

# A303 Sparkford to Ilchester Dualling Scheme TR010036

## 9.34 Responses to Action Points for Midday 20 May 2019

Planning Act 2008

May 2019



## Infrastructure Planning

Planning Act 2008

# A303 Sparkford to Ilchester Dualling Scheme

Development Consent Order 201[X]

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### Responses to Action Points by Midday 20 May 2019

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# 1 Introduction

- 1.1.1 This report provides responses to Hearing Actions Points 32 and 34 associated with the Development Consent Order (DCO) Examination for the A303 Sparkford to Ilchester Dualling Scheme ('the scheme').
- 1.1.2 Each Action Point relates to the table of action points issued by The Planning Inspectorate (EV-032 and EV-033) following the issue specific hearings (ISH), open floor hearings, and compulsory acquisition hearings held on Tuesday 14 May 2019 and Wednesday 15 May 2019. Responses to each of the Action Points are contained within Chapter 2 of this report. The numbering adopted below corresponds to the numbering in the Action Points issued by the Examining Authority.
- 1.1.3 Chapter 3 of this report contains a note on the use of DCO powers outside the Order Limits.

## 2 Action Points

### 2.1 Action Point 32

#### Introduction

- 2.1.1 Action Point 32 states: '*Provide to SCC a list of plots in Schedule 5 which will be used for the creation of highway and clarify occupation of local highway under schedule 7*'.
- 2.1.2 Following the issue specific hearing on the draft DCO, the Applicant offered to provide this note setting out the plots in the ownership or control of Somerset County Council (SCC) that will be affected by temporary possession under the DCO or upon which new local highway will be constructed. This note also sets out on a plot by plot basis what the Applicant intends to use each plot for. Each of the relevant plots is set out in Tables 2.2 and 2.3 at the end of this note.

#### DCO Powers

- 2.1.3 The starting point is that temporary possession of land is similar to compulsory acquisition as it allows the undertaker under a DCO to force a landowner to give up possession of their land on service of notices. The DCO also therefore creates an entitlement to compensation where that occurs.
- 2.1.4 Part 5 of the DCO sets out a range of powers of compulsory acquisition and the scope and limits of these powers.
- 2.1.5 Schedule 5 of the DCO specifies land of which temporary possession may be taken and only new rights etc. may be permanently acquired (Blue land on the land plans).
- 2.1.6 Schedule 7 of the DCO specifies land of which only temporary possession may be taken (green land on the land plans).
- 2.1.7 Under Article 23 (Compulsory Acquisition), all of the Order land is potentially subject to compulsory acquisition powers. In order to give more certainty to the Examining Authority, Secretary of State and the affected landowners, and ensure use of that power is proportionate, it has been limited. Article 26 limits the acquisition on plots listed in schedule 5 to temporary possession and acquisition of rights only, this removes the ability to acquire the freehold of land where only rights are required. Article 33 limits the ability to take temporary possession of and use land specified in schedule 7 to the purposes set out in that schedule.
- 2.1.8 Article 33 allows for the construction of permanent works on land temporarily possessed. Schedule 5 includes areas where land is temporarily possessed, new local highway is created and rights are being acquired pursuant to that. The Applicant is aware that SCC is unhappy with the approach taken in these cases but entirely disagrees with SCC's position on this point.
- 2.1.9 Schedule 7 lists the areas the Applicant needs to occupy for construction but which will be returned to the owner post construction. No new local highway is being formed on any schedule 7 land.

## Application of Section 5(2)

2.1.10 A separate note addresses the powers in the DCO which apply on 'adjacent land' outside the red line boundary; it was noted however that SCC raised a query how the precedence of the DCO applies to the power and duties of the local highways authority. When the DCO takes precedence, a number of normal highway authority powers would not apply. For example, and most aptly for this note, the power to remove people in occupation of a local highway would not be enforceable within the Order limits where occupation is consented by the DCO. This pre-empts and prevents a conflict between the power of SCC to remove persons and materials from the highway and the right to take temporary possession and occupy any land under the DCO. In that case Article 5(2) would mean that the DCO right takes precedence and temporary possession could not be prevented or ended through exercise of Highways Act powers.

## Practicalities

2.1.11 It is noted that SCC have raised concerns about accessing local highway land while it is subject to the exercise of temporary possession powers and therefore occupied by and in the control of the undertaker under the DCO. Highways England would highlight the following on that point:

- (a) The areas of local highway to be occupied are generally only those where works are needed to or very close to the local highway; it is not possible to carry out such works without occupying the highway.
- (b) In most cases where local highway is to be occupied, access to properties will require to be maintained. While that may be restricted or controlled, it is not factually accurate to state that access for emergency services would be prevented. The restrictions and control measures will be set out in the traffic management proposals to be approved of which SCC and the emergency services would have notice of restrictions.
- (c) The Detailed Local Operating Agreement (DLOA) will set out what Highways England are responsible for while occupying local highway. This is a standard requirement however the detail can be drafted to address any particular issues.
- (d) The process for agreeing access in an emergency can be specified in the DLOA. There is clearly a balance to be struck between Highways England's need to control access to a live construction site, and the need to allow access or use by others in an emergency situation. Highways England have no interest in preventing access by SCC where it is necessary, however that must be exercised in an appropriate and safe manner and with the knowledge, and most likely attendance, of those responsible for the safety and security of the site and works.

## Relevant Schedule 5 Plots

2.1.12 Relevant Schedule 5 plots are detailed within Table 2.1 below.

**Table 2.1: Relevant Schedule 5 Plots**

<b>Plot</b>	<b>Rights which are to be acquired</b>
<b>1/2b</b>	<i>Currently shown as becoming highway but should be hedgerows and planting, will be amended at Deadline 7</i>
<b>1/5a</b>	<i>Moved to Schedule 7 following acceptance of the non-material change will be amended at Deadline 7.</i>
<b>4/4b</b>	<p><b>Highway</b> To designate the road to be formed on the plot as public highway open to vehicular traffic. To transfer responsibility for maintenance of the public highway so designated to Somerset County Council. To construct, divert, use and maintain utility connections and equipment including electric cables, equipment and apparatus including access with or without vehicles.</p>
<b>5/3j</b>	<p><b>Highway</b> To designate the road to be formed on the plot as public highway open to vehicular traffic To transfer responsibility for maintenance of the public highway so designated to Somerset County Council To construct, divert, use and maintain utility connections and equipment including electric cables, equipment and apparatus including access with or without vehicles. To construct, divert, use and maintain utility connections and equipment including telecommunication cables</p>
<b>7/1c</b>	<p><b>Highway</b> To designate the road to be formed on the plot as public highway open to vehicular traffic. To transfer responsibility for maintenance of the public highway so designated to Somerset County Council.</p>
<b>7/5a</b>	<p><b>Highway</b> To designate the road to be formed on the plot as public highway open to vehicular traffic. To transfer responsibility of maintenance of the public highway so designated to Somerset County Council. To construct, divert, use and maintain utility connections and equipment including electric cables and telecommunication cables equipment and apparatus including access with or without vehicles.</p>
<b>7/7d</b>	<p><b>Highway</b> To designate the road to be formed on the plot as public highway open to vehicular traffic. To transfer responsibility of maintenance of the public highway so designated to Somerset County Council.</p>
<b>7/8c</b>	<p><b>Highway</b> To designate the road to be formed on the plot as public highway open to vehicular traffic. To transfer responsibility of maintenance of the public highway so designated to Somerset County Council.</p>

## Relevant Schedule 7 Plots

2.1.13 Relevant Schedule 7 plots are detailed within Table 2.2 below.

**Table 2.2: Relevant Schedule 7 Plots**

<b>Plot</b>	<b>Description</b>	<b>Notes</b>
<b>2/4b</b>	Temporary possession and use of approximately 23.44 square metres of land and verge known as the B3151 highway, located to the south west of The Bungalow, Camel Cross, West Camel, Yeovil.	Area required for working area and materials storage.  Small area of verge will be temporarily occupied to undertake highway works.
<b>2/4c</b>	Temporary possession and use of approximately 3097.62 square metres of land and verge known as the B3151 road including part of public right of way located to the south west of The Bungalow, Camel Cross, West Camel, Yeovil.	Area required for the construction of B3151 link, works to the public highway, utility diversions under the public highway.  This is the public highway where works to create new slips and a realigned junction are required – those cannot be carried out without occupying the highway. Utility diversions under the highway also require occupation.
<b>4/1c</b>	Temporary possession and use of approximately 1185.04 square metres of unclassified road at Downhead located to the east of Annis Hill Farm, West Camel, Yeovil.	Area required for works associated with the closure of local road at Downhead, the construction of Downhead Turning Head, utility diversions.  The local road is being dead-ended, occupation to do that work and carry out utility diversions is required. Access to properties will be maintained throughout so this will not be a complete closure except where the exiting road is being dead-ended.
<b>4/1i</b>	Temporary possession and use of approximately 952.52 square metres of unclassified D Road located to the south east of Downhead Manor Farm and to the south west of the Spinney, West Camel, Yeovil.	Area required for the construction of Downhead Lane and accesses, utility diversions.  Works are needed to the local highway to realign it to connect with slips. The Applicant cannot do the work without occupying the local highway. Access to properties will be maintained throughout so this will not be a complete closure.
<b>4/1j</b>	Temporary possession and use of approximately 18.72 square metres of land and road verge of unclassified Road located to the south east of Downhead Manor Farm and to the south west of the Spinney, West Camel, Yeovil.	Area required for working area and materials storage.  This is a very small area in verge of a road being stopped up which will be in the verge of road on other side of A303 from present post the works. Occupation is necessary to construct a bridleway.
<b>5/3d</b>	Temporary possession and use of approximately 1387.19 square metres of public highway known as Steart Lane, West Camel, Yeovil.	Area required for the construction of Steart Hill Link and Steart Hill North, utility diversions.  This is public highway where works to create upgraded junction on local highway to connect to link to the slip roads is required. Those works cannot be carried out without occupying the highway. Utility diversions under the highway also require occupation Access to properties will be maintained throughout so this will not be a complete closure.
<b>6/1a</b>	Temporary possession and use of approximately 129.55 square metres	Area required for works to local road junction at Camel Hill.



Plot	Description	Notes
	of agricultural land, access ways and unclassified D road to the west of Camel Hill Farm, Queen Camel, Yeovil.	Construction and use of a temporary northern earthworks haul route.  This is the area where haul route crosses local road, number of improvement works being done to that local road, traffic will be managed to ensure that there is no conflict with the haul route. Access to properties will need to be maintained throughout.
<b>6/1c</b>	Temporary possession and use of approximately 866.96 square metres of agricultural land, access ways and unclassified D road to the west of Camel Hill Farm, Queen Camel, Yeovil.	Area required for works to local road and access at Camel Hill.  Those works cannot be carried out without occupying the highway. Access to properties will be maintained throughout so this will not be a complete closure.
<b>6/1d</b>	Temporary possession and use of approximately 542.98 square metres of land, track, public right of way and unclassified D road to the south of Camel Hill Farm, Queen Camel, Yeovil.	Area required for works to local road and access at Camel Hill.  Those works cannot be carried out without occupying the highway. Access to properties will be maintained throughout so this will not be a complete closure.

## 2.2 Action Point 34

### Introduction

2.2.1 Action Point 34 states: 'provide details of maintenance of drainage features to SCC'.

2.2.2 This note sets out the key principles and details for such maintenance.

### Key Principles

2.2.3 The key principles of the drainage approach for the scheme are:

- (a) Until discharge to an appropriate watercourse, drain or sewer, any features which only drain the trunk highway will be maintained by Highways England as the strategic highway authority.
- (b) Until discharge to an appropriate watercourse, drain or sewer, any features which only drain the local highway will be maintained by SCC as local highway authority.
- (c) Until discharge to an appropriate watercourse, drain or sewer, any features which drain both the trunk and local highway will be maintained by Highways England as the strategic highway authority. The exception to this is the maintenance of the collection system on the local road network, which will be maintained by the local highway authority. This will include the gullies and carrier pipes.

- (d) All of the drainage / attenuation ponds to be formed as part of the scheme will be maintained by Highways England as the strategic highway authority.
- (e) The final split of responsibility for maintenance of scheme drainage will be shown on the limits of responsibility plans approved as part of the detailed design.
- (f) The drainage maintenance regime does not affect liability for pollution incidents where the cause or source of pollution will guide the responsibility for remediation (eg if the pollution comes from a trunk road incident Highway England will be responsible for clean up, if from a local road incident SCC will be responsible).

## DCO Provisions

- 2.2.4 The draft DCO provides at Article 4 that the DCO does not change or affect the responsibility for maintenance of drainage of land under any other enactment unless agreed in writing. The DCO accordingly does not change the current responsibility for existing watercourses around the scheme. The discharge from the scheme drainage system is limited by Requirement 13 to greenfield equivalent. This is an improvement over the current position and will prevent an adverse impact on receiving watercourses.
- 2.2.5 SCC advised in the hearing on 15 May 2019 that the Lead Local Flood Authority can accept only being a consultee on the surface water drainage design under requirement 13 provided that it does not have any new maintenance responsibilities. A number of scheme drainage assets will become the responsibility of SCC as local highway authority where they are required to adequately drain the local highway. Trunk road drainage will be the responsibility of the Applicant. It is therefore not proposed that any new drainage assets will be maintained by the LLFA.

## Details

- 2.2.6 Proposed drainage features are shown on the Outline Drainage Works Plans (APP-012). Proposed drainage systems for local roads comprise pipework, gullies, manholes and catch-pits, filter drains and ditches. Chapter 7 of the Drainage Strategy Report (APP-060) includes recommended maintenance actions for filter drains and ditches. Additional recommendations for the maintenance of piped systems, gullies, manholes and catch-pits are given in Chapter 3.3 of Part 3 of Highways England's Network Management Manual.
- 2.2.7 The relevant parts of the Drainage Strategy Report and Network Management Manual are summarised in the tables below for ease of reference.
  - (a) Required action for piped drainage (Based on guidance in Part 3, Chapter 3.3 of the Network Management Manual) is detailed in Table 2.3 below.

**Table 2.3: Required action for piped drainage**

Required action	Method	Typical frequency	Notes
Inspection	Manual (rodding, mandrel, CCTV, flushing)	when a blockage or another fault occurs	-
Repair / rehabilitation	Machine and manual	As required	-

(b) Required maintenance action for Gullies, manholes and catch-pits (Based on guidance in Part 3, Chapter 3.3 of the Network Management Manual) is detailed in Table 2.4 below.

**Table 2.4: Required action for gullies, manholes and catch pits**

Required action	Method	Typical frequency	Notes
Inspection	Manual	Monthly at start, then as required	Flushing through or re-use of water from gullies / catch-pits may risk pollution of downstream watercourse systems.
Sediment removal	Manual and machine	At a suitable frequency established by initial inspection	
Repair / rehabilitation	Machine and manual	As required	

(c) Required action for filter drains (source: A303 Sparkford to Ilchester Dualling Drainage Strategy Report, Table 7.2) is detailed in Table 2.5 below.

**Table 2.5: Required action for filter drains**

Required action	Method	Typical frequency	Notes
Remove litter (including leaf litter) and debris from filter drain surface and access chambers	Manual	Monthly (or as required)	-
Inspect filter drain surface, inlet / outlet pipework and control systems for blockages, clogging, standing water and structural damage	Manual	Monthly	-
Inspect inlets and perforated pipework for silt accumulation, and establish appropriate silt removal frequencies	Manual	6 monthly	-
Remove or control tree roots where they are encroaching the sides of the filter drain, using recommended methods (for example NJUG, 2007 or BS 3998:2010)	Manual or small machine	As required	Consideration must to be given to the likely presence of protected species in all drainage features and that appropriate advice must be sought from an ecologist or the regional environmental advisor, before commencing work
At locations with high pollution loads, remove surface geotextile and replace, and wash or replace overlying filter medium	Machine and manual	5 yearly (or as required)	

Clear perforated pipework of blockages	Machine and manual	As required	
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- (d) Required action for grassed channels and ditches (source: A303 Sparkford to Ilchester Dualling Drainage Strategy Report, Table 7.3) is detailed in Table 2.6 below.

**Table 2.6: Required action for grassed channels and ditches**

Required action	Method	Typical frequency	Notes
Remove litter and debris	Manual	Monthly, or as required	-
Cut grass – to retain grass height within specified design range	Small machine	Monthly (during growing season), or as required	-
Inspect inlets, outlets and overflows for blockages, and clear if required	Manual	Monthly	-
Inspect vegetation coverage	Manual	Monthly for 6 months, quarterly for 2 years, then half yearly	-
Inspect inlets and facility surface for silt accumulation, establish appropriate silt removal frequencies	Manual	Half yearly	-
Manage other vegetation and remove nuisance plants	Manual and machine	Monthly at start, then as required	Consideration must to be given to the likely presence of protected species in all drainage features and that appropriate advice must be sought from an ecologist or the regional environmental advisor, before commencing work
Repair erosion or other damage by re-turfing or reseeded	Manual and machine	As required	
Relevel uneven surfaces and reinstate design levels	Manual and machine	As required	

## 3 Use of DCO powers outside the Order Limits

### 3.1 Introduction

- 3.1.1 Article 5(2) provides “Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.”
- 3.1.2 As previously set out by the Applicant, the intention of this power is to prevent conflict of law by providing when the DCO takes precedence. The inclusion of land adjacent to the Order land within this drafting has raised some queries amongst interested parties. In response to discussion at the issue specific hearing on the draft DCO on 15 May 2019, the Applicant has prepared this note to address those instances

### 3.2 Changes to be made to the drafting

- 3.2.1 There is a misalignment between the defined term ‘adjacent land’ and the drafting of article 5(2). The Applicant proposes to rectify this at Deadline 7 by amending Article 5(2) as follows:
- 3.2.2 “Any enactment applying to land within ~~or adjacent to~~ the Order limits or to adjacent land has effect subject to the provisions of this Order.”

### 3.3 Applicability of DCO powers to adjacent land

- 3.3.1 Article 2 provides: “*“adjacent land” means that land which is necessary to carry out the development of the Works or ensure the safe construction, maintenance or operation of any section or part of the Works*”.
- 3.3.2 It was agreed in the issue specific hearing that the ability for the DCO to take precedence on adjacent land should be limited by necessity; it should only be available where it is necessary to safely and properly construct, operate or maintain the authorised development. The Applicant agrees that this limitation is appropriate. It is considered that the definition of adjacent land reflects this agreement and does not require any further amendment.
- 3.3.3 There are four instances in the DCO where powers are not limited to the Order land; Articles 15, 19, 20 and 21. These are addressed in turn.

### Article 15 Temporary stopping up and restriction of use of streets and highways

- 3.3.4 Article 15(1) provides “The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street or highway”. This power is not limited to within the Order limits. Outside of the DCO, the temporary stopping up of any street or highway would require the appropriate exercise of powers by the relevant street or highway authority. Any other person purporting to do so would contravene the relevant legislation. The DCO provides an alternative power and one to which the Applicant submits article 5(2) would apply, meaning that exercise of the DCO power would not be a breach of other legislation as the DCO takes precedence.

- 3.3.5 A number of streets and highways will require to be restricted to construct the authorised development. The Applicant believes that all of the land which it requires to directly control is within the Order limits, however, it may become necessary to extend restrictions beyond that, for example for traffic management to ensure safety. In such cases, the Applicant would have the ability to use the power under Article 15(1) to place restrictions on adjacent land where it is necessary to ensure that the construction is safely carried out. A separate restriction promoted by the street or highway authority would not be required.
- 3.3.6 The use of powers under Article 15 are subject to a requirement to obtain consent where the Applicant is not the relevant Highway Authority and would not therefore normally have the power to effect such restrictions. Article 15(1) reads;
- 3.3.7 “(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street or highway for which it is not the street or highway authority without the consent of the street or highway authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed.”
- 3.3.8 In this case, therefore, any use of the power under Article 15(1), including on adjacent land, is subject to the consent of SCC who can control any exercise of this power through issue or refusal of consent and the imposition of conditions. The article already requires the consultation of SSDC to any use of this power and it has been agreed that this consultation will be amended to be carried out before the Applicant seeks consent from SCC.
- 3.3.9 Article 15(2), which permits the use of stopped up streets as working areas only applies within the Order Limits and is therefore not considered further.

### **Article 19 Traffic regulation**

- 3.3.10 This is very similar in approach to Article 15 in that this Article provides powers to the Applicant to regulate traffic on streets for which it is not the traffic authority, but only with the consent of that traffic authority.
- 3.3.11 Article 19(1) provides that “This article applies to roads in respect of which the undertaker is not the traffic authority”. Article 19(2) then sets out the various matters that the undertaker may do, including amending existing orders and subject to the consent of the traffic authority. Outside the trunk road, the traffic authority is SCC.
- 3.3.12 Examples of instances in which the Applicant anticipates this being used outside the Order limits are:
- (a) Temporary speed limits to ensure safety on the approach to works to the local highway may be required beyond the red line
  - (b) Amendment to an existing speed limit on the local highway where the scheme would create a short length of national speed limit between two lower limits and SCC have advised that they consider it would be in the interests of safety to amend this.

- 3.3.13 An exhaustive list cannot yet be provided as similar further cases may emerge as the traffic management plans are finalised and consulted on.
- 3.3.14 As with Article 15, any use of the power under Article 19, including on adjacent land, is subject to the consent of SCC who can control any exercise of this power through issue or refusal of consent and the imposition of conditions. Article 19 also sets out a process for the use of this power which includes consultation before consent is sought with (as a minimum) SCC and the Police, and will be amended to include SSDC at that stage.
- 3.3.15 Article 5(2) would apply to this power not only to permit the undertaker to exercise powers which would otherwise sit with SCC but also to allow the DCO process for doing so to apply.

### **Article 20 Discharge of water**

- 3.3.16 This article provides that "(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development". This is necessary as watercourse, sewers and drains into which the development drains may not all be wholly within the Order limits.
- 3.3.17 The continuation of that Article to make openings into and connections with watercourses, sewers and drains is limited to within the Order limits.
- 3.3.18 This Article and the use of watercourse drains and sewers is subject to the Protective Provisions. It is also noted that the surface water drainage requirement (13(6)) limits the ability to discharge offsite to the greenfield rate meaning that, while the development can be drained to adjacent land, it can only do so at the greenfield rate. This is an improvement over the current provisions and therefore no adverse impact on other parties should be created as the discharge.

### **Article 21 Protective works to buildings**

- 3.3.19 Article 21 provides that "the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient". The Applicant stresses that this power is purely precautionary and, at this time, it has not identified any buildings to which protective works would be required.
- 3.3.20 This power would allow the Applicant to undertake protective works to buildings to ensure that the development is carried out safely without damage to them. Owners of buildings have to be served with notice and compensated for any loss or damage. The use of this power not only interferes with owners' rights, but also does not require listed building consent to be obtained.
- 3.3.21 In order to address Examining Authority and SSDC concerns about the lack of obligation to obtain listed building consent and the lack of control of works to listed buildings, the Applicant has added a new requirement 12(3). This requires any protective works to a listed building which would cause or require to be caused permanent change or alteration of the listed features to be approved as part of the detailed design of the development.