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To: A303SparkfordtoIlchester@pins.gsi.gov.uk
Cc: [A303 Sparkford to Ilchester](#)
Subject: TR010036 A303 Sparkford to Ilchester - SCC"s deadline 8 response
Date: 10 June 2019 20:59:50
Attachments: [TR010036 SCC Deadline 8 Cover Letter.pdf](#)
[Appendix 1 - Response to HE Section 278 comments.pdf](#)
[Appendix 2 - Response A303 Action point 18.pdf](#)
[Appendix 3 - Anti social behaviour evidence.pdf](#)
[Appendix 4 - Response A303 Action point 44.pdf](#)
[Appendix 5 - Response A303 Action 49.pdf](#)
[Appendix 6 - Land Ownership outside Mattia Diner.pdf](#)
[Appendix 7 - Amended DCO comments.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 8**

PLANNING INSPECTORATE REFERENCE TR010036

Please find attached relevant documents from Somerset County Council in respect of Examination Deadline 8.

Yours faithfully,

Andy Coupé

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Ref: TR010036 - Sent by e-mail

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 8

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.

This submission is in response to the Examining Authority's Rule 9 and Rule 8(3) letter dated 9th May 2019. Notably, it includes

- responses from the County Council to Action Points arising from the Issue Specific Hearings on 14th, 15th, and 23 May 2019 in relation to questions put directly to it, and in response to comments made by the Applicant in its document titled "9.36 Responses to Action Points for Deadline 7"
- comments from the County Council in relation to the further amendments to the dDCO submitted by the Applicant at Deadline 7

- a note that the County Council has worked with the Applicant to agree a Final Statement of Common Ground that will be submitted by the Applicant as part of its Deadline 8 response

Local Highways and Fees

In addition to providing comments on the above matters, the County Council wishes to restate its position in relation to the approval of detailed designs, the supervision of work and the payment of associated fees. The County Council believes it has been very clear both in its written submissions throughout the Examination and in the oral evidence provided at the Issue Specific Hearings that

- it seeks the ability to review, approve and subsequently supervise only the works associated with local highways;
- it does not foresee a role for itself in relation to the trunk road network but that it would be pleased to be a consultee on these matters especially where it interfaces with local highways.

The County Council's proposed version of the Protective Provisions submitted at Deadline 7 reflect this. They relate only to "local highways" meaning "any public highway including public right of way which is maintainable or is intended at the completion of Works to be maintainable by the local highway authority". In addition, the County Council's covering explanatory note to its Protective Provisions stated that "in the event that the LHA is the approving authority under requirement 12 for the detailed design relating to the local highway network, the following amendments would be required to the draft DCO (new text in blue):

Requirement 12 of Schedule 2

No part of the authorised development is to commence until the detailed design of that part has been approved in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions, and in respect of any part of the authorised development which relates to changes to the local highway network, no such part is to commence until the detailed design of that part has been approved in writing by the local highway authority."

The County Council set out in its Local Impact Report that "The DCO should include provision for the associated fees in connection with undertaking the detailed design review to be secured. SCC superintendence fees are based on 8.5% of the total highway construction cost". The County Council has subsequently explained that reference to the 8.5% was made simply to illustrate the quantum that it would usually seek to secure if the development had been permitted through a traditional planning route. However, the County Council has subsequently clarified that it seeks to secure superintendence fees for only those elements of the project which relate to "local highways" and

not the trunk road elements. The County Council has also explained that it would be pleased to explore a cost recovery model with the Applicant rather than a set fee. Contrary to concerns therefore that have been expressed by the Applicant that the County Council is seeking to recover 8.5% of the overall scheme cost in superintendence fees, at the recent Issue Specific Hearings the County Council confirmed that the quantum of fees it estimated would be required in order for its costs to be fully recovered would equate to around only 0.1% of the overall scheme cost (based on previously published indicative scheme costs by the Applicant).

Deadline 8 Response

The County Council's responses are set out either in the main body of this letter or in an Appendix, and the table below identifies where each response can be found.

Reference	Action	Response location
Examination Timetable	Final Statement of Common Ground (SoCG)	SCC has worked with the Applicant to agree a final SoCG. We understand that the Applicant will be submitting the document as part of its Deadline 8 response.
Action Point 17 (from 23 May)	Applicant and SCC to set out respective positions to proposed section 278 works and how these matters should be secured.	Please see Appendix 1 (which also deals with the Applicant's response to Action Point 64 from 14 th &15 th May hearings)
Action Point 18 (from 23 May)	Applicant and SCC to set out position regarding the temporary possession and Compulsory Acquisition of rights and any reference to case law	Please see Appendix 2
Action Point 19 (from 23 May)	SCC to provide evidence of anti-social behaviour	Please see Appendix 3
In addition to the above, SCC has provided a response to the following comments made by the applicant in their document titled "9.36 Responses to Action Points for Deadline 7.		

Reference	Action	Response location
Action Point 7 (from 14 th & 15 th May)	Update error in dDCO in relation to revocation of 1996 SRO.	Partial revocation of the Sparkford to Ilchester improvement and slip roads Side Roads Order 1996 should be amended to reflect the comments made by the County Council at Deadline 7
Action Point 13 (from 14 th & 15 th May)	OTMP Communication Plan – (a) Confirm who the working group referred to in paragraph 2.3.23 of the Outline TMP would consist of. (b) confirm who will determine the detail of the Communication Plan in paragraph 2.3.36. (c) review the wording at paragraph 2.3.38.	Please see response in Cover Letter below.
Action Point 36 (from 14 th & 15 th May)	Provide response to SCC’s response to Applicant’s note on protective provisions (Action Point 31) Including: consider need for definition of completion and how this could be addressed having regard to SCC proposal and propose alternative(s).	Please see response in Cover Letter below
Action Point 44 (from 14 th & 15 th May)	Requirement 12 – Response to analysis of paragraphs 1.41 and 1.42 of Volume 1 of DRMB on potential local approval.	Please see Appendix 4
Action Point 48 (from 14 th & 15 th May)	Article 2 – provide definition of “relevant planning authority”	Please see response in Cover Letter below

Reference	Action	Response location
Action point 49 (from 14 th & 15 th May)	Article 3 – Ensure separation of Internal Drainage Board and Local Lead Flood Authority provisions and ensure appropriate consistency where necessary.	Please see Appendix 5
Action point 52 (from 14 th & 15 th May)	Article 5 – Provide note setting out scenarios where Traffic Regulation Orders may be required so SCC can more fully understand purpose.	Please see response in Cover Letter below. See also Action Point 7 below from 23 rd May hearing.
Action Point 61 (from 14 th & 15 th May)	Submit response to SCC’s suggested wording relating to unrecorded rights of way.	Please see response in Cover Letter below
Action Point 7 (from 23 rd May hearing)	Applicant to revise Explanatory Memorandum to clarify function and effect of Article 5(2).	Please see response in Cover Letter below in relation to Action Point 52 above from 14 th and 15 th May hearing.
Action Point 16 (from 23 rd May hearing)	Applicant to confirm ownership of A303 outside Mattia Diner to confirm ownership of land below surface of A303.	Please see Appendix 6
Response to Deadline 8 question to Defence Infrastructure Organisation (DIO)		
Rule 17 letter dated 4 June 2019	Question to the Defence Infrastructure Organisation	Please see response in Cover Letter below
Response to documents submitted by the applicant at Deadline 7 (note that these comments are in addition to comments already made in respect of the DCO and associated documents at previous deadlines)		
Draft DCO and Public Rights of		Sch 4 Part 2:-

Reference	Action	Response location
Way and Access Plans		As per the County Council's deadline 6 submission, references in the DCO and the Rights of Way & Access Plans require amending; Y 27/29 should now be shown as Y 27/UN, and Y27/36 should now be shown as Y 27/29. If the County Council is to update the Definitive Map & Statement with the effect of the DCO then these changes are critical.

Action Point 13 (from 14th & 15th May) – OTMP Communication Plan

The applicant sought the views from the County Council on the membership of the Traffic Management Group. SCC responded on 24th May to advise that the proposed list of attendees was acceptable from the perspective of the local highway authority, subject to the SCC site representative/supervisor also being invited to attend. We note that this has not been included in the Applicant's Action Point 13 response and advise the ExA that the site representative/supervisor should be included.

Action Point 36 (from 14th & 15th May) - Provide response to SCC's response to Applicant's note on protective provisions (Action Point 31) Including: consider need for definition of completion and how this could be addressed having regard to SCC proposal and propose alternative(s).

To date SCC has not received any proposals or details of a sectional completion. Article 13 stipulates that highway (other than a trunk road) to be constructed under this order must be completed to the reasonable satisfaction of the LHA. In order to achieve 'reasonable satisfaction' the LRN needs to be fully constructed and safe.

Construction

In terms of construction completion all drainage, signage, traffic regulation measures and highway lighting (if necessary) will require completion as per the detailed design.

Taking drainage as an example - The Outline Drainage Works Plans separate the highway drainage into catchment areas. The catchment areas discharge to one of the 5 no attenuation ponds. The exception is at tie-in points of new construction with minor roads where the minimal increase in runoff will most likely discharge to existing ditches or gullies, as per the existing arrangements, though the detailed design will confirm if this will be the case.

In order for the LHA to be satisfied that all drainage works have been completed, the drainage infrastructure from the LRN to the receiving attenuation pond, the construction of the pond itself and the outfall into the adjacent watercourse will need to be fully completed. This will provide the satisfaction to the LHA that the LRN has been completed as per the TA drawings.

In practice, if the applicant or their contractor's sectional completion construction programme is not compatible with the above then it is unlikely that the LHA will be able to agree that the works are complete.

Safety

In order for the sectional completion to be deemed safe a Stage 3 Road Safety Audit (RSA) must be undertaken. Without the scheme being fully constructed it is unclear how the safety audits can review the scheme in the context of its overall design aims. With this in mind, it is considered only feasible to undertake an interim Stage 3 RSA until such time as all the 'authorised development' works have been completed, at which point a full Stage 3 RSA can be undertaken.

A single date of final completion for the whole scheme would address these potential issues.

Action Point 48 (from 14th & 15th May) - Article 2 – provide definition of “relevant planning authority”

SCC notes that the applicant is content to use the definition put forward by SCC, though the word “or” should be replaced with “and/or” to address those situations where both authorities may perform a planning role.

Action point 52 (from 14th & 15th May) - Article 5 – Provide note setting out scenarios where Traffic Regulation Orders may be required so SCC can more fully understand purpose.

Action point 7 (from 23rd May) - Applicant to revise Explanatory Memorandum to clarify function and effect of Article 5(2).

These two action points relate to the inclusion in the draft DCO of Article 5(2). This provision does not appear in the model provisions and the Applicant cites only two other examples where it has appeared in other DCOs.

Submissions early in the Examination focussed on the ambiguity as to how far beyond the Order limits the provision was intended to extend, as the reference to land within or adjacent to the Order limits was undefined. The County Council also raised concerns about the drafting of the provision, its lawfulness and its purpose.

In response, the Applicant proposed that adjacent land should be identified by reference to a map, and when this could not be agreed, subsequently proposed to clarify the definition of adjacent land in the wording of the DCO.

The Applicant has confirmed that the purpose of article 5(2) is to extend to it the power to make traffic regulation orders outside the red line boundary, and it explains in the Explanatory Memorandum (page 5, 4.17-4.19) that this provision is intended to avoid the undertaker applying for separate consents outside the DCO limits by ensuring the DCO takes precedence over any enactments. It also states that it would only apply where is it necessary.

SCC's position remains as submitted in its Deadline 6 comments on the terms of the DCO. The disapplication of unknown legislative provisions within an undefined area causes uncertainty for those seeking to enforce the law and those seeking to abide by it.

The suggestion in the Explanatory Memorandum that it would only apply where necessary is incorrect - in the current drafting of the DCO the issue of necessity only applies in relation to defining the area of land which is adjacent, and not the circumstances in which the provision is applied. For this to be the effect, Article 5(2) would need to be amended as follows: *5(2) Any enactment applying to the land within the Order limit or, where specifically provided in this Order, adjacent land, has effect subject to the provisions of this Order.*

However, the County Council's position remains that article 5(2) should be deleted due to the lack of clarity as to its effect and questionable need for its inclusion. Any conflict between proposed and existing traffic regulation orders should be considered on a case by case basis so that those using the roads and those enforcing the terms of its use are aware of any limitations or

restrictions on use, and are not left to try to interpret the scope and effect of the proposed article 5(2).

Action Point 61 (from 14th & 15th May) Submit response to SCC's suggested wording relating to unrecorded rights of way

The Applicant's position in relation to any mitigation for unrecorded rights has consistently been that as Applicant it should not be treated any differently to any other landowner. However, the vast majority of landowners that have routes on their land that are subject to applications to modify the Definitive Map & Statement are not applicants of a Nationally Significant Infrastructure Project. Occasionally planning applications do impact on existing applications and generally the development (or part thereof) is put on hold until the modification application has been determined. This is because there is a risk that if they proceed with development and rights are subsequently recorded, enforcement action will in some cases have to follow to remove any such obstruction caused by the development.

The County Council is not on this occasion suggesting that enforcement action would follow (if unrecorded rights are found to exist), should the Applicant proceed with development that impacts on routes subject to applications to modify the Definitive Map. However, for the County Council to take a position that tolerates the possible interference with unrecorded rights by a development, it expects a degree of security in respect of potential costs and legal processes by way of appropriate mitigation secured through the DCO or a linked legal agreement.

This whole issue has been brought into sharp focus due to the tight timescales of the DCO process and the existing workload that the County Council has with regard to applications to modify the Definitive Map & Statement. Even if the County Council had been able to process the applications following their submission, it is highly unlikely that they would have reached a conclusion beyond challenge that would have aligned with the current examination timetable.

Therefore, the County Council refers the Examining Authority to its submission at deadline 7 in relation to unrecorded routes and the measures that it seeks.

Rule 17 letter dated 4 June 2019 - Question to Defence Infrastructure Organisation (DIO) - *The Ministry of Defence has agreed to the provision of a footpath on Crown Land alongside the southern boundary of the site at Camel Hill to link Gason Lane and Traits Lane. The ExA has received representations from a number of bodies, including the South Somerset Bridleways Association, that this should be a bridleway rather than a footpath. The Applicant, Highways*

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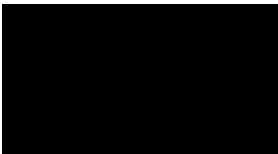


England, has stated that the Ministry is only willing to accept this as a footpath and it is suggested that a bridleway is unacceptable for security reasons. Could the Ministry please explain whether this is the case, and if so, why the use of the route as a bridleway would give rise to security concerns when use as a footpath would not.

Whilst the above question is directed to the DIO, the County Council wishes to bring to the attention of the Examining Authority its response at Deadline 7 in relation to the [partial] revocation of the 1996 Side Roads Order. By excepting the bridleway created across the Ministry of Defence land in the 1996 Side Roads Order from any revocation, there would be no need to secure any further rights of access, and the issue of whether it should be footpath or bridleway is resolved as it is already a bridleway and the Definitive Map & Statement can be updated to reflect the 1996 Order.

In addition to the above comments on the Action Points arising from the recent Issue Specific Hearings, attached at Appendix 7 are comments from the County Council in relation to the further amendments to the DCO submitted by the Applicant at Deadline 7.

Yours sincerely,



Andy Coupe

Strategic Manager (Infrastructure Programmes)