

Open letter to the Examination

From Keith Buchan CTPP, transport adviser to CPRE

Dear Panel

I write in this instance as a Chartered transport planner and an individual objector – I objected in the first instance because of the behaviour of NH (then HA) prior to the Examination opening. This is the subject of a formal complaint to NH which is so far unresolved and will be pursued in the additional context of their behaviour once the Examination opened. In my short submission in September 2021 I drew attention to key issues where information from NH was lacking, despite previous requests. These included the failure to use the Uncertainty Log properly, the negative impact of the scheme on TfGM, and the failure to address Government priorities particularly on carbon. It is a sad commentary on NH's behaviour that these are still key issues. Some data has been extracted with great difficulty but some basic requests are still unanswered at this late stage in the DCO. These have only confirmed our view that this scheme has major flaws in its appraisal likely to exaggerate its benefits and underestimate its disbenefits.

My requests to the Examining Panel are relatively simple and twofold. The first that action is taken to ensure that the NH pattern of behaviour, in particular the obstacles placed in the way of technical dialogue and the failure to supply basic information, does not go without consequence. To do so would set a dangerous precedent.

To be clear, this includes avoiding technical examination through repetition of irrelevant material, late supply of relevant material and in some cases no supply at all. To say that some of the statements made at the ISH lacked clarity would be an understatement. How was the rail/road modelling done? The information is not in front of the Examination and was the subject of an email from myself requesting the facts of the case on 6th April. A meeting was requested at the same time. Neither request has been responded to.

Failure to follow guidance, for example on uncertainty (TAG Unit M4 and the Uncertainty Toolkit) and on reviewing the Strategic Outline Case when the Outline Business Case is being prepared, has been subject to excuses about the timing of new guidance and that this scheme somehow escapes its relevance. However, the guidance in the examples above was in place before the submission of NH documents to the Examination. Is the NH argument that this scheme can bypass the new guidance (and new policies on carbon) because it was prepared before it came into effect? This is completely unacceptable and wrong.

In my professional career I have acted for various parties at Public Inquiries. Public examination, and the emphasis on establishing facts through written submission, has largely replaced that adversarial system for this type of scheme. Like many I have welcomed that approach. However it depends on the transparency and good behaviour of the Applicant. If there had been an old style Public Inquiry, some of these matters would have been flushed out very quickly, there would have been little room in that context for the tactics of obfuscation and non-engagement in the face of strong evidence.

For these reasons I would like the Panel to discuss with the Inspectorate preparing detailed guidance for Applicants, including NH, on the need to engage on technical matters and, importantly, to set out consequences for not doing so.

The second request is related to the first.

In the face of NH's tactics it is virtually impossible for CPRE to prepare a Statement of Common Ground (SoCG) with NH as we always intended. This is largely because there are unresolved matters of fact, some of which are the subject of the latest questions from the Panel. Have NH ruled out any use of some elements of the DfT Uncertainty Toolkit? If so, precisely why? Why did they not review the Strategic Case in light of new legislation, policy and programmes to reduce carbon? Why did they not review the Outline Business Case against the "Golden Thread" of the Strategic Case as DfT and Treasury guidance sets out?

As far as my advice to CPRE is concerned, it is that sufficient information has been extracted from NH to show the damage that will be done to the policies to achieve modal shift by this particular scheme. This is not a general argument against all enlargement of the SRN, it is the specific circumstances of this scheme, and its close relationship with Greater Manchester, and impact on the National Park which lead to that conclusion.

I also consider that the failure to review the Strategic Case is the means by which NH have avoided considering an alternative package which would achieve much of the benefits at Mottram, additional benefits in Hollingsworth and Tintwistle not offered by this scheme, less environmental damage and safety disbenefits, and significant benefits for those not using cars. The idea that only variations on the form of the road scheme need be considered is not what is in the guidance.

This is an area where I had expected engagement from Greater Manchester who have been sent information by CPRE with a request for further communication. However, they have not been actively involved in the Examination and this is surprising. The very late Draft TfGM SoCG with NH is the subject of a separate submission by CPRE. In retrospect, a more formal approach might have been better, with CPRE also seeking an SoCG with TfGM.

However, given my previous comments on the behaviour of NH, and the fact that crucial evidence is still not before the Examination, I would ask the Panel to come to a verdict of case not proven.

There is a lot of written evidence but much of it from the Applicant is repetitive, with much of it still lacking crucial detail, and there are outstanding issues to pursue with TfGM who still appear to be unaware of some of the new data and analysis available. There are also outstanding issues on the NH line of argument that "this didn't apply at the time so we can ignore it" which surely need to be resolved. It must be wrong to allow £180million of public money to be spent while the proposer tries to avoid scrutiny on a technicality. Their argument is not even correct, much of the guidance is in force and some of it has been so for some time. The carbon emission arguments are still going on without possibility of us preparing an SoCG at this late stage. The lateness has been caused entirely by NH's approach, CPRE for example tried to start a dialogue in March 2021, well over a year ago. When contact was finally established, technical meetings direct with those undertaking the modelling and forecasting was not permitted by NH, only arranged by them and with them leading. This was not dialogue.

There would be merit in refusing permission on these grounds since the Applicant may well resubmit an application, this time being careful to engage properly with those concerned. They may also reflect on the impact on sustainable travel and have specific proposals to compensate (they do not at present). The initial questions from the Panel would be able to raise these issues early and hopefully allow a full written exchange and SoCGs where needed. The decision would then have greater public confidence and the conduct of the Applicant might be seen to be more in line with the highest professional standards.