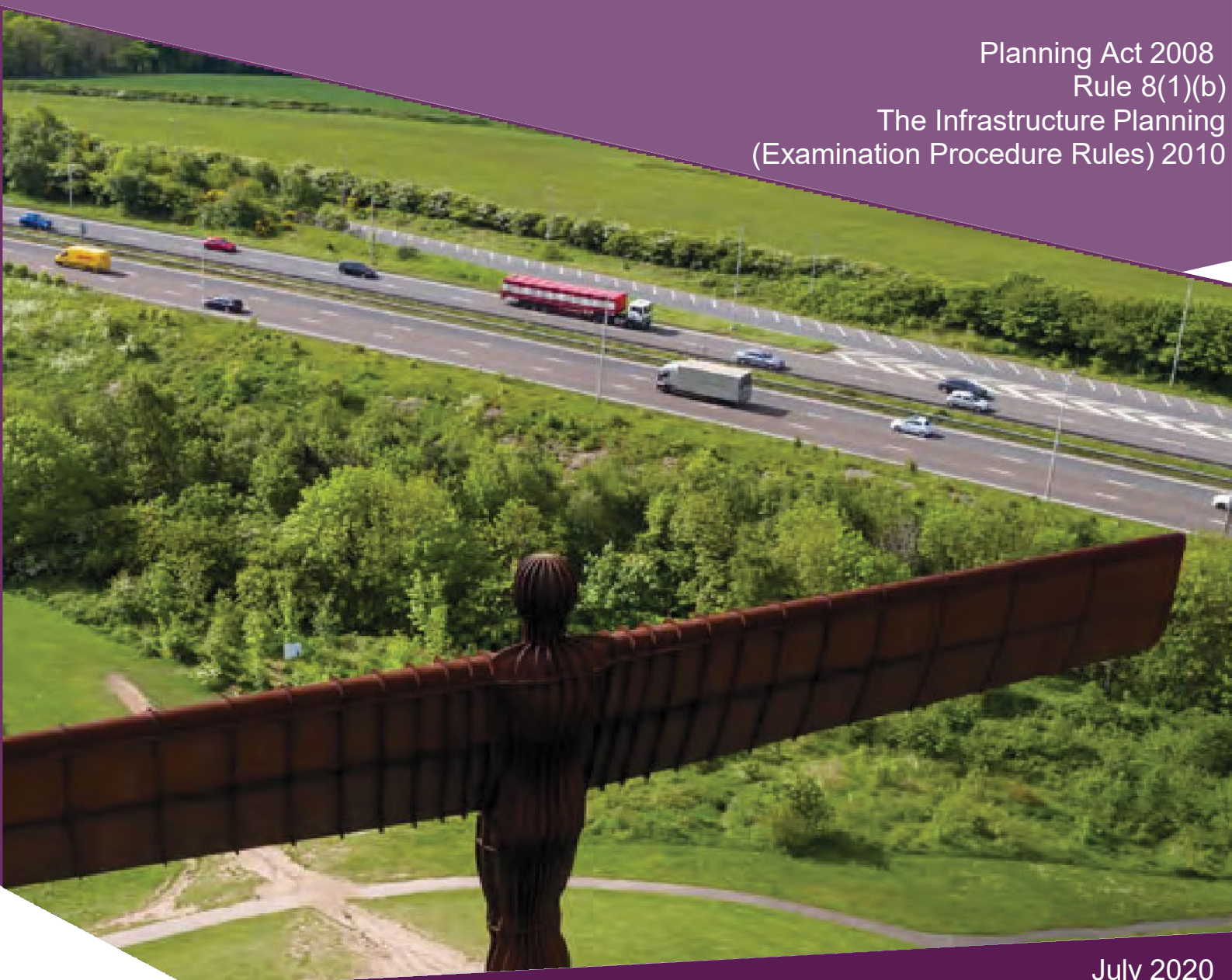


A1 Birtley to Coal House
Scheme Number: TR010031

**Comments on any Additional
Information/Submissions Received by D8**

Planning Act 2008
Rule 8(1)(b)
The Infrastructure Planning
(Examination Procedure Rules) 2010



Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure Rules) 2010**

**The A1 Birtley to Coal House
Development Consent Order 20[xx]**

**Comments on any Additional Information/
Submissions Received by D8**

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|---|---|
| Rule Number: | Rule 8(1)(b) |
| Planning Inspectorate Scheme Reference | TR010031 |
| Application Document Reference | Comments on any Additional Information/Submissions Received by D8 |
| Author: | A1 Birtley to Coal House Project Team, Highways England |

| Version | Date | Status of Version |
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| Rev 0 | 8 July 2020 | For Issue |

APPLICANT'S RESPONSE TO THE EXAMINING AUTHORITY'S SCHEDULE OF CHANGES TO THE DRAFT DEVELOPMENT CONSENT ORDER

| Ref | ExA's suggested changes | ExA's comments | Applicant's response |
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| Articles | | | |
| <p>Interpretation Article 2(1)</p> | <p>“commence” means- (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 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>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> | <p>The change to the wording has been included. However, the inclusion of “site clearance” within the definition of development requires that additional provisions are required to deal with required advance works.</p> <p>It will be necessary to carry out early vegetation clearance in order to avoid vegetation clearance during the nesting season. Given the timescales associated with the approval of requirements (and, in particular, the CEMP) delaying site clearance until all requirements are discharged would mean a considerable delay to the start date of the Scheme. In order to overcome this issue, a bespoke requirement 16 has been provided for vegetation clearance works. Before</p> |

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| | | | <p>vegetation clearance can be carried out, The Secretary of State must approve a construction management plan for those works. The plan must address specified items in the REAC.</p> <p>This provision will allow the site clearance operations to take place in advance of the other requirements being discharged but will still ensure that appropriate measures are in place to avoid impacts from these works.</p> |
| <p>Interpretation Article 2(1)</p> | <p>“maintain” in relation to the authorised development includes, to the extent assessed in the environmental statement, inspect, repair, adjust, remove, reconstruct, refurbish or replace and any derivative of “maintain” is to be construed accordingly;</p> | <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. 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> | <p>The words “alter”, “improve” and “landscape” are required within the definition of maintain in order to ensure that the Applicant is able to comply with their statutory duty to maintain the new road as part of the national road network. A full explanation of the statutory framework is set out in the Applicant’s written submission on ISH 5 in relation to agenda item 4(5).</p> |
| <p>Article 7 Limits of</p> | <p>In carrying out the authorised development the undertaker may—</p> | <p>The ExA considers that limits of deviation of up to 1.0m are</p> | <p>As explained in the Applicant’s written submission on ISH 5 in</p> |

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| <p>Deviation</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 0.5 metres upwards or 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>not justified and may lead to unintended consequences (for example in relation to the visual effects from the proposed gantries).</p> | <p>relation to agenda item 4(c), the whole scheme has been designed and assessed in terms of the ES within this tolerance. Detailed design is also now being carried out in accordance with this tolerance. If the vertical limit of deviation were to be reduced then it may not be possible for the Scheme to be constructed and it may require to be redesigned.</p> <p>Whilst there is a need to tie into the existing carriageway, there needs to be flexibility in intervening locations to take into account differences in terrain. In particular, it is known that the required height of slip roads at some locations will require to be close to the 1 metre vertical limit. There is also a critical need to ensure the necessary clearance over the railway for the replacement Allerdene bridge. All of this necessitates, for this particular scheme, a common vertical 1 metre vertical limit of deviation throughout the scheme to</p> |
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| | | | <p>ensure that the various elements can be designed and constructed.</p> <p>It is noted that a particular issue has been raised about how the limits of deviation would apply to gantries. However, requirement 5 has been revised to include a design scheme for the gantries. Further amendments have been made to ensure that this includes consideration of height and the impact of the gantries on the setting of the Angel of The North.</p> |
| <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>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</p> | <p>As explained in the Applicant's written submission on ISH 5 in relation to agenda item 4(d), Article 32(9)(a) does not give a power to create new rights. Article 32(9) is a general prohibition against the creation of new rights. However, it allows the compulsory acquisition powers which are granted over specified land in terms of articles 26 and 30 to be exercised over land which is also subject to powers of temporary occupation. Without</p> |

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| | | whether or not there is a justified case for the acquisition of such rights. | this provision, the effect of Article 32(9) would be to prohibit the compulsory purchase of the rights which are authorised under article 26. |
| Schedule 2, Part 1 Requirements | | | |
| R4 (1) | <p>4 (1) Construction and handover environmental management plan</p> <p>No part of the authorised development is to commence until a CEMP, 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 and Historic England to the extent that it relates to matters relevant to its function.</p> | 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. | <p>As explained in the Applicant's written submission on ISH 5 in relation to agenda item 6(b), A requirement to "accord with" the outline CEMP would effectively mean that the final CEMP would need to be in the same terms as the outline CEMP which in turn would require the outline CEMP to be developed to a high degree of specification which is not possible for this stage of the design.</p> <p>The "substantially in accordance" test requires the exercise of planning judgement and is a test which planning authorities are well-placed to deal with. It is the test that is used in all the vast majority of highways DCOs and, there is a tried and tested process for approval of detail</p> |

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| | | | <p>pursuant to requirements via the Secretary of State.</p> <p>The capitalisation of the “Environment Agency” is accepted and has been incorporated into the draft DCO.</p> |
| R5(2) | <p>5 (2) Landscaping</p> <p>The landscaping scheme must 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.</p> | <p>In order to ensure that there is the necessary certainty regarding the implementation of measures contained within the REAC.</p> | <p>It is accepted that the test here should be consistent with the “substantially in accordance” test in Requirement 4(1) and the wording in the draft DCO has been revised accordingly. As with Requirement 4(1), however, the need for the relevant scheme to evolve in line with the detailed design means that it is not appropriate to provide an absolute requirement for accordance. The “substantially in accordance” test is a well-recognised and measurable appropriate test.</p> <p>The relevant planning authority will be consulted on the landscaping scheme and will have the opportunity to make submissions to the Secretary of State in the event</p> |

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| | | | that there are any concerns about the degree of accordance with the REAC. |
| 8(1) | <p>8 (1) Surface and foul water drainage</p> <p>No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, 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.</p> | <p>In order to ensure that there is the necessary certainty regarding the implementation of measures contained within the REAC.</p> <p>Missing 'to' inserted for clarity.</p> | <p>It is accepted that the test here should be consistent with the “substantially in accordance” test in Requirement 4(1) and the wording has been revised accordingly. As with Requirement 4(1), the need for the relevant scheme to evolve in line with the detailed design means that it is not appropriate to provide an absolute requirement for accordance. The “substantially in accordance” test is a well-recognised and measurable appropriate test.</p> <p>The relevant planning authority will be consulted on the details of the surface and foul water drainage system and will have the opportunity to make submissions to the Secretary of State in the event that there are any concerns about the degree of accordance with the REAC.</p> <p>The inclusion of the additional</p> |

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| | | | word “to” is accepted and has been incorporated into the draft DCO. |
| R9(1) | <p>9 (1) Archaeological Remains</p> <p>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.</p> | 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. | <p>As with Requirement 4(1), the need for the relevant scheme to evolve in line with the detailed design means that it is not appropriate to an absolute requirement for accordance. The “substantially in accordance” test is a well-recognised and measurable appropriate test.</p> <p>The relevant planning authority and Historic England will be consulted on the FWSI and will have the opportunity to make submissions to the Secretary of State in the event that there are any concerns about the degree of accordance with the draft WSI.</p> |
| R13 | <p>13 Fencing</p> <p>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</p> | 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’. | The acoustic barriers which are required by N2 and N3 will require to be designed to a different standard. Additional wording has been included in Requirement 13 to clarify this. |

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| | State in connection with the authorised development. See ExA's comments | | |
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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

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