Highways England for an Order granting Development Consent for the A1 Birtley to Coal House Improvement Scheme

The Examining Authority's schedule of changes to the draft Development Consent Order (dDCO)

Issued on 16 June 2020

The following schedule of changes is based on the most recent version of the Applicant's dDCO [REP8-004]. For ease of reference, text shown emboldened in red identifies insertions of new suggested text, while text shown with a strike through is suggested for deletion. Please provide any comments you may wish to make on this schedule of changes by Deadline 9 (8 July 2020). The schedule will also be referred to at the Issue Specific Hearing on the dDCO (ISH5) on 25 June 2020.

In addition to this schedule of changes, further matters may arise following discussions at the forthcoming Hearings and future written submissions, which may lead to the ExA recommending further changes to the dDCO. This includes the proposed Protective Provisions in Schedule 11 of the dDCO.



Ref	ExA's suggested changes	ExA's comments
Articles		
Interpretation Article 2(1)	<p>"commence" means-</p> <p>(a) unless otherwise provided, means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement" shall be construed accordingly;</p> <p>(b) In relation to paragraphs 4,5,7, 8, 9 and 10 of Part 1 to Schedule 2, means any material operation (as defined in Section 56(4) of the 1990 Act) excluding the measuring or marking out of a proposed road;</p>	<p>The ExA does not consider that reasonable justification has been provided for why these works should be excluded, taking into account the impact that might potentially arise from such works.</p> <p>The ExA considers that part (b) would be superfluous and also notes that 'site clearance' is not included within Section 56(4) of the 1990 Act.</p>



Ref	ExA's suggested changes	ExA's comments
Interpretation Article 2(1)	"maintain" in relation to the authorised development includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, improve, landscape, remove, reconstruct, refurbish or replace and any derivative of "maintain" is to be construed accordingly;	<p>The terms 'alter' and 'improve', and the measures or works they could allow for, appear to go beyond a reasonable definition of 'maintain' and may result in changes to the scheme without appropriate consultation.</p> <p>The inclusion of 'landscape' within the definition is not considered to be justified for the scheme and landscape maintenance is also covered by the draft Requirements (5).</p>



Ref	ExA's suggested changes	ExA's comments
Article 7 Limits of Deviation	<p>In carrying out the authorised development the undertaker may—</p> <p>(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;</p> <p>and (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of \pm 0.5 metres upwards or \pm 0.5 metres downwards,</p> <p>except that these maximum limits of lateral and vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation (a) 1991 c. 59. The definition of "drainage" was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25). 9 in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p>	<p>The ExA considers that limits of deviation of up to 1.0m are not justified and may lead to unintended consequences (for example in relation to the visual effects from the proposed gantries).</p>



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<p>Article 32 (9) Temporary use of land for carrying out the authorised development</p>	<p>(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from-</p> <p>a) acquiring new rights over any part of that land under article 26 (compulsory acquisition of rights and restrictive covenants); or</p> <p>b) acquiring any part of the subsoil (or rights in the subsoil of a or airspace over) that land under article 30 (acquisition of subsoil or airspace only).</p>	<p>This text could result in the creation of new undefined rights over land listed in Schedule 7. A significant number of plots could be affected by this provision and there is not sufficient clarity as to the nature of any new rights being sought. The ExA is also concerned that appropriate consultation has not taken place on the creation of new undefined rights. As such the ExA is concerned that it would not be possible to determine whether or not there is a justified case for the acquisition of such rights.</p>
<p>Schedule 2, Part 1 Requirements</p>		



Ref	ExA's suggested changes	ExA's comments
R4 (1)	4 (1) Construction and handover environmental management plan No part of the authorised development is to commence until a CEMP, substantially in accordance which must accord with the outline CEMP, for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, the environment agency Environment Agency and Historic England to the extent that it relates to matters relevant to its function.	In order to ensure that there is the necessary certainty regarding the implementation of measures contained within the outline CEMP. The use of capitalization for the Environment Agency.
R5(2)	5 (2) Landscaping The landscaping scheme must reflect be in accordance with the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan and landscape mitigation design annexed to the environmental statement.	In order to ensure that there is the necessary certainty regarding the implementation of measures contained within the REAC.
R8(1)	8 (1) Surface and foul water drainage No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting which accords with the mitigation measures set out in the REAC including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.	In order to ensure that there is the necessary certainty regarding the implementation of measures contained within the REAC. Missing 'to' inserted for clarity.



Ref	ExA's suggested changes	ExA's comments
R9(1)	9 (1) Archaeological Remains 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 substantially 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.	In order to ensure that there is the necessary certainty regarding the implementation of measures contained within the REAC and outline written scheme of investigation.
R13	13 Fencing Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development. See ExA's comments	The ExA questions whether clarification and revised drafting is needed to avoid any inconsistency and/or misunderstanding with measures N2 a N3 of the REAC which may be considered to be 'other means of enclosure'.



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R14	<p>14. Allerdene bridge replacement</p> <p>The undertaker is restricted to carrying out Work No.5a as either one of the works specified in paragraph (i) or (ii) of Work No. 5a as follows:-</p> <p>(a) In the event that the Work No. 5a is to comprise a single span bridge structure in terms of paragraph (i) of Work No. 5a then it shall be carried out generally in accordance with Sheet 3 of the structures engineering drawings and sections;</p> <p>(b) In the event that the Work No. 5a is to comprise a six span bridge structure in terms of paragraph (ii) of Work No. 5a then it shall be carried out generally in accordance with Sheet 4 of the structures engineering drawings and sections;</p> <p>(c) In the event that the Work No. 5a is to comprise a seven span bridge structure in terms of paragraph (ii) of Work No. 5a then it shall be carried out generally in accordance with Sheet 5 of the structures engineering drawings and sections;</p> <p>(d) In the event that the Work No. 5a is to comprise a three span bridge structure in terms of paragraph (ii) of Work No. 5a then it shall be carried out generally in accordance with Sheet 16 of the structures engineering drawings and sections.</p>	<p>The use of the word 'generally' is unprecise and may result in design revisions that do not accord with paragraph 4.29 of the National Networks National Policy Statement seeking the demonstration of good aesthetics as far as possible.</p> <p>The ExA also questions whether further drafting is required to secure some of the design measures referred to in the Applicant's response to ExQ2.0.4 [REP4-052] (e.g. bespoke parapet details).</p>

End of Schedule