

Dear Sirs,

I write to you about some procedural matters. There is a slot allocated for such matters at the beginning of Tuesday's hearing. They are requests for rulings from yourselves, on important matters where clarity would be a great help to all stakeholders and is also necessary for the good governance of this examination. May I apologise in advance for the lateness of this request: the request on climate change, although I had worked on it before, was even more complex and time-consuming than I anticipated.

These matters are as follows:

- 1 The consultation report.** I suggest to you that this be ruled out of play.
- 2 the transport assessment report.** I suggest that the applicant be requested to write one which actually is worthy of its title.
- 3 the carbon assessment.** I suggest that the present cumulative carbon assessment be done again in line with all applicable requirements.

I will explain those briefly in turn. All except the last I have referred to in previous submissions and requested action. The reason I write to you specifically asking for rulings on these matters is that the end (of the examination) is nigh, and when the examination is over and you retire to your tower in the woods and write the report then it is too late to raise these matters.

### **1 The consultation report.**

Here is a key quotation from this report:

“8.1.8 Two thirds of respondents (66%) supported the Scheme and the updates we have made, more than twice as many as the 29% against the Scheme. A further 6% didn't know and 2% didn't answer the question.”

This is not an overwhelming expression of support but it is nevertheless an impressive figure. One might gather from it that around two-thirds of the people in the area support this scheme. Indeed the local MP made much of this support when he addressed the Peak Park Authority. And I am sure I remember that Highways England themselves have used this fact to bolster their case.

However the people who expressed these opinions had no information about the impact of the scheme on the local roads in Glossop or on Glossop High Street. In fact they had no traffic information at all.

This flies in the face of the Nolan principles<sup>1</sup> which guide the activities of this state controlled company, and it contradicts their own licence agreement because that agreement ties them to the latest version of the cabinet office guidance on consultation, guidance which they have not followed.<sup>2</sup>

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<sup>1</sup> Especially No. 4 Accountability, and No. 5 Openness

<sup>2</sup> C. Consultations should be informative Give enough information to ensure that those consulted understand the issues and can give informed responses. (cabinet Office guidance on Consultation, 2018)

**We now know of course the scale of the additional traffic which is scheduled to be inflicted on Glossop. The fact that this information was not available to the public makes that expression of public opinion invalid.**

I did think it stopped there but in fact it doesn't. There are tables and tables in the consultation report tabulating the classified views of the 1400 or so people who participated in the consultation. All of these people were misled. Some of the views are perhaps valid, some not. How can we tell? **All were unable to give “informed responses” in the words of the Cabinet Office guidance.**

All these matters I detailed in my DL 1 submission. (REP1-045). Other missing information was ANY substantiation at all for the claims about economic growth, which are central to the case for the scheme, being the justification for all the losses it will impose. No mention of the words “Green Belt” either. No mention of the cost of the scheme, which was “buried” on the website. No mention of the number of properties which would experience an increase in traffic and the number which would get relief. I listed questions to the Applicant on page 20, to nail down what had happened.

I think it helps to give just one example of just how misled people were. Here is an extract from page 8 of the Consultation Brochure (page 9 in the library version) :

“The scheme will:

- **Reduce noise levels and pollution for neighbouring properties** - by reducing the amount of traffic from the existing A57 through Mottram in Longdendale”

*(DW NOTE: this is part of a set of four bullets, emphasis as in original)*

We now know just how utterly misleading this is. Consider the residents of Shaw Lane, Cemetery Road, etc. This is not a fair representation of the truth, it is more of an exercise in persuasion. I have no idea why they feel the need to do this, but it renders the consultation null and void.

The comments of High Peak Borough Council and Derbyshire County Council are a handy summary:

*“The Consultee expressed significant concern was expressed (sic) regarding the absence of environmental and traffic data published with the public consultation. It stated that the lack of information in the PEIR prevented it from developing a Local Impact Report or any other assessments of the Scheme’s impacts.”*

And . . .

*“The Consultee wishes to submit a holding objection to the public consultation exercise, pending the availability of detailed and robust evidence for the Scheme.”*

*DCC / HPBC Pages 195 and 201*

The PDNPA said more or less the same thing in different words.

## **Request to ExA**

**Please can the ExA rule that the 2020 community consultation report be considered out-of-play, together with any remedial action to be taken, e.g. a request to the applicant to re-run the consultation with full information provided to the public.**

## **2 the Transport Assessment Report (TAR)**

I have made this point before but this time may I insist on an answer? All the quotations below are from the chapter on the TAR in my DL4 / DL5 submission. (REP5-040)

I begin with part of the conclusion of the chapter, and then I give just two examples of how extraordinarily bad this document is. I end with my request to you for action.

### **From the CONCLUSION**

“I think I have shown that there is a huge amount of information missing. There is nothing about the Glossop workarounds - the alternative routes to the A57. There is nothing about how the model actually works and what factors are built into the calculation. There is no discussion of alternatives. We are not told about the improvements being carried out right now, as the examination is in progress, on the Hope Valley railway line which runs parallel to this proposed scheme, and which is inherently more reliable and more climate-friendly.

“The absence of any proper information on HGV’s, severance and reliability is shocking, likewise the selectiveness of the information on journey times, and the inadequacy of the approach to accidents. Glossop is airbrushed out of existence.

“If the TAR is a joke it is a very bad joke. I do not know how angry I can be. The public, and you, Sirs have been badly let down by this document.

“I invite you, the ExA, to ponder on these things. What is going on here? What is the motive for HE’s behaviour when they set before you and all stakeholders a document such as this and call it a transport assessment? We are still in the process of winking out information which should have been in this document or rather the examination should have been building on properly assembled and presented facts and consideration of the transport aspects of this scheme.”

### **Section on SEVERANCE**

“..... You would not know about the continuing problems in Tintwistle, for example, where, we are informed in the 2015 report cited above,<sup>3</sup> the accident rate is particularly high:

“1.2.11 The A628 also experiences a high number of pedestrian accidents within the urban section through Tintwistle at its western end.”

“How is it that the 2015 report can tell us about pedestrian accidents in Tintwistle (and anyone who has stood alongside the road in Tintwistle as I have can understand how this could be) and the TAR says not a word?

“How is it that there is no discussion of the extra traffic to be loaded onto Dinting Road/Shaw Lane?<sup>4</sup>

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<sup>3</sup> TRANS-PENNINE ROUTES FEASIBILITY STUDY STAGE 1 REPORT, FEBRUARY 2015, to be found on the UK government website

<sup>4</sup> Subject to the caveat that the traffic may not divert as much as predicted . . .

“The TAR’s only message on severance is “The Scheme will reduce the volume of traffic and percentage of HGVs on the existing A57 through Mottram and will enhance pedestrian and cyclist provision within Mottram”

“This is indeed a very severe case of tunnel vision. I can only shake my head in disbelief that such a document can be before this examination.”

### **Section on TRAINS**

“ ..... In section 3.4 the TAR sets out the existing situation with regards to rail passenger services. It lists the frequencies on the Hope Valley line to various destinations and it gives journey times between Manchester and Sheffield. It also shows where the railway stations are in the area, says what the frequency is into Manchester and lists existing patronage of the stations. And that is all.

“There is no analysis, not even a mention, of the potential for modal shift to rail. The TAR tells us that the frequency into Manchester from Glossop is 2 trains per hour. Could this be increased? Are the necessary paths available? If they are not available now are they likely to be available in the near or medium-term future under existing expansion plans? What might the effect be of different amounts of modal shift to rail on the road network, in particular on congestion and on air quality, but also on all traffic nuisances? What is the policy environment with regard to rail, both at regional level (Greater Manchester, Sheffield City, Transport for the North) and national level? .....

And that section on trains, and all the other sections continue on in that vein. For the full grim story, go to Library Ref: REP5-040.

### **Request to ExA**

**Please can the ExA ask the applicant to provide a satisfactory TAR, including proper assessments in all areas of potential impacts and proper assessment of alternative transport solutions?**

**Contd on next page**

### **3 the carbon assessment**

**1 this is a request to the ExA to instruct the applicant to carry out a carbon assessment which complies with the applicable law and regulations and which in so doing helps the ExA and other stakeholders to arrive at an accurate overall evaluation of the scheme.**

**2 The carbon assessment which the applicant has offered up to the examination is unacceptable.** It first tells us only what the direct emissions of the scheme, from its construction and operation, are estimated to be. It then, in refusing to make any useful comparisons, and in the output of the assessment, effectively says that these emissions do not matter.

**3 Firstly, the applicant's action obstructs the examination.** Their response to the question put by the ExA (their "cumulative carbon assessment" (Library ref: REP5-026)) is not helpful to the ExA or to other stakeholders. It tells us nothing which helps us evaluate the scheme. It cannot be a sensible means of assessment, when any scheme assessed in this way would emerge with the same score on its scorecard on its carbon assessment, namely an "all clear."

**4.1 Secondly, it conflicts with the science.** The science tells us that every tonne of greenhouse gases emitted leads to more damage in the world, including in this country, and every tonne avoided leads to a better future.

4.2 So it cannot be correct to say that the quantity of emissions from the scheme effectively makes no difference. For Highways England to argue that this scheme in isolation cannot affect the achieving of the national target misses the point. It is contrary to morality, and also contrary to government policy – see next paragraph.

**5 Thirdly, it fails on practical and policy grounds.** We are in a climate emergency, the Decarbonising Transport Plan and NZS for example say that strong action must be taken to cut emissions, but the end result of what HE are saying is that absolutely no measure undertaken by any individual or corporate body makes any difference and that just cannot be right.

**6 So what should HE be doing?** I do not have to make anything up, fortunately the applicable regulations and law point to all the requirements we need.

### **7 the EIA regulations**

7.1 NPS-NN section 4.15 invokes the EIA Regs and states that the Directive as transposed into UK law "*specifically requires an environmental impact assessment to identify, describe and assess effects on ... climate ...*"

The same section points to Schedule 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and says that it "*sets out the information that should be included in the environmental statement.*" <sup>5</sup>

It is clear that NPS-NN mandates the use of EIA as it applies to infrastructure planning, and it is also the case that HE accepts this interpretation and are using the latest version of these regulations

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<sup>5</sup> For more details on this matter of NPS-NN mandating the use of these Regulations, if required, see the written representation of Dr Boswell, aka CEPP (REP2-064).

published in 2017. (*Written Summary of the Applicants Case at Issues Specific Hearing 2 (library Ref REP4-008) page 36*)

7.2 Schedule 4 of the EIA regulations 2017 specifies that the information in environmental statements should include:

*"A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects."* (section 2)

The latter has not been provided by the applicant. See 9.26 Environmental Statement - Chapters 1-4: Introductory Chapters (Tracked) REP2-036, pages 93-121, esp. Table 3-3, options 5 and 6 and 13 3.3.21 & 3.3.24;

7.3 Schedule 4 also says:

*"The description of the likely significant effects on the factors specified in regulation 5(2) (DW NOTE: these include "climate") should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development."* (section 5)

Note here that "the description" should include not only the *direct effects* of the scheme, which Highways England have done, but also the *indirect effects* of the scheme, which they have not done. It is important to note that these direct and indirect effects are on *emissions* and *not on final receptors of the damage* caused by the emissions. This is the cause of much confusion.

I cover this below in my paragraphs on adverse effects (see paragraphs 8.3 to 8.6)

7.4 The EIA report writing guidance spells out the appropriate approach to greenhouse gas reduction targets and also repeats the emphasis on considering alternatives:

*Firstly, "The assessment should take relevant greenhouse gas reduction targets at the national, regional, and local levels into account, where available." and secondly, the assessment should "identify opportunities to reduce emissions through alternative measures." (EIA report writing guidance, page 39) <sup>6</sup>*

## **8 The Planning Act 2008**

### **Section 104**

8.1 Chapter 5 "Decisions on applications," section 104 spells out what the Secretary of State "must have regard to" in making decisions on applications for a DCO in cases where a National Policy Statement has effect.

Section 104 subsections (3) and (7) say:

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<sup>6</sup> CEPP written submission, library ref: (REP2-064), para. 33

*“(3)The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies. [. . . .] (7)This subsection applies if the [F12Secretary of State] is satisfied that the adverse impact of the proposed development would outweigh its benefits.”*

8.2 And although in the Planning Act, the test is written into a Chapter which is headed: “Decisions on applications” NPS-NN confirms that it follows from the fact that the Secretary of State has to consider this test when taking the decision, that the ExA must in turn assess the adverse effects of the scheme:

*“4.3 In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, **the Examining Authority and the Secretary of State** should take into account:*

- “• its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
- “• **its potential adverse impacts, including any longer-term and cumulative adverse impacts,** as well as any measures to avoid, reduce or compensate for any adverse impacts.”*

### **adverse impacts**

8.3 These adverse impacts clearly include harmful impacts due to carbon emissions. We know that these impacts are serious, both here and abroad. We also know that these harmful impacts arise in proportion to the size of the emissions. (see 4.1 above)

The difficulty with this is the temptation to think that what is required *is to assess these actual impacts*. But as HE rightly point out, on their way to avoiding this issue altogether: *“It is not possible to define a link between Scheme emissions and indirect climate effects on local receptors, therefore this cannot be assessed.”* (Written Summary of the Applicants Case at Issues Specific Hearing 2 (library Ref REP4-008)., page 36)

They are right. It is indeed impossible to allocate harmful impacts to specific tons of emissions. The whole point is that carbon emissions are cumulative, they all go into the one receptor of the atmosphere, and the resulting global heating causes losses and damages and suffering all over the world, including here in Glossopdale, as food supplies are disrupted, heatwaves and rain and storm events all increase and the world becomes in every way less stable.

**8.4 However this impossibility of allocating harmful impacts to specific tons of emissions must not be used as a way of avoiding doing an assessment at all.** All this counts as “adverse impact” and **it has to be accounted for, both morally and legally.**

8.5 There is still the problem of how to go about weighing the harm against the benefits. The way out is to ***assess emissions, and that is the solution to the conundrum.***

8.6 The indirect effects of the scheme, that is the effects of the emissions which would be caused by this scheme if it were to be built, on the climate and the subsequent impacts on people and planet, are already embedded in government statutory carbon reduction targets. They caused these targets to come into existence. **The examination does not have to concern itself with directly attempting to assess such downstream impacts.** That would be a fool’s errand. But you, Sirs, **the ExA do however have to concern yourselves with the effects of the scheme *in making emissions***

*reach the atmosphere in the first place, and the reason you have to do this, is because the resulting impacts are so severe.*

## **9 direct and indirect emissions effects of the scheme**

9.1 And the emissions which you assess have to be, in accordance with the EIA Regulations, (see paragraph 7.3 above) **not only the direct emissions** of the scheme, estimates for which HE have already put before this inquiry,( in ES Chapter 14) **but also the indirect emissions**, which they have not.

9.2 “Indirect emissions” arise when the scheme causes trips to be made in carbon intensive ways which could have been made in low carbon or zero carbon ways, or not made at all. This “causation” could be from for example, but not limited to – intimidation effects, promotional effect of the scheme’s existence on modal choice, permissive environment effect, network effect, effects on the allocation of resources.

9.3 This may sound hard to do. May I suggest that one way of doing this, perhaps the only way, is **to compare the emissions which result from the scheme, to the emissions which would result from an alternative package of measures** delivering the same or similar solutions to, or ways around, the problems identified.

## **10 alternatives**

10.1 Consideration of alternatives is mandated by the EIA Regs and by NPS-NN.

10.2 Schedule 4 of the EIA regulations 2017 says that ES should include a description of the reasonable alternatives studied by the developer, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects. (see para. 7.2 above).

10.3 This is supported by NPS-NN at para. 4.26:

*“ ..... The EIA Directive requires projects with significant environmental effects to include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant’s choice, taking into account the environmental effects..... ”*

and at para. 4.27:

*“All projects should be subject to an options appraisal. The appraisal should consider viable modal alternatives ..... or national road and rail schemes, proportionate option consideration of alternatives will have been undertaken as part of the investment decision making process.<sup>61</sup> It is not necessary for the Examining Authority and the decision maker to reconsider this process, **but they should be satisfied that this assessment has been undertaken.** (My emphasis)*

10.4 There is no sign of such an assessment in the ES – the sustainable transport options were in the long list and were rejected for other reasons. (See 9.26 Environmental Statement - Chapters 1-4: Introductory Chapters (Tracked) REP2-036, pages 93-121, esp. Table 3-3, options 5 and 6 and 13 3.3.21 & 3.3.24;)

## **11 carbon reduction targets - national**

11.1 In light of the facts about adverse effects of GHG emissions, the government has set both an overall statutory target for carbon reduction, and has a strategy (the NZS) to meet the 2050 target with an indicative pathway for the transport sector which includes a carbon reduction figure which

is “expected” to be met, of around 34-45% by 2030 and 65-76% by 2035, relative to 2019 levels.<sup>7</sup> The NZS was published in October 2021.

11.2 The applicant states, in the Cumulative Carbon Assessment Paragraph 2.2.13, written in February 2022:

*“Neither Parliament nor Government has identified any sectoral targets for carbon reductions related to transport, or any other sector. There is no requirement in the CCA 2008, or in Government policy, for carbon emissions for all road transport to become net zero.”*

and refers in that same paragraph to the judgement in R(Transport Action Network) v Secretary of State for Transport [2021] EWHC 2095 (Admin) (“the TAN case”) and quotes a paragraph out of that judgement:

*“there is no sectoral target for transport, or any other sector, and that emissions in one sector, or in part of one sector, may be balanced against better performance in others”*

11.3 However, HE do not mention that the TAN case judgement was in July 2021 whilst the Net Zero Strategy was published in October 2021. Someone on the HE team must have read the transport sector part of the NZS. HE’s statements in this paragraph and the use of the quote from a judgement passed 3 months before the publication of the NZS in support of their claim about the non-existence of a government target look very like an attempt to mislead (to add to an already long list which I maintain).

11.4 The Net Zero Strategy has been laid before Parliament under section 13 and 14 of the Climate Change Act, and provides the up-to-date legal and policy framework to be considered within the context of the NPS NN.

## **12 carbon reduction targets – local**

12.1 In the Decarbonising Transport Plan there is a clear commitment to local authorities (LA’s) having plans for sustainable transport with support via advice and funding from the DfT.

12.2 LAs can and do set their own targets. The Tyndall Centre in Manchester has a method for setting carbon budgets for local authorities and Sheffield, Manchester and Tameside are among those working with the Centre on this. And there is a dataset of CO<sub>2</sub> emissions by region and local authority going back to 2005.<sup>8</sup> *“The statistics can be used by local authorities (LAs) and other relevant organisations ..... and to help design carbon reduction strategies”* says the BEIS website.

12.3 At least 2 participants in this examination, Sheffield Green Party and South Yorkshire Climate Alliance, have written, the former briefly the latter at greater length, **comparing the scheme’s carbon emissions to Tameside Borough Council’s carbon budget**. The latter also considers Transport for the North’s Decarbonisation strategy which **compares policy scenarios to a quantified decarbonisation trajectory**. If two participants at this enquiry can make a stab at

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<sup>7</sup> (figures from CEPP, A38 Derby Junctions, DfT consultation, Expert Witness Statement: Mair Bain/Derby Climate Coalition, March 23rd 2022)

<sup>8</sup> <https://naei.beis.gov.uk/data/local-authority?view=la-co2> and please do not anyone redact this, as it serves no purpose but to RESTRICT access to valuable information !!!!!!!

doing this, and a statutory Sub-National Transport body has actually done it, then it becomes more questionable that the applicant is refusing to do it.

12.4 There is really nothing standing in the way of National Highways carrying out your instruction sir, borrowed from the DfT letter, of comparing the emissions from the scheme to either a local transport budget or a regional budget or to the national sectoral budget or all three. It may be a new thing to do, but the whole transition to a low-carbon society is also a new thing to do. The DfT acknowledges that it is feeling its way and *specifically asks for feedback* on any difficulties encountered in compiling the information in its letter.

12.5 What is HE's motive? Why are they digging in like this? Their response to your request for a carbon assessment amounted to a brush-off, to put it mildly. This is an interesting stance to take but I hope, Sir, that you will insist that they do what you asked them to do.

### **13 the HE Licence agreement**

13.1 Paragraph 4.2 of the licence agreement says:

*“4.2 Without prejudice to the general duties on the Licence holder under section 5 of the Infrastructure Act 2015, the Licence holder **must**, in exercising its functions and complying with its legal duties and other obligations, act in a manner which it considers best calculated to: . . . . .]*

*h. Conform to the principles of sustainable development.”* (my emphasis)

13.2 **Their licence agreement states that Highways England must uphold the principle of sustainability.** Tackling climate change is one of the most important aspects of sustainability in today's world. It follows that they are obligated to show all of us stakeholders in this examination how this scheme promotes sustainability. In particular, as there are self-evidently doubts about this, they have to answer the question, for this reason as for so many others, why there are no sustainable transport solutions on the table as an alternative to what they are offering us.

13.3 **This is not only a practical issue it is a legal issue.** The licence agreement makes it quite clear in paragraph 2.1 that when the word “must” is used that is a direction, and in the words of the Licence: “Directions must be complied with by the Licence holder.” Too often sustainability is a word used rather like community - a bit of a chocolate box word - but in this context it is diamond hard. There are real consequences to this in the real world and Highways England *have* to be open about GHG emissions.

### **14 In conclusion and request to ExA**

**I formally ask that you instruct the applicant to do a carbon assessment worthy of the name, compliant in all respects with guidance and the law and the DfT letter. It will therefore a) explain how and whether the scheme is compatible with carbon reduction targets at local, regional and national levels; b) report on direct and indirect carbon emissions caused by the scheme and c) report fully on how the scheme's emissions compare to those of a package which addresses the issues of the area without building this scheme.**