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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](#)
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**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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Deadline 8 – SCC response to Action Point 17 (from 23 May) and response to the Applicant’s comments on Action Point 64 (from 14 & 15 May) issued at Deadline 7

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

Action Point 64 requests: *Section 278 Agreement in relation to Podimore Road – Mechanism to secure, whether in dDCO or otherwise.*

Background to Section 278

Discussions in respect of a Section 278 agreement commenced between Somerset County Council (SCC) and the Applicant during the pre-application stage as part of the Engineering Technical Working Group meetings, which consisted of engineering representatives from Somerset County Council and Highways England.

The Technical Working Group reviewed a range of technical information, which for the purposes of this note included signage and regulatory measures. The review of these items produced a number of comments, however there are two specific comments which both parties noted would require securing via an appropriate mechanism as they were outside of the development red line boundary. The matters were: -

- the installation of no through road signs at the southern limits of Traits Lane and Gason Lane; and,
- the Traffic Regulation Order legalising the required speed limit to 50mph along the existing B3151 carriageway (that is subject to the national speed limit, between the limit of HE’s scheme and the commencement of the existing 40mph speed limit just north of the cross-roads at Bridgehampton).

SCC understood that Highways England agreed that these matters would be secured as part of a S.278 Agreement; and the progress of these discussions is documented in the draft Statement of Common Ground between SCC, South Somerset District Council, and Highways England which were issued to the ExA at Deadline 2 and Deadline 5.

In addition to the two items above, during the course of the Examination SCC and Highways England entered into discussion in relation to the Podimore Turning Head.

SCC was concerned that the proposed scheme would include a piece of road from the T junction along the Podimore Off Slip serving no purpose. There are no agricultural accesses along this stretch and it would also not serve private properties; the road could not be accessed from the A303 as its being stopped, and vehicular

movements cannot legally be made eastwards towards the A303 as it is currently one-way. There is also the concern that the section of road could be used for anti-social behaviour and unauthorised traveller encampments.

We therefore welcomed discussions with the Applicant in relation to the removal of the turning head, and also understood that the section of road between the T junction and turning head would be removed by virtue of a Section 278 agreement.

An update on the progress being made between SCC and the applicant is documented in SCC's deadline 5 response under Action 8.

SCC was therefore disappointed to learn at the Issue Specific Hearing and the Applicant's Action Point 64 response at Deadline 7 that they did not consider a Section 278 should be secured through the DCO. SCC notes, however, that a draft S278 has been prepared by the Applicant, but it has not to date been shared with the County Council.

Why a Section 278 is necessary

Paragraph 5.217 of the National Policy Statement for National Networks explains that mitigation measures may relate to the design, lay-out or operation of the scheme.

In relation to the signage and traffic regulation order noted above, we consider these works are required in the interests of maintaining highway safety; a view which is based on our engineering technical judgement and communicated to the applicant at the pre-application stage.

In respect of the Podimore turning head, the removal of the turning head by itself does not address our concerns as the section of road between the junction and A303 also requires removal. The proposal put forward by the applicant without inclusion of the road removal leads to the potential situation where a member of the public could accidentally drive along this section of road and would then have no place to turn around and would need to reverse back onto the highway. We therefore disagree that a Section 278 is not necessary to make the scheme acceptable in planning terms, as we consider that if these measures are not secured the proposed scheme could create safety issues on the local highway. The National Policy Statement for National Networks places great emphasis on safety, notably providing at paragraph 4.66 that the Secretary of State should not grant development consent unless satisfied that all reasonable steps have been taken and will be taken to:

- Minimise the risk of road casualties arising from the scheme; and
- Contribute to an overall improvement in the safety of the Strategic Road Network.

Legal tests

Whilst we maintain that the proposed works are necessary. We do not agree with the applicant's view that a requirement seeking to secure a S.278 would not meet the necessary legal tests. It is noted that the Applicant provides no reasoning to support this view.

The National Policy Statement for National Networks provides at paragraph 4.9 that the Examining Authority should only impose requirements in relation to a development consent, that are *"necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. Guidance on the use of planning conditions or any successor to it, should be taken into account where requirements are proposed."*

It is assumed that the Applicant may be concerned that as the S.278 works are outside of the red line boundary they may not have the necessary control over the land to guarantee installation. Guidance provides that if the land is outside the red line boundary, a condition requiring the carrying out of works on the land cannot be imposed unless the determining authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.

Whilst it would be *ultra vires* to require works which a developer has no power to carry out, or which would need the consent or authorisation of a third party, it may be possible to achieve a similar result by a Requirement worded in a negative form, prohibiting development until a specified action has been taken.

Previous detailed guidance provides an example linked to highway works that *"it might be reasonable to use a condition requiring that the development should not commence until a particular highway had been stopped up or diverted, if there were reasonable prospects that the highway authority would be able and willing to take the necessary action."* (Circular 11/95).

The works proposed to be included within the S.278 are located within the local highway boundary and Somerset County Council as the Local Highway Authority would have no disagreement in relation to the installation of the required works.

Whilst we consider that the works are necessary to maintain highway safety we also disagree with the applicant's comments at paragraph 2.1.228 in response to Action 64 which provides that SCC have the powers necessary to carry out these works themselves. These safety issues are arising as a direct result of the Applicant's scheme and we therefore consider it inappropriate and unreasonable for SCC to provide the mitigation on behalf of the Applicant.

Matters in respect of Public Rights of Way

In addition to the matters discussed above, there is also the outstanding matters linked to Public Rights of Way which the Council has provided in detail as part of the Deadline 7 response.