



Application by National Highways
for Order Granting Development
Consent for the Lower Thames
Crossing

DEADLINE 6

Any further information
requested by the ExA under
Rule 17 of the EPR:

ISH10 Traffic & Transportation
Action Point 2 (NPS Policy)

on behalf of DPWLG

Interested Party Ref: 20035309

OCTOBER 2023

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1.0 Issue Specific Hearing 10 (ISH10) Traffic & Transportation – Action Point 2 (NPS Policy)

1.1 Introduction

1.1.1 This Note responds to Action Point 2 of Issue Specific Hearing 10 (Traffic & Transportation) following a request by Mr Rynd Smith of the ExA for DPWLG to provide reference to NPS policies concerning the free flow of vehicular traffic to the ports. It also responds to oral submissions made by Mr John Rhodes OBE, on behalf of National Highways (the Applicant), regarding the mitigation requirements of the LTC Scheme in policy terms.

1.2 DPWLG's Response

1.2.1 A critical operational objective for DPWLG is maintaining the free flow of traffic to London Gateway Port. This means ensuring that vehicular access to the Port is unimpeded by unnecessary delay and disruption to ensure ongoing efficiency, as well as operational and economic resilience. In this regard, the National Policy Statement for Ports ('NPSP') is an important and relevant consideration (under PA2008 s104), as demonstrated in the recent Thanet Offshore Extension Wind Farm DCO decision. In that case the ExA identified (at paragraph 6.4.7 of the Recommendation Letter) that *"it is important and relevant for a decision-maker in regard to a Proposed Development affecting existing or possible future NSIP ports to consider growth assumptions in the NPSP need case for ports and also to consider any circumstances in which development might adversely affect the economic efficiency, competitiveness or resilience of ports"*.

1.2.2 Given how the LTC Scheme interacts with the ports and the national networks close to the ports, NPSP must be read alongside the NPS for National Networks ('NPSNN') in considering when access mitigation is appropriate.

1.2.3 NPSNN and NPSP both comprise the government's objectives for the development of nationally significant infrastructure projects (national networks and port development). Both documents were produced by the Department for Transport (DfT) within three years of one another and there is clear recognition of the critical relationship between ports and the national network within both documents. RIS2 (2020) also confirms the importance of reliable, predictable, rapid access to ports with one of the overarching aims for the SRN being to improve links to ports.

- 1.2.4 In this context, it is appropriate to assume that there is a mutuality of objectives between the documents i.e. each NPS should achieve their objectives without compromising the other.
- 1.2.5 The strategic importance of the ports industry to the UK economy is well evidenced in NPSP. Paragraphs 3.3.1 and 3.3.3 set out Government policy for ports, including (amongst other things) to ensure competition and security of supply, as well as enhance access to ports. It also confirms the Government's recognition of *"the essential contribution to the national economy that international and domestic trade makes."* (Para 3.3.6)
- 1.2.6 Paragraph 3.4.13 highlights the importance for UK ports to be competitive, whilst paragraph 3.4.15 cites the need for resilience of ports to account for *"short term demand peaks, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties without causing economic disruption through impediment to the flow of imports and exports"*.
- 1.2.7 Paragraph 4.1 highlights the interrelationship of port infrastructure and national networks by requiring applicants of port infrastructure schemes to take into account *"all of the Government's objectives for transport, including the need: - to promote economic growth through improving networks and links for passengers and freight, as well as ensuring an efficient and competitive transport sector both nationally and internationally"*.
- 1.2.8 NPSNN sets out Government objectives for national networks, which includes the delivery of national networks with *"the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs"*. The significant role of national networks in supporting economic growth, as well as existing economic activity and productivity, is emphasised throughout chapter 2 of NPSNN. Notably, paragraph 2.8 states that there is a need *"to improve the integration between the transport modes, including the linkages to ports and airports."* Moreover, the adverse economic impact of congestion is flagged at paragraph 2.16, which states that traffic congestion constrains the economy by *"increasing costs to businesses, damaging their competitiveness and making it harder for them to access export markets."*
- 1.2.9 As summarised above, the critical relationship between ports and the national network infrastructure is recognised within the overarching objectives of both the NPSNN and NPSP. It is further reinforced in the emerging NPS documents. Notably, Draft NPSNN (Paragraph 3.93) notes that *"whilst ports continue to invest in their own infrastructure growth, it is vital that this is mirrored"*

in the growth in national network capacity and connectivity". Again, this recognises that the government objectives for port infrastructure and network capacity go hand in hand.

- 1.2.10 The overarching (and mutual) objectives of the NPSNN and NPSP are clear that any threat to the competitiveness and resilience of ports in respect of access should be avoided, given their national economic significance.
- 1.2.11 Moreover, it is worth repeating the oral submissions made at ISH10, on behalf of DPWLG, that the Orsett Cock Junction is a critical component of the scheme itself. Its design should incorporate the changes necessary for it to function efficiently and appropriately with respect to the surrounding network and the vital economic and social interests the network serves. It is an intrinsic matter that is fundamental to the scheme, not strictly a mitigation issue.
- 1.2.12 Nevertheless, and in this context, the policy objectives with respect to the mitigation of network infrastructure projects remain entirely apposite in this context. Paragraph 5.216 of NPSNN states – *"Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible"*. In this respect, the Applicant cannot demur from the fact that NPSNN requires sufficient mitigation measures to ensure no worsening of accessibility generally. Paragraph 5.216 essentially comprises a two-part test for the Applicant in relation access mitigation: (i) Does the proposed development worsen accessibility? (ii) If so, it should be mitigated so far as reasonably possible.
- 1.2.13 In considering the extent of mitigation required by paragraph 5.216, it is appropriate that the ExA takes account of the overarching (and mutual) objectives of NPSNN and NPSP, which seek to improve transport links to ports and safeguard their operational and economic resilience. Therefore, any development that does not maintain free flow conditions to the ports would not be in accordance with NPS guidance. In its current form, the LTC Scheme falls short of achieving the broader Government objectives in how it interacts with the ports and the national networks close to the ports, as it has missed opportunities to provide greater resilience and competitiveness of the national ports infrastructure and therefore the national economy.

1.3 Response to the Applicant's Oral Submissions at ISH10

1.3.1 In addition to the above, DPWLG wish to make the following observations regarding the oral submissions made by the Applicant at ISH10.

1. The Applicant's failure to consider NPSP

1.3.2 The Applicant has thus far failed to properly consider NPSP despite the potential for the LTC Project to impact adversely on existing port operations and their future development. It was noted at ISH10 that the Applicant, in setting out their current policy position on mitigation, made no reference to the policy requirements of NPSP.

1.3.3 DPWLG welcome the comments from Mr Smith of the ExA in which he advised that the Applicant take NPSP *"very carefully into account"* (ISH10 Transcript, page 43, Line 9) given the critical importance of managing positively the relationship between the ports and the highway network. DPWLG also welcome the response of Mr Latif-Aramesh, on behalf of the Applicant, that they intend to respond to the Ports' Joint Statement on Policy Compliance (REP3-196) at Deadline 6. (ISH10 Transcript, page 43, Line 27).

2. The Applicant's interpretation of NPSNN Paragraph 5.216

1.3.4 DPWLG note the following comments made by Mr Rhodes at ISH10 in respect of the mitigation requirements at paragraph 5.216 of NPSNN and the meaning of 'accessibility':

1.3.5 *"There's one point, though, in relation to paragraph 5.216, and that's mitigating the impact on accessibility, and in that context it's really important to understand what the NPS means by 'accessibility'. It has a specific heading under paragraph 3.19 in relation to accessibility. It's not delay on the network. It's accessibility by non-motorised users and disabled users, and that is my interpretation. I think it's very clear what is meant by the NPS in that respect"*. (ISH 10 Transcript, Page 71)

1.3.6 The implication of the Applicant is that NPSNN does not require mitigation in relation to congestion on the road network, only in relation to accessibility impacts on non-motorised users and disabled users. The NPSNN does not bear such an interpretation. In this regard, it is pertinent to note that both NPSNN and NPSP contain the same wording in relation to requirements for accessibility:

- Paragraph 5.4.24 of NPSP states – *‘Where development would worsen accessibility, such impacts should be mitigated so far as reasonably possible’.*
- Paragraph 5.216 of NPSNN states – *‘Where development would worsen accessibility such impacts should be mitigated so far as reasonably possible’.*

The second sentence of Paragraph 5.216 then reads: *‘There is a very strong expectation that impacts on accessibility for non-motorised users should be mitigated’.*

1.3.7 The same two-part test applies to port infrastructure projects as network infrastructure projects. In this respect, it is notable that the recent Tilbury 2 DCO was required (by National Highways) to include highway improvements to mitigate the impact of the proposed development, including the construction of a new link road and improvements to the capacity and safety at the ASDA roundabout.

1.3.8 A straightforward and literal interpretation of para. 5.216 reveals that the second sentence of para 5.216 imposes a separate requirement with respect to impacts on accessibility by non-motorised users. It does not qualify the first sentence.

1.3.9 Given the above, DPWLG strongly disagree with Mr Rhodes’ interpretation of the meaning of ‘accessibility’ in the context of paragraph 5.216 of NPSNN.

3. The Applicant’s comments on WebTAG compliant transport assessment and mitigation

1.3.10 DPWLG note the following comments by Mr Rhodes at ISH10 regarding the Applicant’s assessment of impact and mitigation:

1.3.11 *‘Our application has fully assessed the impacts on the road network without an assumption that unfunded highway schemes are going to come forward. So on the road network that you can rely on, our application has done that both in transport economic terms but also in environmental terms, and it’s identified the mitigation which it says the NPS requires it to identify to address the impacts which the NPS is clear need to be mitigated, and it concludes an overall substantial benefit would be derived from the application. We have engaged with those impacts. They are part of our application, they are part of our assessment, they are weighed in the balance, and insofar as there are impacts on local roads, those are assessed as well. The environmental consequences of those are assessed.*

They're taken into account. They're mitigated where they can be and where they're required to be, and then maybe you're right. There may be other impacts that arise in the future. There may be other benefits that arise in the future'. (ISH 10 Transcript, Pages 72-73)

- 1.3.12 There is a significant lack of convergence between the strategic and local traffic model approaches prepared by the Applicant with respect to Orsett Cock in that the outcomes of the LTAM and local junction modelling assessments conflict with and contradict each other. Given the findings of the local junction model for Orsett Cock, it remains DPWLG's view (see Section 2.2 of DTA Report submitted at D1 – REP1-333) that the LTAM (as a strategic model) is most likely in error. At this stage, therefore, no weight can be given to the conclusions of the WebTAG assessment in terms of its findings regarding impacts, benefits or indeed mitigation. It also raises significant doubt and uncertainty about the Applicant's averred BCR for the application scheme (which, in any event, is low).
- 1.3.13 In addition to this concern on the base assessment, the Applicant has provided no robust response to the IP's concerns relating to Network Resilience as set out in Section 3 of the D1 submissions. Issues relating to incidents at Dartford (which are a daily occurrence) are not assessed in the application and that will, as demonstrated by previous submissions, likely have a significant and material impact on the outcome of any BCR assessment.
- 1.3.14 In light of the above, it is clear that the Applicant has not, to date, undertaken a robust assessment upon which they are able to assert that they have "fully assessed the impacts on the road network".