

# A303 Sparkford to Ilchester Dualling Scheme TR010036

## 9.39 Deadline 8 Report

Planning Act 2008

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## Infrastructure Planning

Planning Act 2008

# A303 Sparkford to Ilchester Dualling Scheme

Development Consent Order 201[X]

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## Deadline 8 Report

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## **Table of Contents**

|          |   |           |
|----------|---|-----------|
| <b>1</b> | <b>Introduction</b>                       | <b>4</b>  |
| <b>2</b> | <b>Hearing Action Points</b>              | <b>5</b>  |
| 2.1      | Introduction                              | 5         |
| 2.2      | Action Point 6 (EV-032)                   | 5         |
| 2.3      | Action Point 6 (EV039)                    | 5         |
| 2.4      | Action Point 17 (EV039)                   | 5         |
| 2.5      | Action Point 18 (EV039)                   | 7         |
| <b>3</b> | <b>Rule 17 Letter Responses</b>           | <b>8</b>  |
| 3.1      | Introduction                              | 8         |
| 3.2      | DMRB References                           | 8         |
| 3.3      | CD239 and Expressway Standards            | 8         |
| 3.4      | Tracked change versions                   | 9         |
| 3.5      | Bunds 6 and 7                             | 9         |
| <b>4</b> | <b>Comments on Deadline 7 Submissions</b> | <b>11</b> |
| 4.1      | Mr Norman                                 | 11        |

# 1 Introduction

- 1.1.1 This report forms part of the Applicant's Deadline 8 submission for the Development Consent Order (DCO) Examination for the A303 Sparkford to Ilchester Dualling Scheme (hereafter referred to as 'the scheme').
- 1.1.2 This Deadline 8 Report provides the Applicant's responses to the remaining Action Points from the hearings (Chapter 2 of this report), responses to the Rule 17 letter issued on 4 June 2019 (Chapter 3 of this report), and comments on the Deadline 7 submissions the Applicant has felt necessary to provide responses to (Chapter 4 of this report). An update on negotiations in relation to compulsory acquisition will be included within the revised Statement of Reasons to be submitted to the Examining Authority on Wednesday 12 June 2019.
- 1.1.3 The Table of Amendments submitted as part of Deadline 8 (document reference 9.10, Volume 9) sets out the changes made to the draft DCO submitted as part of Deadline 7 and which was omitted from the deadline 7 submission in error. A further table setting out amendments in relation to the dDCO submitted at Deadline 8 has not been submitted as only one change has been made to Schedule 3 Part 11 to correct an error. A tracked change version showing that change has been submitted (document reference 3.1, Volume 3, Revision 0.6).

## **2 Hearing Action Points**

### **2.1 Introduction**

- 2.1.1 This chapter provides responses to the remaining Hearing Action Points associated with Deadline 7 and Deadline 8. Each Action Point relates to the table of action points issued by The Planning Inspectorate (EV-032 and EV-039) following the Issue Specific Hearings held on Tuesday 14 May 2019 and Thursday 23 May 2019. The numbering adopted below corresponds to the numbering in the Action Points issued by The Planning Inspectorate.

### **2.2 Action Point 6 (EV-032)**

- 2.2.1 Action Point 6 requests: *Somerset County Council and Applicant to provide joint note in relation to outstanding Right of Way legacy issue.*
- 2.2.2 The Somerset County Council (SCC) position is that three legacy routes could “potentially” be affected “if” they have been created (REP6-019). The SCC Deadline 7 submission then notes that these routes should have been legally evented but that has not been undertaken (REP7-035).
- 2.2.3 The Applicant notes that it has assessed the scheme on the basis of the definitive mapping, surveys and what is present on the ground. The Applicant advises that the three potentially affected routes are not shown on the definitive mapping which demonstrates that SCC has never held them to be in effect. That is consistent with the lack of legal eventing.
- 2.2.4 The routes are not in place on the ground and cannot be in use as it is not physically possible to use them as indicated on the SCC sketches. The Applicant does not consider it to be reasonable that SCC are seeking to force the DCO to address non-existent routes which it, as the responsible authority, has never engaged with (in over 20 years) since the making of the 1996 order and has never carried out the legal eventing work to secure. It again appears that the County Council is seeking to use the DCO to address historical issues not related to the development proposed and to remedy errors in its definitive mapping; that is not a proper planning purpose.

### **2.3 Action Point 6 (EV039)**

- 2.3.1 Action Point 6 requests: *Applicant to then respond at Deadline 8 in relation to SCC’s wording to be submitted in response to the action point 5.*
- 2.3.2 The Applicant notes that the response submitted by SCC at Deadline 7 was “*SCC has reviewed the wording provided by the applicant on the 20th May and does not propose any amendment*”. Accordingly, the Applicant does not consider that any response from it is required.

### **2.4 Action Point 17 (EV039)**

- 2.4.1 Action Point 17 requests: *Applicant and SCC to set out respective positions to proposed section 278 works and how these matters should be secured.*

- 2.4.2 As the Applicant has repeatedly submitted, it does not accept that a Section 278 agreement is necessary to make the scheme acceptable in planning terms. Accordingly, the Applicant's position is that a requirement seeking to secure a Section 278 agreement would not meet the necessary legal tests. The Section 278 is not necessary to make the development acceptable in planning terms. There is no planning need or justification for requiring these works, the Council simply believes they would be of benefit. The matters which the County Council submits should be secured are not required for the scheme to be safe, useable and in compliance with the Environmental Statement. The Applicant has been willing to discuss provision of these discretionary extra elements voluntarily with the County Council as part of the ongoing relationship; that does not mean that the Applicant accepts these are necessary.
- 2.4.3 At Deadline 7 and in response to Action Point 10 (REP7-035), SCC provided a list of works outside the Order limits which it considers are necessary; these are the works the Applicant expected the County Council to specify for the Section 278 agreement. The Applicant is very surprised that the County Council is taking the view that these works do not need to be secured through a Section 278 agreement but should be considered works under the Order as the Applicant does not consider that they can all be lawfully be added to the Order in the manner suggested.
- 2.4.4 SCC's list is:
- The alteration works to the Podimore off-slip.
  - 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.
- 2.4.5 The Applicant submits that the only point on that list which can be carried out under the Order is the alteration of the existing speed limit on the B3151.
- 2.4.6 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 activities that the undertaker may carry out, including amending existing orders – all of which is subject to the consent of the traffic authority. Outside the strategic road network, the traffic authority is SCC. The Applicant therefore agrees that the change in speed limit can be achieved through the DCO. The Applicant had, however, included this in the list of s278 works it was discussing with SCC as the provision of associated required signage outside the red line cannot be carried out under the DCO.
- 2.4.7 The other items suggested by SCC require physical works which are outside the red line, have not been included in the works descriptions, have not been assessed in the Environmental Statement and are located on land which the Applicant has no ability to occupy. To add these works to the Order would require new works to be added to Schedule 1, the red line boundary of the DCO to be extended, new plots to be created on the land plans and changes to other plans such as the general arrangement plans and environmental masterplan. The Council has not proposed how any of those changes can be lawfully made to the DCO at this stage. The Applicant does not consider it is lawfully possible to add new red line areas to the DCO at this stage of an

examination or at any stage in the absence of a request by the Applicant to do so with all of the supporting assessment and documentation that would be required. The only manner in which these works could be lawfully secured by the DCO is through a Section 278 agreement. The County has accordingly fundamentally misunderstood the process.

- 2.4.8 The County Council's submission that the very limited provisions in the DCO which allow certain powers to be exercised on adjacent land include undertaking physical works is entirely incorrect. The Council has cited no power in the DCO which would allow that and could not cite such a power as it does not exist. The DCO authorises the physical works within the Order limits; to extend those outwith the red line would negate the purpose of the red line completely and result in a situation where it was unclear what works were authorised on what land. The Applicant submits that as a matter of logic and law the Council's position cannot be correct or there would be no need to have a red line plan and works plans at all.
- 2.4.9 Despite the Applicant's best efforts to assist the County Council, it still appears to fail to understand the effect of the adjacent land provision. For the avoidance of any doubt, very few of the powers in the DCO apply to adjacent land. In particular, and relevant to this point, the consent to construct under the DCO is for the authorised development; "authorised development" means the development and associated development described in Schedule 1 (authorised development) including all of the numbered Works. Article 5(1) provides that "Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits" (emphasis added). The Applicant submits that there is no provision in the Order which allows physical works to be carried out outside the Order limits and it would not be a lawful or appropriate amendment.
- 2.4.10 The listed works are not necessary elements to make the scheme acceptable in planning terms. If these works were a necessary part of the DCO they would have been included in the red line.
- 2.4.11 The Applicant is committed to negotiating an appropriate agreement with the County Council for minor discretionary works outside the DCO process however it will not agree to these being brought into the Order.

## **2.5 Action Point 18 (EV039)**

- 2.5.1 Action Point 18 requests: *Applicant and SCC to set out position regarding the temporary possession and Compulsory Acquisition of rights and any reference to case law.*
- 2.5.2 The Applicant has provided a response to Action Point 18 within 9.40 Deadline 8 Response to Action Point 18 - Legal Submission report (Revision A) submitted as part of Deadline 8.

### 3 Rule 17 Letter Responses

#### 3.1 Introduction

- 3.1.1 The below sections provide responses to sections of the Rule 17 letter issued on 4 June 2019 (PD-020) addressed to the Applicant.

#### 3.2 DMRB References

- 3.2.1 The Rule 17 letter requests: *The ExA notes that there have been recent updates to DMRB. Could the Applicant confirm whether the references to DMRB in both the ES and any subsequent submissions refer to the latest version and that it does not seek to rely on any section that have been subsequently withdrawn or superseded. Does the Applicant wish to comment on any of the sections published and/or updated in May 2019?*
- 3.2.2 The Design Manual for Roads and Bridges (DMRB) is updated on a quarterly basis. There have been updates in August 2018, November 2018, February 2019 and May 2019 since the submission of the DCO application. As a matter of course, the Applicant has undertaken an ongoing review of all these updates in relation to the documents submitted as part of the DCO application (including the Environmental Statement) and can confirm that none of the updates alter any of the assessment findings or conclusions.

#### 3.3 CD239 and Expressway Standards

- 3.3.1 The Rule 17 letter (PD-020) requests: *DMRB Volume 0, Part 5, GD300 Requirements for new and upgraded all-purpose trunk roads (expressways) and CD239 Footway and cycleway pavement design were published in May 2019. The former provides the design requirements and advice for new and upgraded all-purpose trunk roads (expressways). What are the implications of these documents for the proposal?*
- 3.3.2 CD239 Footway and cycleway pavement design sets out the design requirements in relation to the pavement construction. Pavement construction refers to the construction detail of a road, path or similar. This standard sets out the layers, thicknesses and types of materials for cycleways and footways depending on their usage. The introduction of this standard has had no bearing on the design, because the current design has not been developed to this level of detail. During the detailed design stage, this standard will be referred to.
- 3.3.3 DMRB Volume 0, Section 2, Part 5 (GD 300) was published on 31 May 2019.
- 3.3.4 The England National Application Annex sets out the Highways England-specific requirements for new and upgraded all-purpose trunk roads (expressways) under DMRB GD3 00. The full application of GD 300 standards applies to the implementation of a level 4 scheme only. Guidance is to be sought from the Overseeing Organisation (Highways England) for the development of level 1, 2 or 3 schemes. Delivery of a level is not a commitment to implementing another level in the future.
- 3.3.5 Information on levels can be found within Appendix E/C of GD 300.



- 3.3.6 The design of the A303 Sparkford to Ilchester scheme obviously predates the publication of the standard; however, the scope of the scheme is broadly consistent with level 2. The full requirements of GD300 therefore do not apply as this is not a level 4 scheme.
- 3.3.7 The Applicant can therefore confirm that the implication of GD 300 on the scheme is that:
- It does not introduce additional requirements on the scheme.
  - It serves as a reference point to achieve consistency with GD 300 level 2.
  - There is no commitment to implement another level in the future.

### 3.4 Tracked change versions

- 3.4.1 The Rule 17 letter (PD-020) requests: Please supply a tracked change version of the following documents from the previously submitted versions:
- Outline Environmental Management Plan (Please note the contents page also appears to need amending so that it is consistent with contents of the document).
  - Biodiversity Offsetting Metric.
  - Statement of Reasons.
  - Environmental Statement Table of Errata.
- 3.4.2 The Applicant has submitted tracked change versions of these reports as part of the Deadline 8 submission.

### 3.5 Bunds 6 and 7

- 3.5.1 The Rule 17 letter (PD-020) requests: *In respect of Bund 7 could the Applicant please explain why the drainage arrangement could not be redesigned so that the two culverts are moved to the east, thus allowing Bund 7 to be extended eastward, or why the proposed culverts could not be extended in length to allow an extension of Bund 7 overhead, or why an attenuation pond could not be included on the southside of the main carriageway to avoid the need for the culverts to the north. If an extension of Bund 7 is not technically feasible, could the Applicant set out what alternative screening measures it has considered and why the environmental barrier (albeit a wooden fence) has been chosen.*
- 3.5.2 As stated in the Applicant's non-material change request cover letter (REP6-014), the Applicant investigated the possibility of extending Bund 7 to the east in order to avoid the need for the timber fence alongside the proposed dual carriageway in the south eastern corner of the park. However, this was not possible as it would have compromised proposed drainage outfalls from the carriageway for the reasons outlined in the following paragraph.
- 3.5.3 It is good design practice to consider the impacts of scenarios where the design limitations of drainage systems are exceeded (that is, during periods of exceptionally high rainfall). At this location, the A303 carriageway is generally impounded along its northern perimeter by proposed bunds and the existing cutting to the east of Bund 7. Under normal rainfall conditions the carriageway

drainage systems will operate as designed. However during exceptionally high rainfall these systems will become overwhelmed and, whilst it is not necessary to accommodate high flows within the designed drainage systems, it is important to consider where this 'exceedance runoff' would flow so that its impact is minimised. It is good practice to ensure that exceedance flows do not impact the operation of critical infrastructure such as transport links. The gap between Bund 7 and the adjacent cutting provides a route for any exceedance flows to leave the carriageway whereas if Bund 7 was to be extended further east this would not be possible, and the A303 might become flooded.

- 3.5.4 As such, instead of extending Bund 7, it is proposed to provide additional localised screening planting at this location to soften the appearance of the fence.
- 3.5.5 The wooden fence environmental barrier was chosen as this will provide visual screening from visual receptors within the Registered Park and Garden during Year 1, whilst the proposed planting establishes. By Year 15, it is anticipated that the proposed planting will then provide additional screening. As part of the Applicant's non-material change request and in order to soften the views of the wooden barrier, in line with South Somerset District Council's concerns, additional localized screening planting at this location has now been proposed, as shown on the latest version of the environmental masterplan (REP7-030).

## 4 Comments on Deadline 7 Submissions

### 4.1 Mr Norman

- 4.1.1 Mr Norman refers to a further 12 hour traffic survey carried out by Queen Camel Parish Council on 16 May 2019, two years after the original survey. It is assumed that this count was carried out in Queen Camel High Street, although this is not made clear. It is also assumed that the claimed increase of 42% is wrong and should probably read 4.2% as he also quotes 2.1% per annum, although this cannot be verified as the count data has not been provided. Increasing traffic over the last two years by a small percentage is not surprising although a more reliable comparison should be made by counts carried out over at least two week periods in each case.
- 4.1.2 The Applicant explained in the earlier response (REP3-003) to Mr Norman's Written Representation (REP2-027) that a count in Queen Camel High Street is not equivalent to the traffic from Hazlegrove roundabout turning to the A303 eastbound via the new slip road with the scheme, as a large proportion of the traffic through Queen Camel High Street is heading to Sparkford and A359 north.

Mr Norman also refers to proposed increases in housing in Yeovil. The Applicant's traffic forecasting has accounted for planned developments in the sub-region that are likely to proceed, the details being obtained from local planning authorities. These are set out in the Combined Modelling and Appraisal (ComMA) report (App-151) in which Figure 11.4 shows the developments in South Somerset that are listed in Appendix E and which shows that urban extensions to the north and south of Yeovil have been included. Therefore Mr Norman is wrong to say that the Applicant has done nothing to prove they have used the correct statistics to calculate the viability of this junction as the traffic model has been validated with independent data and reviewed by Somerset County Council whilst the forecast developments have relied on data from the local planning authority.