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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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Response by Somerset County Council to the Applicant's response to Action 16 from 23 May Issue Specific Hearing (Application Document Reference 9.36)

Action Point 16 – Applicant to confirm ownership of the A303 outside Mattia Diner to confirm ownership of land below the subsoil

1. Context

The County Council has been seeking confirmation of this point from the Applicant in order that it may explore with the Applicant the opportunities to address the issues which will arise from the de-trunking of this section of road. The County Council is therefore grateful to the Examining Authority as identifying this as an action point in the proceedings to which the Council may now respond.

The County Council made clear in its oral submissions at ISH5 that the transfer of responsibility for this section of road should not pass to it as local highway authority on de-trunking. It fundamentally disagrees with the Applicant's view that simply by default the local highway authority should pick up the responsibility for a section of road which is no longer required for the strategic road network, particularly where that section of road is no longer required for public passage.¹

2. Implications of the Applicant's Proposals

The Applicant proposes that this section of road is treated as any other section of trunk road which is de-trunked, and seeks to apply the provisions of section 265 of the Highways Act 1980 whereby responsibility for the highway transfers on de-trunking to the local highway authority. Whilst this is appropriate in relation to de-trunked roads which continue to serve a highway function, it is entirely inappropriate for those which do not. Once this section of carriageway is de-trunked, it will only provide an access for the owners, occupiers and visitors to two business premises (assuming that their businesses are able to adapt to the changing environment within which they find themselves) and adjoining farmland. This section of carriageway will no longer serve the public at large² and will become, as aptly described by the District Council's Counsel, the "road to nowhere" or, in Mr Mattia's words, "redundant".

Contrary to the Applicant's submissions at ISH5, there is no evidence that Parliament intended that sections of road which do not meet the criteria for being part of the strategic road network must automatically form part of the local highway network. If this were the case then severed slivers of former trunk road which may arise following a realignment of a trunk road would become part of the local highway.

¹"A highway must be open to the public at large – rather than a way open to the owners, occupiers and lawful visitors of particular properties; this has been recently emphasised in *Kotegaonaker v Secretary of State for Environment Food and Rural Affairs* [2012] EWHC 1976 (Admin). This is the essential feature that has always distinguished a public highway from a private right of way" (Extract: Sweet & Maxwell Encyclopedia of Highway Law and Practice Volume 1 pg [1]-10002)

² Save at two points at which the carriageway is crossed by rights of way

This is clearly wrong - the de-trunked road must continue to serve a highway purpose for it to become part of the local road network.

The Council has referred to its experience of anti-social behaviour and unauthorised encampments on sections of cul-de-sac roads which were former trunk roads or are adjacent to trunk roads in Action point 19. It notes the concerns of those business premises whose customer base is derived from the businesses' location immediately adjacent to a busy trunk road as to whether they will be adequately compensated for the impact on their business arising from the de-trunking of the road. These are all issues which arise as a direct consequence of the Applicant's proposals and it is entirely reasonable to expect the Applicant to deal with these as part of the DCO process, through the stopping up of public rights of passage, the creation of private rights of way in their place, the preservation of the rights of statutory undertakers and payment of compensation.

3. The relevance of land ownership

The retention of public rights of passage where they are not required has the undesirable consequence of limiting the solutions available to tackle anti-social behaviour and unauthorised encampments. Those committing such acts are not using the highway to pass and repass and have no right to be there, but physical measures such as gates or barriers to prevent them using the highway in this way would conflict with public rights of passage. If in reality there is no need for the public at large to use the road, then the retention of such rights is irrational and only serves to frustrate those attempting to find a solution.

In this case, where the only use of the road would be to access adjoining land and premises, the removal of public highway rights enables those most affected by the anti-social behaviour to agree a solution in the absence of any such solution being secured in the DCO. This is the basis on which the County Council has proposed, through its amendments to article 13(4) and Schedule 3 of the draft DCO (which seek to exclude the section of de-trunked road automatically becoming part of the local road network through the operation of section 265 of the Highways Act 1980), to allow the Applicant as the landowner of a large proportion of the carriageway and adjoining land to agree with the other adjoining landowners an arrangement for the future management and maintenance of the road.

If the DCO remains as drafted by the Applicant, then the de-trunked road will become part of the local highway network maintainable at the public expense for the benefit of a small number of landowners. Section 47 of the Highways Act 1980 enables an application to be made to the magistrates court for a declaration that the highway should not be maintainable at the public expense and, if made, would divest the County Council as local highway authority of its interest in the highway. However, the Council would have inherited pursuant to section 265 those parts of the subsoil which were previously in the ownership of the Applicant as part of the strategic highway network. The County Council would therefore find itself unnecessarily involved in discussions with the Applicant and other adjoining landowners on

arrangements for private maintenance and management of a route in which it has no statutory role.

Therefore, responsibility for this section of road following de-trunking should remain with the Applicant as an adjoining landowner of a substantial section of the road and the provisions of section 265 of the Highways Act 1980 should not apply.