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Subject: TR010036 - SCC's response to Deadline 7
Date: 30 May 2019 23:39:57
Attachments: [TR010036 SCC Deadline 7 Cover Letter.pdf](#)
[Appendix 1 Y 30.28 mitigation options plan.pdf](#)
[Appendix 2 Potensial legacy issue from partial revocation of 1996 SRO.pdf](#)
[Appendix 3 A303 Modifications plan - updated for D7.pdf](#)
[Appendix 4 Draft assessment routes affected by partial revocation of A303 Trunk Road.pdf](#)
[Appendix 5 1996 SRO.pdf](#)
[Appendix 6 Statement of Priorities.pdf](#)
[Appendix 7 Joint Note for D7 - Maintenance of Drainage.pdf](#)
[Appendix 8 Plan showing extent of Local Highway Network.pdf](#)
[Appendix 9 SCC PPs LHA D7.pdf](#)
[Appendix 10 Note to accompany Protective Provisions D7.pdf](#)
[Appendix 11 SCC PPs SoS D7.pdf](#)

**PLANNING ACT 2008
APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE A303 SPARKFORD TO ILCHESTER
DUALLING
SUBMISSION MADE PURSUANT TO DEADLINE 7**

PLANNING INSPECTORATE REFERENCE TR010036

Please find attached relevant documents from Somerset County Council in respect of Examination Deadline 7.

Kind regards,

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Somerset County Council

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My working days are Wednesday, Thursday and Friday

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The Planning Inspectorate
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Please ask for
Andy Coupe

Direct line
01823 355145

My reference

Your reference:
TR010036

Sent by e-mail

30 May 2019

Dear Ms Coffey

**PLANNING ACT 2008
APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE A303 SPARKFORD TO ILCHESTER
DUALLING**

SUBMISSION MADE PURSUANT TO DEADLINE 7

This submission is in response to the Examining Authority's Rule 9 and Rule 8(3) letter dated 9th May 2019; and the relevant Action Points from the recent Hearings.

The submission consists of: -

Reference	Action	Response location
Examination Timetable	Comments in respect of oral case made at ISH	SCC considers that the representations made during the 23 rd May ISHs correspond with the list of Actions in which we are providing detailed responses. We do however wish to provide a summary and update in relation to unrecorded routes, which is outlined in the Cover Letter (below).
Examination Timetable	Comments on the accepted non-material change request.	Addressed in Cover Letter (below).
ISH5 Action 5	Formally submit documents submitted to ExA in relation to revocation of 1996 SRO and mitigation of route loss for Y 30/28.	Addressed in Cover Letter (below) In addition, Appendices 1, 2, 4 and 5 support our response.

Reference	Action	Response location
ISH5 Action 6	Somerset County Council and Applicant to provide joint note in relation to outstanding Right of Way legacy issue.	Addressed in Cover Letter (below). Appendix 5 supports our response.
ISH5 Action 8	Queue lengths – Joint note about how active management at Podimore Roundabout can be included in DCO	SCC notes the comments made from the applicant in respect of their active management. We will therefore comment on their note being prepared for D7 and confirm if we have any additional points at D8.
ISH6 Action 35	Provide note on agreed position on maintenance of drainage features including minimum standards	Attached in Appendix 7.
ISH6 Action 44	Requirement 12 – Response to analysis of paragraphs 1.41 and 1.42 of Volume 1 of DRMB on potential local approval	Addressed in Cover Letter (below).
ISH6 Action 45	Requirement 12 – Potential wording for local approval mechanism for specified works	Our Protective Provisions Note (Appendix 10) sets out our proposed drafting for Requirement 12. In addition, we attach at Appendix 8 illustrated plans showing the degree of proposed works on the Local Highway Network. The Local Highway Network is depicted with a black dash line, and the Strategic Road Network is depicted with a green dash line. The plan usefully illustrates the extent of works proposed to the Local Highway Network.
ISH6 Action 48	Article 2 – provide definition of “relevant planning authority”	Addressed in Cover Letter (below).
ISH6 Action 60	Higher Farm Lane – Suggested wording for upgrading of rights	Addressed in Cover Letter (below).
ISH6 Action 63	SCC’s view on Road Safety Audit Stages 3 and 4 and need for safety net	This has been addressed as part of our work on the Protective Provisions. Therefore, please see Appendices 9,10 and 11.

Reference	Action	Response location
23 rd May Action Point 5	Somerset County Council (SCC) to submit wording in relation to Requirement 13 differentiating between Local Highway Authority and the Lead Local Flood Authority, following review of paragraph 2.2.5 of the Applicant's submission on 20 May 2019	SCC has reviewed the wording provided by the applicant on the 20 th May and does not propose any amendment.
23 rd May Action Point 8	SCC to respond on the proposed wording in 2.2.7 of the 22 May submission, including a list of wording to be proposed in new wording in X(2).	See attached Protective Provisions (Appendices 9, 10 & 11).
23 rd May Action Point 9	In relation to the definition of 'highway', in protective provisions, SCC to propose wording on what details do or do not apply in relation to Public Rights of Way.	See attached Protective Provisions (Appendices 9, 10 & 11).
23 rd May Action Point 10	SCC to provide a list of examples of works outside the red line boundary that they consider would be caught by the definition of 'works'	In the SCC Protective Provisions we have defined "Works" to include any works necessary outside of the Order Limits. Examples of such works are provided in this cover letter (below).
23 rd May Action Point 11	SCC to provide alternative wording instead of conditional approval for the protective provisions.	See attached Protective Provisions (Appendices 9, 10 & 11).
23 rd May Action Point 14	SCC to respond on wording on protective provisions paragraph 16.	See attached Protective Provisions (Appendices 9, 10 & 11).
23 rd May Action Point 17	Applicant and SCC to set out respective positions to proposed section 278 works and how these matters should be secured.	In our response at the 23 rd May hearing, SCC outlined that we consider it appropriate for the applicant to set out these matters. SCC will provide a response on these matters at Deadline 8.

Reference	Action	Response location
23 rd May Action Point 19	SCC to provide evidence of anti-social behaviour	This will be submitted to the ExA as soon as possible after Deadline 7.
23 rd May Action Point 20	Applicant and SCC to submit final version of protective provisions pursuant to their case.	See attached Protective Provisions (Appendices 9, 10 & 11).

With reference to the summary above, the detailed response aspects are outlined in turn below: -

Examination Timetable - Comments in respect of oral case made at ISH

Whilst we consider that the points we raised during the 23rd May Hearings are captured in our response to Action Points, we do wish to summarise and update in respect of unrecorded routes which we made at ISH 6.

Provision in respect of unrecorded routes was an agenda item at ISH5, but wasn't specifically mentioned by the Examining Authority. The County Council expressed a view in relation to unrecorded routes under the additional requirements item at ISH6. The Council's view was not explored in detail and it was agreed that such a view and the applicant's response could be submitted for deadline 7, albeit it does not feature as a specific action.

The County Council proposed the additional requirement to the applicant in writing, and their oral response at ISH6 suggested they were not agreeable to the requirement. The County Council still maintain the position that the applicant should commit to mitigation for the potential event that it is determined that unrecorded rights exist that the development will impact upon. It is quite reasonable that this is not an open-ended commitment, hence the additional requirement sought is intended to address the two current Wildlife & Countryside Act 1981 applications to modify the Definitive Map and Statement that are directly affected by the development, and is as follows:

'Upon the recording of any additional/ higher rights in relation to applications 859M & 861M to modify the Somerset Definitive Map & Statement, the undertaker and any successor in title, shall cooperate in full to ensure that any possible right of way cul-de-sac situations are resolved without compensation or costs being sought for any dedication agreement(s) or diversion order relating to AA-AB (861M) and BF-BM-BN-BO-BP (859M), or equivalent routes thereof.'

It should be noted that in relation to AA-AB, this could change depending on any change to the proposed mitigation for the partial stopping up of bridleway Y 30/28 (Eastmead Lane). Please note the County Council's response to ISH 6 Action 60 in this regard.

The County Council is more than happy to consider alternative wording to the above that would provide the same protection to the Council to prevent it from being exposed to future costs involved in resolving any impact that the development has on the two applications cited. The County Council notes that physical routes are proposed by the

development that would be capable of carrying diverted 'higher' rights, but this is to neglect the fact that there would still be the need for a legal order process to resolve any resulting cul-de-sac created and ensure an equivalent route is provided that connects to another like or higher highway.

Assuming the applicant is resistant to the requirement above or equivalent thereof, then the Council would seek a s278 Highways Act legal agreement that would provide for the dedication of higher rights as necessary over prescribed mitigation routes and a financial/ works commitment for highway works that fall outside/ within the applicant's ownership.

Update in relation to modification applications

As referenced at the ISHs, if the DCO is confirmed, the County Council will take those modification applications directly impacted out of turn. This is in accordance with the Council's adopted Statement of Priorities (Appendix 6). To take them out of turn prior to consent being given (regardless of the size of development) would be unfair to those applications that are already under investigation or have equally already been taken out of turn. However, even if the investigations are prioritised, given the likely potential for challenge (whether appeal from the modification applicant or objection from affected landowners) the overall timescale for when there would be a decision on the applications that is beyond legal challenge, would not align with when the applicant wishes to begin construction.

Since ISHs 5 & 6 the County Council was notified that there is likely to be a further modification application submitted on behalf of the South Somerset Bridleways Association (SSBA). It is also understood that SSBA may also submit a minor amendment to the route claimed for application 859M.

Appendix 3, as previously submitted to the Examining Authority, details the two applications directly impacted by the development (859M & 861M) and the two that are abutting/in close proximity (851M & 863M). The plan has been updated to show the new application to record a bridleway (red line to east of Hazlegrove roundabout). The variation to the route of application 859M has not been received as yet. It is considered in both cases, that the above proposed additional requirement is still fit for purpose, as the potential mitigation route for 859M would also serve to provide mitigation for the new application route, albeit it could bring a greater focus on the off-road provision for horse riders around the Hazlegrove roundabout.

Examination Timetable - Comments on the accepted non-material change request

Please refer to the County Council's response to ISH5 Action 6, which if accepted and is not challenged would make the following comments redundant. However, in the event that there is opposition from the applicant to the approach set out, or there is successful challenge from 3rd parties, then the following comments will be relevant.

One of the proposed non-material amendments put forward by the applicant was:
Footpath between the east of Traits Lane and the west of Gason Lane: To delete the more southerly of the two proposed footpaths between the east of Traits Lane and the west of Gason Lane (shown as plots 7/7a and 7/7c on the Lands Plans (Sheet 7) [REP5-002]).

This is in direct conflict with the Draft DCO Schedule 3 Part 11. This schedule refers to both of the routes between Traits Lane and Gason Lane as bridleways, not footpaths. Therefore, the applicant should have submitted a proposal for deleting the more southerly route, and downgrading the status of the northerly route from bridleway to footpath.

The County Council is most disappointed that this change has been put forward at such a late stage offering little opportunity for stakeholders to have a meaningful input into the situation. The County Council is more than willing (and is aware of others who are also willing) to assist in negotiations with the Ministry of Defence to secure the dedication of a bridleway over their land, as opposed to just a footpath.

The impact for horse riders and cyclists is a significant diversion in excess of 2km, or over 4km for a 'there and back' ride, on single track roads with poor sight lines. The County Council strongly encourages the applicant to ensure that every effort is made to arrange for further discussion and negotiation with the Ministry of Defence and other stakeholders to secure the original and drafted intention; of delivering a bridleway between Trait Lane and Gason Lane. If successful, the non-material amendment could be simply amended by replacing the word footpath with bridleway ahead of deadline 8.

Should it not be possible to undertake any discussions before deadline 8, this should not preclude the ability for the Ministry of Defence to dedicate higher rights at a later date, and any approval of the amendment and subsequent recommendation by the Examining Authority to the Secretary of State should bear this in mind.

ISH5 Action 5 - Formally submit documents submitted to ExA in relation to revocation of 1996 SRO and mitigation of route loss for Y 30/28.

See Appendices 1 & 2. Please note that the 0.8km previously tabled at ISH5 in Appendix 1 was incorrect and now reads as 1.6km. Please note that the digital route of bridleway Y 30/29, as has been shown on the County Council's Explore Somerset mapping and thus the DCO Rights of Way & Access Plans, is not an accurate representation of the route shown in the 1996 Side Road Order. Please see Appendices 4 & 5 for plans/ extracts showing the route that was intended by the Order.

ISH5 Action 6 - Somerset County Council and Applicant to provide joint note in relation to outstanding Right of Way legacy issue.

Contact has been initiated with the applicant in the interests of preparing a joint note, but at time of writing a substantive response in this regard has not been forthcoming due to time pressures experienced by the applicant, hence this note is the County Council's response only. It may be that a joint note can be agreed for deadline 8 or as soon as possible prior to then and it is hoped that this submission will help prepare the way for that joint note.

Further to ISHs 5-7, legal advice has been obtained, which advises that in principle the rights of way so extinguished and created by the 1996 Side Road Order (SRO), save for the trunk road, took effect in 1996. The order was made, and advertised in accordance with the relevant legislation, and to the best of our knowledge without

further challenge. It is assumed that all the administrative processes were correctly followed.

The Department for Transport take the view that because the scheme wasn't constructed the order did not take effect, and this is certainly a pragmatic approach that would seem most logical. However, in strict legal terms is not the case.

It appears that the County Council only recognised two new routes in updating its digital mapping (bridleway Y30/29 and footpath Y 27/UN), and none of the effects of the 1996 SRO were updated on the legal record, the Definitive Map & Statement (DMS). Strictly speaking, a legal event modification order should be processed to update the DMS in recognition of the legal event that occurred in 1996. This is far from a practical solution given the scheme did not progress, hence the Council's previous position has been that the SRO should be revoked in full either as part of or in parallel to the DCO.

In the apparent absence of the applicant undertaking comparison analysis of the 1996 SRO and the DCO Rights of Way & Access Plans, the County Council has prepared a document in draft form which can be found at Appendix 4. The tight deadlines have not allowed for a computer-generated overlay of the various legacy issues but the extracts of the two Orders should assist the Examining Authority in understanding the complications that would arise should the applicant pursue a partial revocation of the 1996 SRO within the order limits only. The analysis identified 3 other routes that are technically created and associated routes extinguished in the vicinity of Camel Hill.

In consideration of the following:

- The discovery of additional 1996 SRO legacy issues in addition to that of bridleway Y 30/29
- The continued resistance of the applicant to provide appropriate mitigation for the stopping up of Y 30/28 within the DCO
- The non-material amendment that has been submitted in relation to the route between Traits Lane and Gason Lane
- Further legal advice that has been obtained,

the Council's position has now changed with respect to the 1996 SRO and how it should be dealt with.

Despite best endeavours, the County Council is conscious that what it seeks in relation to the 1996 SRO may not necessarily have been clear to the Examining Authority. However, it is important to stress that how the 1996 SRO is addressed through the DCO has interdependencies with the County Council's responses to ISH6 Action 60 and the comments on the non-material amendment.

The current drafting promoting partial revocation within the order limits would result in a number of cul-de-sacs and isolated sections of right of way. Whilst the applicant gave reassurance at ISH5 that the issue in relation to Y 30/29 could be addressed through DCO redrafting, the additional legacy issues that have been identified call into question the best way to approach this issue. It would not be an acceptable outcome to the County Council to update the DMS with the effect of the 1996 SRO and then further update with the effects of the partial revocation within the DCO limits. It would

create a nonsensical rights of way network in places, which the County Council should not be burdened with to resolve.

The County Council's position is thus; that the 1996 SRO should be revoked in full, save for:

- Schedule 1 – new highway A (bridleway)
- Schedule 2 – new highway G (bridleway)

See Appendix 5 for the whole 1996 SRO.

The first exception would confirm the route so labelled as Y 30/29 and has been shown on the Council's digital mapping, thereby providing a route between bridleway Y 30/28 and footpath Y 30/31. The second exception would overcome the difficulty currently being experienced with the Ministry of Defence not willing to enter into a bridleway creation agreement between Traits Lane and Gason Lane.

Excepting these routes and rights from any revocation of the 1996 SRO creates further considerations as follows:

- The alignment of these routes vary slightly from those shown in the DCO Rights of Way and Access Plans and are not wholly within the red line.
- Recognising the fact that the rights were created in 1996, but never formally passed into the control of the County Council as Highway Authority.
- Partial physical access of both routes exists but there will be the need to establish the routes on the ground to ensure they are fit for public use, and it is contended that such costs should be borne by the DCO applicant as successor in name to the organisation that promoted the 1996 SRO, the Highways Agency.
- The location of the Gason Lane turning head.

In light of the routes not being wholly within the red line and the possibility that this cannot be resolved at this point in the process, the County Council would seek the following:

- A s278 Highways Act agreement with the applicant that would cover the establishment costs for both routes. For route 'A' (Y 30/29) this would be in the order of £5k and for route 'G' this would be £20k. Any remaining balance could be refundable. Such costs may be capable of being offset if the applicant carried out appropriate establishment works within the red line boundary.
- Further to securing the above agreement, the Examining Authority to recommend in light of the DCO process and any revised drafting in relation to revocation of the 1996 SRO, that the Secretary of State formally notifies the County Council that they become responsible for the new highways as referenced above (Schedule 1 'A' and Schedule 2 'G')

With regard to the Gason Lane turning head, should the above approach be taken forward the location of the turning head could be relocated further east with associated stopping up of part of Gason Lane. The County Council is not requiring this, but merely

highlighting it to the applicant as a possibility that may be provide for a more favourable outcome.

ISH6 Action 44 - Requirement 12 – Response to analysis of paragraphs 1.41 and 1.42 of Volume 1 of DRMB on potential local approval

SCC understands that GD01/15 has recently been updated with GG101. This was part of an overarching review of DMRB undertaken by Highways England to improve structure and content.

Paragraph 2.6 of GG101 provides that “Where works that will subsequently be adopted by a local highway/road authority are to be carried out by an Overseeing Organisation, any departure applications shall first be submitted to the Overseeing Organisation”. No other requirements are given regarding local roads in GG101.

ISH6 Action 48 - Article 2 – provide definition of “relevant planning authority”

Somerset County Council has liaised with South Somerset District Council (SSDC) in respect of an agreed definition of “relevant planning authority”. We understand that SSDC are content with the SCC definition; however for clarity SSDC seek amendments to Requirements 11 and 15 to ensure that they are consulted.

ISH6 Action 60 - Higher Farm Lane – Suggested wording for upgrading of rights

The County Council’s position has always been that a bridleway connection between Podimore and Y 30/28 (Eastmead Lane) via Y 30/31 (Higher Farm Lane) is appropriate mitigation for the stopping up of the southern terminus of Y 30/28 (see separate topic paper submitted at deadline 2), and therefore should form part of the DCO. In the absence of any appropriate mitigation the County Council previously sought a requirement to secure an obligation. This has not been forthcoming hence the Council now requires a legal agreement with the applicant under s278 Highways Act 1980. Noting the County Council’s response to ISH5 Action 6 and the existence of bridleway Y 30/29, the heads of terms for this aspect of a s278 agreement would be as follows:

- The applicant to undertake works on their Higher Farm Lane overbridge to accommodate horse riders, through the upgrading of parapets or the provision of mounting blocks and associated signage.
- The applicant to dedicate bridleway rights, with a clause to dedicate restricted byway rights should such rights be confirmed over Y 30/28 Eastmead Lane), over land that they own as far as it is necessary to secure.
- To provide a contribution of £70k to enable the Council to secure, process and defend any necessary agreements and orders, and to secure the necessary rights and works over land that is outside of the ownership of the applicant. Any remaining balance could be refundable.

The County Council acknowledges that a Designated Funds application is being prepared to help fund the link, but there can be no guarantee that this will be successful and it this will not secure it as part of the DCO process.

23rd May Action Point 10 - SCC to provide a list of examples of works outside the red line boundary that they consider would be caught by the definition of 'works'

SCC considers that there are 3no works elements that are known to fall outside of the red line boundary.

- The alteration works to the Podimore off-slip (contested by HE at the latest ISH)
- The introduction of 'no-through road' signs where existing highway is to be severed by the SRN works.
- The alteration of the existing speed limit on the B3151.

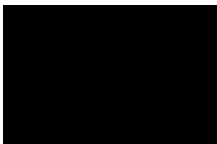
They may be other locations where works are required to extend outside the red line boundary.

At present SCC have only had sight of the preliminary design proposals. Unfortunately, until such time as SCC are able to review the detailed design it is difficult to determine whether or not other works will encroach outside of the red line boundary. Notwithstanding the above, potential locations are likely to be the tie-in points where the new sections of LRN adjoin the existing highway network. The construction tie-in and drainage works will need to be compatible with the existing infrastructure. Given that the majority of the LRN in the locality are minor side roads the level of the infrastructure could be minimal and/or the condition substandard. This may therefore require accommodation works to be included in the design which could take the works outside of the order limits.

The applicant, in its submission on 20th May, provided further detail in relation to DCO powers on "adjacent land"; and summarised the powers sought by virtue of Articles 15, 19 and 20. It is SCC's view that works undertaken pursuant to these Articles and on adjacent land outside of the Order Limits may amount to physical works such as signage, lining, bollards, speed humps and kerbing.

The County Council strongly supports the need for the single carriageway section of the A303 between Sparkford and Ilchester to be upgraded to dual carriageway as part of an end-end whole route improvement of the A303/A358 between the M3 and the M5 at Taunton. If designed appropriately, the improvement will improve connectivity and access to the South West Region, improve the resilience of the strategic road network and help to promote economic growth in the region.

Yours sincerely,



Andy Coupe
Strategic Manager (Infrastructure Programmes)