

A303 Sparkford to Ilchester Dualling Scheme TR010036

9.45 Submission in response to selected points arising from the revised DCO

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A303 Sparkford to Ilchester Dualling Scheme

Development Consent Order 202[X]

Submission in response to selected points arising from the revised DCO

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1 Introduction

1.1.1 The Applicant has read the Examining Authority's report and the revised Development Consent Order (rDCO) in full and, although acknowledging that submissions on the drafting have not been specifically requested, submits this response as the rDCO drafting raises some important issues which the Applicant respectfully submits the Secretary of State should address in your decision.

1.1.2 This submission addresses the following points:

- Chapter 2: Sets out the Applicant's serious concerns regarding the application by the Examining Authority of a World Health Organisation (WHO) noise standard which has not been adopted by the UK Government, and the use of inappropriate noise criteria applied to the peak flow assessment of the scheme contrary to Design Manual for Roads and Bridges (DMRB) methodology. The Applicant requests that the Secretary of State review these points in particular as allowing the Examining Authority's approach will have ramifications across all of the Road Investment Strategy programme and for other projects under the National Policy Statement for National Networks (NPSNN).
- Chapter 3: Addresses the Examining Authority's new requirements on layby signage and works outside the Order Limits and seeks amendments to the drafting of those requirements.
- Chapter 4: Responds to the Examining Authority's recommendation to require a bridleway and Pegasus crossing at Hazlegrove Roundabout and explains why such a crossing cannot be accommodated within the Order Limits and would not deliver improved overall safety or better NPSNN compliance given the wider bridleway network position.
- Chapter 5: Explains why a requirement securing an increase in the width of the drainage maintenance tracks inserted by the Examining Authority is not necessary and would reduce delivery of biodiversity net gain on the scheme.
- Chapter 6: Seeks minor amendments to the Examining Authority's drafting of the Protective Provisions, to ensure these meet the Examining Authority's purpose of ensuring the approval role remains with the SoS as is appropriate but to ensure sufficient safeguards for Somerset County Council. Also, to rectify a misunderstanding of the law.

2 Noise

2.1 Summary

Assessment of Noise, compliance with the NPSNN and Examining Authority requirement 14(2) and (3).

2.1.1 The Applicant is seriously concerned by the application by the Examining Authority of a WHO noise standard which has not been adopted by the UK Government. The Applicant notes that the Examining Authority concludes, on that inappropriate basis, that the scheme is not in compliance with the NPSNN. The Applicant requests that the Secretary of State review this point in particular as allowing the Examining Authority's application of an inappropriate, unadopted standard to be used as a criteria for measuring compliance with the NPSNN will have ramifications across all of the Highways England Road Investment Strategy programme and for other projects under the NPSNN. The Applicant submits that this scheme should not be allowed to set a precedent which conflicts with the methodology applied by the NPSNN through use of the DMRB. It is inappropriate for an Examining Authority to change the standards by which noise is assessed and to create a departure from NPSNN and DMRB.

Basis of noise assessment, impact on scheme design and Examining Authority requirement 14(2) and (3).

2.1.2 During the examination, the Examining Authority requested assessments of noise based on summer weekend peak flows (for example a bank holiday weekend). The Applicant pointed out several times that DMRB noise assessment guidance is based on annual averages not peak flows, and provided the requested information under cover of a caveat that its production did not accord with DMRB methodology and should not be used to determine the necessity of mitigation (see paragraph 5.1.4 of REP4-020 and paragraph 2.1.38 of REP5-020). The Examining Authority has applied inappropriate noise criteria to the peak flow assessment of the scheme, and determined that the impacts have not been assessed, which is incorrect.

2.1.3 The approach taken by the Examining Authority would require the Applicant to overdesign schemes to cater for short, temporary peaks. This would require schemes to mitigate for a traffic flow which occurs on relatively few days a year. The Applicant considers that the resultant increases in land take, landscape, visual and ecological impacts through increased need for noise bunding and barriers and the increased costs of constructing and maintaining the scheme would be disproportionate to the effects actually occurring. The approach taken by the Examining Authority fundamentally undermines the cost-benefit balance which needed to be achieved by the scheme in order to be brought forward.

2.1.4 Again, this is an approach which would have impacts across the Road Investment Strategy programme if allowed to stand, and the Secretary of State is asked to review this.

Other matters

- 2.1.5 The Examining Authority has inappropriately sought to impose mitigation on the Applicant which properly sits with a third-party developer. The Examining Authority has inappropriately sought to impose mitigation on the Applicant outside the Order limits which was not supported by evidence.

2.2 Reliance on WHO ENG

- 2.2.1 The Examining Authority contends that the Scheme does not comply with the National Policy Statement for National Networks because the Examining Authority asserts that it does not comply with the Noise Policy Statement for England (NPSE). The Examining Authority's conclusions include that "The Applicant's noise assessment does not take account of the WHO ENG recommendations", and "the failure to mitigate any increase in noise emissions above the Significant Observed Adverse Effect Level (SOAEL), having regard to the WHO ENG should be afforded substantial weight in the overall planning balance"¹. The Applicant notes however that this conclusion is based on applying levels drawn from World Health Organisation European Noise Guidelines recommendations (WHO ENG), which recommendations have not been adopted by the UK Government and which are not prescribed by NPSNN or NPSE. The Applicant therefore does not accept that this the conclusion of non-compliance is reasonable and submits that, when the correct standards are applied, the scheme is in compliance.
- 2.2.2 NPSNN provides that the "prediction of road traffic noise should be based on the method described in Calculation of Road Traffic Noise"², and that "Developments must be undertaken in accordance with statutory requirements for noise. Due regard must have been given to the relevant sections of the Noise Policy Statement for England, National Planning Policy Framework and the Government's associated planning guidance on noise"³. Chapter 11 Noise and Vibration of the ES [APP-048] did this. The Calculation of Road Traffic Noise (CRTN) was used with DMRB which is the relevant standard to assess road traffic noise.
- 2.2.3 The aims of the NPSE are: "through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development:
- avoid significant adverse impacts on health and quality of life;
 - mitigate and minimise adverse impacts on health and quality of life; and,
 - where possible, contribute to the improvement of health and quality of life."
- 2.2.4 The key phrase on avoiding impacts is "significant adverse"; how that is used within the NPSE is discussed in the annexed Explanatory Note. SOAEL is defined in that note as "the level above which significant adverse effects on health and quality of life occur. **It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations.** Consequently, the SOAEL is likely to be

¹ Recommendation report paragraphs 8.7.1 and 8.7.2

² NPSNN Paragraph 5.191

³ NPSNN Paragraph 5.193

different for different noise sources, for different receptors and at different times”⁴ (*emphasis added*). The Applicant therefore objects to the use by the Examining Authority of a single limit for the SOAEL by reference to WHO ENG as being directly contrary to the explicit wording in the NPSE. To conclude that there is non-compliance on that basis is accordingly perverse.

- 2.2.5 Chapter 11 Noise and Vibration of the Environmental Statement (ES) [APP-048] demonstrates that the scheme does comply with policy aims of the NPSE (and hence NPSNN) because it shows that there are no significant adverse effects due to noise. Mitigation is included in the design, and noise levels are reduced for some receptors. The criteria used to determine significance were set out in Chapter 11 Noise and Vibration of the ES [APP-048].
- 2.2.6 The Examining Authority acknowledges that the ES complies with the DMRB but does not agree that the criteria used for significance are correct or that the values chosen in the Noise and Vibration chapter of the ES [APP-048] for the SOAEL for day-time and night-time are suitable. In Section 2.6 of the Applicant’s previous Consultation Response to the Secretary of State (26 November 2019) the Applicant attempted to resolve the confusion about SOAEL and significance with respect to NPSE (not then knowing that the Examining Authority disagreed with the criteria for significance or SOAEL).
- 2.2.7 No evidence to support the Examining Authority’s assertion that the WHO ENG recommendations are suitable for the definition of SOAEL was provided at the hearings or in subsequent evidence to the Examination. The WHO ENG recommendations have not been subject to any form of scrutiny for their applicability for assessment of development in the United Kingdom. The assessment method used in the ES [APP-048] is however consistent with the requirements of DMRB LA 111 issued in November 2019 and used throughout the United Kingdom for highways noise assessment.
- 2.2.8 While the WHO ENG provide evidence that adverse health effects occur at 53 dB Lden, this evidence is based on a large portfolio of research and a range of values. The WHO ENG recommendation is too precautionary and does not support the UK Government’s aims for sustainable development, which are part of the NPSE policy aims. There is insufficient evidence to correlate the WHO %HA (highly annoyed) adverse health effect indicator used for road traffic sources to the ‘significant’ criteria in the NPSE SOAEL definition.
- 2.2.9 Whilst NPSE is flexible to new evidence, this has to be based on “suitable guidance”. WHO ENG is not UK adopted policy; moreover the WHO ENG guidance does not take into account sustainable development as a core principle underpinning all government policy. Specifically, paragraph 2.18 of NPSE states “There is a need to integrate consideration of the economic and social benefit of the activity or policy under examination with proper consideration of the adverse environmental effects, including the impact of noise on health and quality of life. This should avoid noise being treated in isolation in any particular situation, i.e. not focussing solely on the noise

⁴ Department for Environment, Food and Rural Affairs (2010) The Noise Policy Statement for England, explanatory note, paragraphs 2.21, 2.22.

impact without taking into account other related factors.” The WHO ENG does treat noise in isolation and does not take account of other related factors.

- 2.2.10 The Applicant is concerned that the Examining Authority has not applied the NPSE in the context within which the policy has been set. The Examining Authority Recommendation Report states “NPSE is clear that such levels [SOAEL] should not be exceeded. Exceeding this level is contrary to the first aim of the NPSE”⁵. However, the NPSE does not state that.
- 2.2.11 The Examining Authority’s Recommendation Report states “Where the predicted noise level lies between LOAEL and SOAEL the adverse effects of such noise need to be weighed against the benefits of sustainable development”⁶. This is not correct as all of the aims of the NPSE are made within the context of sustainable development, not only where levels are between LOAEL and SOAEL. The NPSE is explicit that the whole policy is set in the context of sustainable development: “The vision and aims of NPSE should be interpreted by having regard to the set of shared UK principles that underpin the Government’s sustainable development strategy”⁷. The NPSE provides that “The aim of this document is to provide clarity regarding current policies and practices to enable noise management decisions to be made within the wider context, at the most appropriate level, in a cost-effective manner and in a timely fashion”⁸. The first aim of NPSE is “...within the context of Government policy on sustainable development avoid significant adverse impacts on health and quality of life”. This is further reinforced in the explanatory note which provides “The first aim of the NPSE states that significant adverse effects on health and quality of life should be avoided while also taking into account the guiding principles of sustainable development”⁹. The ES [APP-048] sets out fully how this objective has been achieved by reference to relevant standards used in the United Kingdom.
- 2.2.12 The Examining Authority has applied inappropriately low thresholds on noise.
- 2.2.13 Paragraph 2.4.3 of the WHO ENG states “The GDG [Guideline Development Group] agreed to set guideline exposure levels based on the definition: ‘noise exposure levels above which the GDG is confident that there is an increased risk of adverse health effects’. The guideline exposure levels presented are therefore not meant to identify effect thresholds (the lowest observed adverse effect levels for different health outcomes). This is a difference in approach from prior WHO guidelines, like the night noise guidelines for Europe (WHO Regional Office for Europe, 2009), which explicitly aimed to define levels indicating no adverse health effects.”
- 2.2.14 Step 4 of 2.4.3 of the WHO ENG refers to the “determination of the guideline exposure level...associated with the smallest relevant risk increase for adverse health outcomes”.
- 2.2.15 LOAEL is defined as the level at which a noise effect becomes observable – and since the WHO ENG guidance values are exposure levels above which

⁵ Paragraph 8.6.19

⁶ Paragraph 8.6.19

⁷ Paragraph 1.8

⁸ Paragraph 1.3

⁹ Paragraph 2.23

the CDG is confident there is (some) increased risk of health effects, it is reasonable to assume that the WHO ENG guidance values are slightly above the LOAEL. Conversely the WHO ENG says nothing about SOAEL, only that the guideline values are not meant to define effect thresholds. It is a very important point that the WHO ENG explicitly state that their recommendations are “*not meant to identify effect thresholds*” which is precisely what the Examining Authority has done.

- 2.2.16 As submitted in response to written question 2.4.4¹⁰, the WHO ENG do not supersede but complement the WHO Night Noise Guidelines (NNG) as is stated in paragraph 2.6.3 of WHO ENG. The new guidelines make recommendations whereas the NNG states “40 dB L_{night,outside} is equivalent to the lowest observed adverse effect level (LOAEL) for night noise. Above 55 dB the cardiovascular effects become the major public health concern, which are likely to be less dependent on the nature of the noise.” That is, the WHO definition of LOAEL was 40dB L_{night,outside}. The level at which cardiovascular effects become a major public health concern is numerically the same as the Interim Target value which has been used in the assessment as the value for SOAEL. 55dB is therefore an appropriate value for SOAEL because significant health effects arise at this level according to WHO.
- 2.2.17 Paragraph 5.193 of NPSNN states that due regard must be given to the NPSE and the National Planning Policy Framework, and paragraph 5.195 states that the Secretary of State should not grant development consent unless the NPSE aims have been met. The Applicant asserts that suitable criteria for significant adverse effects were set out in accordance with the relevant UK highways standards, there are no significant adverse effects due to noise as mitigation is included in the design, and noise levels are reduced for some receptors. The scheme therefore meets all the aims of the NPSE fully.
- 2.2.18 It is acknowledged that the Examining Authority has adopted its own assessment criteria against which significant effects do arise, but these criteria are contrary to all known criteria used for highways noise assessment in the UK and were not subject to any scrutiny during the examination process. The Examining Authority criteria are based on WHO recommendations pertaining to annual averages and which have not been adopted in the UK to determine significance.
- 2.2.19 The assessment methodology applied by the Applicant in the ES complies with DMRB, the relevant standard for highways noise assessment and has had due regard to NPSE as required by NPSNN. The Examining Authority’s alternative approach does not comply with any known British standard. Compliance with the relevant British standard is a requirement of the NPSNN.
- 2.2.20 If upheld by the Secretary of State, the Examining Authority’s application of an inappropriate, unadopted standard to be used as a criteria for measuring acceptability of noise impacts in isolation from all other considerations and relying on that in determining compliance with the NPSNN, will have ramifications across the entire Road Investment Strategy programme and for

¹⁰ REP5-025

other projects under the NPSNN. The Applicant submits that this scheme should not be allowed to set a precedent which conflicts with the use of the DMRB methodology.

2.2.21 Table 2.1 below shows what was set out in Chapter 11 Noise and Vibration of the ES [APP-048] and what may be inferred from the Recommendation Report on these issues.

Table 2.1: Comparison between the issues as set out in the ES and the Examining Authority's Recommendation Report

Issue	Environmental Statement (APP-048)	Examining Authority	The Applicant's comment
SOAEL	Table 11.9: the SOAEL of 68dB LA10,18h daytime is based on the Noise Insulation Regulations and 55dB Lnight,outside is based on the WHO Night Noise Guidelines	8.6.13, 8.6.15 and 8.6.18: seeks to set SOAEL at 53dB Lden daytime and 45dB Lnight based on WHO European Noise Guidelines recommendations	The values applied by the Examining Authority are not reasonable values for SOAEL. The Applicant's ES complies with the subsequently issued DMRB LA 111. The value for SOAEL is consistent with all known recent assessments of UK highways noise carried out under the former DMRB assessment methodology. The UK government has not adopted WHO ENG guidance. A relatively high proportion of the UK (and EU) population is already exposed to noise levels above the WHO recommended levels.
Significance criteria and NPSE	Table 2.2: showed the DMRB impact classification indicating that a noise increase of less than 1dB in the short-term (3dB in the long-term) is classified by DMRB as negligible. 11.4.36:Traffic noise is "potentially significant if the noise increase is non-negligible (that is 1dB or more in the short term or 3dB or more in the long term) for a receptor exposed to noise above SOAEL, or the noise increase in the opening year is moderate or major" (i.e. 3dB or more). 11.4.37 "In all cases where a potentially significant adverse effect is indicated, professional judgement is used to determine if a significant adverse effect is likely to arise. This includes consideration of the sources of noise, the causes of change in noise levels, the magnitude of the impact in the opening year, the classification of the impact in the long-term, and the	8.6.19 Exceedance of SOAEL	The Examining Authority, in reaching the conclusion set out 8.6.19, sets out that they are not accepting the DMRB methodology for determining significance. The conclusions in this section are based on an error that the NPSE provides that SOAEL cannot be exceeded, which is incorrect. The first aim of the NPSE is "to avoid significant adverse impacts on health and quality of life"; the explanatory notes extend established toxicology concepts to introduce SOAEL. They state "It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However, not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available." The ES has defined significance with respect to both noise level and increase such that an increase of 3dB or more in the short-term is potentially significant, but the required noise

Issue	Environmental Statement (APP-048)	Examining Authority	The Applicant's comment
	noise level in the opening year relative to LOAEL and SOAEL."		<p>increase to trigger potential significance is reduced to 1dB when noise is already at a higher level. This is consistent with the subsequently issued DMRB LA 111 and with all known recent assessments of UK highways noise. The ES position is that noise increases below 1dB in the short-term are negligible and are not significant. Conversely a short-term noise increase of more than 3dB would be potentially significant even at a relatively low baseline level. The determination of significance thus makes reference to the existing context and not simply exceedance of a threshold (that baseline levels without the scheme may have exceeded already.)</p> <p>The assessment methodology applied in the ES complies with DMRB, the relevant standard for highways noise assessment.</p>

2.3 Use of peak figures

- 2.3.1 The Examining Authority's concerns about traffic noise are based on peak flows, not annual averages, whereas the ES uses annual average figures for both noise levels and the assessment criteria. The Examining Authority is applying criteria based on annual averages (namely the WHO ENG recommendations) to noise levels arising only at peak times.
- 2.3.2 The Recommendation Report¹¹ states that the noise model is derived from Average Annual Daily Traffic (AADT) and therefore does not include provision for variations in flow during the day or between seasons. This is incorrect; the noise model is based on the Average Annual Weekday Traffic (AAWT) (not AADT) as explained in [APP-048] para 11.4.17. The Applicant highlights that it is very important to note that the criteria for LOAEL and SOAEL, like the AAWT, are based on annual averages – not simply the level at any particular time or day. This is consistent with the WHO recommendations, for example, which are also based on annual averages (see for example the section on Noise Indicators in the WHO Night Noise Guidelines, threshold levels defined by reference to L_{night,outside} that is defined as an annual average).
- 2.3.3 During the Examination, the Examining Authority requested assessments of noise based on summer weekend peak flows (for example a bank holiday weekend). The Applicant pointed out several times that DMRB noise assessment guidance is based on annual averages not peak flows, and reluctantly provided the requested information under cover of a caveat that its production did not accord with DMRB methodology and should not be used to determine the necessity of mitigation (Figure 2.1).

Figure 2.1: Extracts of REP5-020 showing the Examining Authority's request and the caveat on the response

Action Point 20

2.1.36 Action Point 20 requests: *Provide calculations for traffic figures for summer peak and weekend together with implications for noise levels.*

2.1.37 A noise model has been constructed using traffic data for summer peak weekends. Table 2.2 below shows all receptors that are subject to a moderate or major impact in the short-term based on L_{A10,18hr}. It is also noted that the short-term noise increase for receptors on Sparkford High Street ranges from 2.0 to 2.2 dB (classified as minor in DMRB).

2.1.38 The criteria used for significance of noise impacts and for the specification of LOAEL and SOAEL in Chapter 11 Noise and Vibration of the Environmental Statement (APP-048) are not directly applicable to summer peak traffic noise because they correspond to annual averages when considering the effects on health and quality of life.

- 2.3.4 The Examining Authority has used the peak flow noise to determine that the impacts of the scheme have not been assessed, which is incorrect. Again, this

¹¹ Paragraphs 8.3.11

is a decision which is contrary to the methodology of DMRB would have impacts across all projects under the NPSNN if allowed to stand.

- 2.3.5 Using DMRB criteria, the summer peak information demonstrated that using summer peak flows, only one property (The Spinney) is subject to a major impact. That impact has already been described in paragraph 11.10.67 of Chapter 11 Noise and Vibration of the Environmental Statement (APP-048) as a potentially significant adverse effect for which secondary glazing and acoustic trickle vents have been offered in mitigation¹². Annis Hill Farm is the only other receptor in the table where the summer peak traffic exceeds the annual average LOAEL. Mitigation has already been considered for those properties in the ES. The summer peak flow noise impact, with the exception of the Spinney and Annis Hill Farm, was assessed as not significant.
- 2.3.6 In conclusion, the approach taken by the Examining Authority would require the Applicant to overdesign schemes to cater for short, temporary peaks, not the average use. This would require schemes to mitigate for a traffic flow which may occur on only a few days a year. The Applicant considers that the resultant increases in land take, landscape, visual and ecological impacts through increased need for noise bunding and barriers, and the increased costs of constructing and maintaining the scheme would be disproportionate to the effects actually incurred. The approach taken by the Examining Authority fundamentally undermines the cost-benefit balance which needed to be achieved by the scheme in order to be brought forward.

2.4 Imposition on HE of pre-existing third-party mitigation obligations

- 2.4.1 The Examining Authority has stated¹³ that the noise and vibration update at Deadline 6 [REP6-011] did not include the proposed development at Long Hazel Holiday Park. While correct, this is because the assessment for the proposed development at Long Hazel Holiday Park had previously been reported at [REP5-025]. Table 2.4 of [REP5-025] shows the noise levels and increases for the locations that are shown in plan view in Figure A.2. The text in paragraph 2.6.17 of [REP5-025] explains that none of the receptors are exposed above SOAEL and that increases are negligible or minor in the short term and in the long term.
- 2.4.2 The Examining Authority does not agree with the ES that no additional mitigation is required to be provided by the scheme for Long Hazel Holiday Park. The Holiday Park applied for and was granted planning consent for residential lodges within its site. In granting that planning consent for residential lodges on the Park, the Planning Inspector of that consent recognised the existing potential adverse impact of noise on residential amenity for such lodges, and imposed noise mitigation conditions on that permission which was to provide a suitable noise barrier.

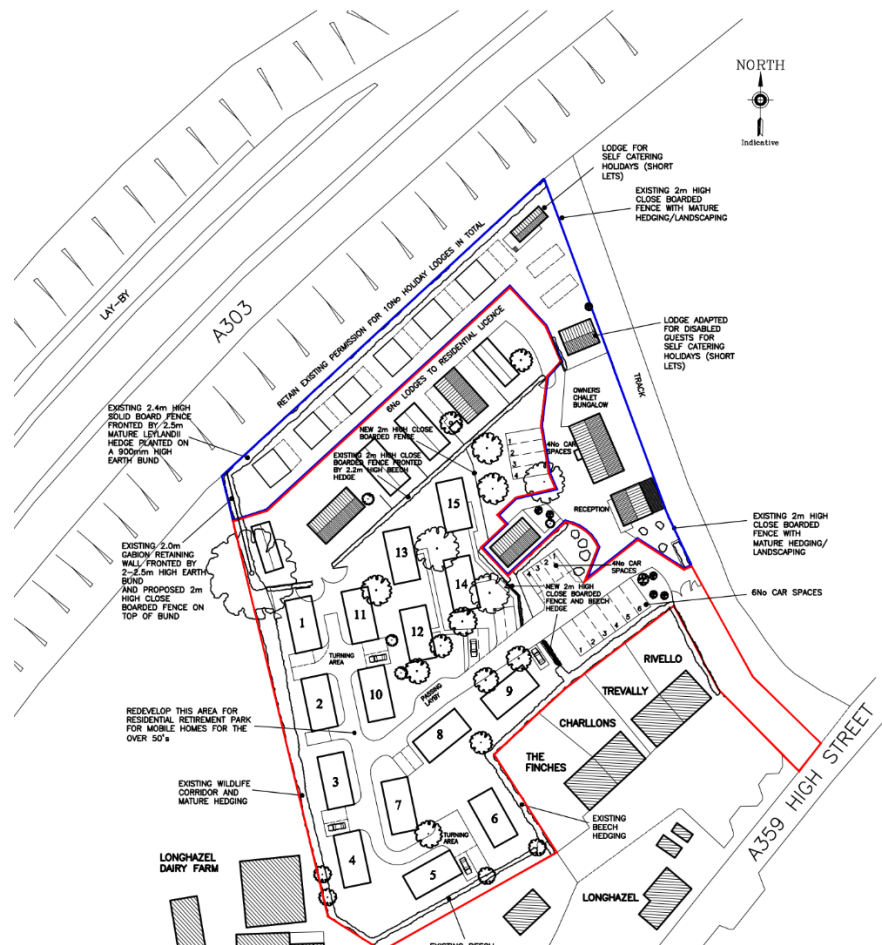
¹² REP5-020 paragraph 2.1.40. The affected property (The Spinney) is owned by Highways England and there is accordingly a high degree of comfort that mitigation will be installed as the Applicant has ultimate control of the property.

¹³ Paragraph 8.6.22 of the Recommendation Report

- 2.4.3 The owners of the Park have submitted in the DCO Examination that the Applicant's scheme should provide mitigation for the holiday lodge development, and the Examining Authority has sought to secure that through the DCO. The impacts which the mitigation addresses are caused by the proximity of the consented lodges to the existing A303 and are not related the scheme. The mitigation concerned is required from the Owners in order to allow their site to be developed in accordance with their planning permission, it is not a requirement for the scheme and stands apart from the DCO. The Applicant does not consider it reasonable for it to be required to deliver mitigation which is required by a planning permission held by a third party, where the impact that mitigation addresses is not created by the scheme.
- 2.4.4 The facts and circumstances of the owners' application for planning permission for residential lodge development on the Long Hazel site included the proximity of the operational highway and therefore the road noise above the level considered to be acceptable by the Local Planning Authority (LPA). The baseline noise environment for the site is already affected by noise. The 'hum of noise from the A303' was identified in the Inspector's decision in considering the application for the residential planning permission as a factor reducing the attractiveness of the site¹⁴.
- 2.4.5 The closest works to Long Hazel Park are approximately 17 metres from the property's boundary and will be minor works of vegetation clearance and resurfacing. No works to the area of highway closest to the property are proposed. The increase in noise predicted for the property is due to the predicted increase in traffic volumes generally, in accordance with nationwide predicted increases, not any design change. The proximity of the proposed lodges to the existing A303 is shown in Figure 2.2 below. The consented lodges may require the mitigation measures (additional insulation, triple glazing and air conditioning) set out by the owners in their planning application to meet acceptable noise limits, however that need is not created by this scheme and it is therefore not necessary for this scheme to provide them. The Examining Authority in the Recommendation Report appears to have supported the owners' request that the Applicant pay for replacing their existing fencing which has been allowed to deteriorate to a poor condition. It is not the function of mitigation for this scheme to undertake measures which the owners require in order to comply with their planning consent or maintain their own property.

¹⁴ APP/R3325/W/16/31447318

Figure 2.2: Extract of layout plan for planning permission APP/R3325/W/16/31447318 showing proximity of lodges to existing A303



2.5 Imposition of works outside by Order Limits

2.5.1 The Examining Authority has proposed extensions of mitigation and low noise surfaces, but with no evidence about their effectiveness. The Examining Authority has also sought to secure, by way of a requirement requiring re-assessment of noise, leading to works outside of the scheme boundary: “The necessary mitigation measures may include the extension of the low road noise surface, beyond the point planned by the Applicant. This would require Works to the existing A303 for which the Applicant is responsible. It may also be necessary to provide noise attenuating fencing along the boundary to some of the existing and proposed residential properties that adjoin the A303”¹⁵.

2.5.2 No evidence to support the statement that a low noise road surface would be effective¹⁶ was presented at the hearings or in any written evidence. This seems to be conjecture on the part of the Examining Authority. Conversely, no

¹⁵ Paragraph 8.6.28 of the Recommendation Report

¹⁶ Paragraphs 8.6.28 and 8.6.31 of the Recommendation Report

additional mitigation besides that set out included in the assessment presented at [APP-048] is needed to ensure that no significant effects arise. The introduction of additional mitigation without assessment of its benefits and when not required to mitigate significant adverse impacts is not consistent with government policy on sustainable development. The evidence presented by the Applicant demonstrates that the scheme complies with the NPSE and hence also the NPSNN.

2.6 rDCO drafting

2.6.1 Based on the detailed explanation given above the Applicant objects to the wording of Requirement 14 of the rDCO.

2.6.2 The Applicant seeks deletion of sub-paragraphs (2), (3), (5) and (6) of requirement 14 of Part 1 of Schedule 2 of the rDCO.

Sub-paragraph	Reason for seeking deletion
(2) The scheme must include an assessment of the potential impacts on the consented residential development, including that at Long Hazel Park, situated between the A303 and Sparkford High Street, and provide for any necessary mitigation measures.	<p>This assessment has already been carried out as part of the Environmental Impact Assessment (EIA) for the scheme. The assessment complies with all relevant guidance and is sound. It is not appropriate for the impacts of a scheme to be assessed post consent as that information must be considered by the decision making in coming to the consenting decision (in order to comply with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017).</p> <p>The reason this has been included in the rDCO is to allow the inappropriate standards preferred by the Examining Authority to be applied to the re-assessment of noise this seeks to secure.</p>
(3) The scheme should have regard to the thresholds for road traffic noise within the Environmental Noise Guidelines for the European Region 2018, published by the World Health Organisation, Section 3.1.	<p>As set out in detail in this submission, this standard has not been adopted by the UK, is not prescribed by NPSNN, NPSE or DMRB, does not take account of the need to promote sustainable development and treats noise in isolation contrary to the NPSE. This would create a confused precedent for other schemes where they could not know which standard they should be using in assessment. For these reasons, this sub-paragraph should be deleted.</p>
(5) In the event that the scheme identifies works which would give rise to any new or materially different adverse effects from those identified in the Environmental Statement, the undertaker must make a subsequent application to the Secretary of State and must follow the procedure set out in Regulations 22 to 25 of the Infrastructure Planning (Environmental Impact	<p>The drafting of these sub-paragraphs is predicated on a misunderstanding of the law.</p> <p>The Applicant cannot undertake any works for which it does not have consent. While the DCO would allow for the detail of works to be brought forward later, in determining whether to approve the detail the Secretary of State's team will have regard to whether the detail gives rise to any new or materially different adverse effects from</p>

Sub-paragraph	Reason for seeking deletion
<p>Assessment) Regulations 2017 to seek to permit the carrying out the identified works.</p> <p>(6) In the event that the Secretary of State grants consent for the subsequent application the approved works must be undertaken by the undertaker prior to the part of works referred to in sub-paragraph (1).</p>	<p>those identified in the Environmental Statement related to the DCO consent. If it does, the detailed design would be outside the scope of the consented DCO and consent to the detailed design would not be granted. In this case, the works the Examining Authority clearly envisages (such as provision of noise mitigation works at Long Hazel Park), would be outside of the scope of the Works set out in schedule 1, outside the order limits (red line) and outside the scope of the ES assessment. They could not be considered to be consented by the DCO and cannot be brought forward under a requirement.</p> <p>Regulations 22 to 25 relate to cases where further environmental information is required to allow the proper determination of subsequent applications (which would include discharge of requirements); that process does not allow the original consent to be varied. These regulations allow submission of information demonstrating that no new or materially different adverse effects from those identified in the ES are created by the detail submitted; but do not allow new works with new effects to be retrospectively incorporated into the initial consent.</p> <p>The correct procedure to authorise works with new or materially different adverse effects from those identified in the Environmental Statement is to seek a change to the consent itself; thereby allowing consideration of the new or materially different effects to be undertaken as part of that determination.</p> <p>Seeking to place a positive obligation on an undertaker to seek a change in this way is highly unusual and has the EIA issues already highlighted. The fundamental driver for these provisions (the imposition of WHO ENG) is inappropriate.</p> <p>These paragraphs are accordingly misconceived in law and policy and should be deleted.</p>

3 Layby signage and works outside order limits

3.1 rDCO requirement 12(2); provision of information boards in laybys

- 3.1.1 The Examining Authority has added to requirement 12 of the rDCO a requirement for the signage strategy to include details for information boards setting out the history of the road. The Applicant notes that this was never discussed during the examination and it has never been asked to consider or assess the locations and content of such boards. The Applicant notes that the Examining Authority in the Recommendation Report refers installing an information board in “two parking areas on either side of the Proposed Development” to “describe the heritage significance of the turnpike within the context of the history of the overall road”. The Applicant is dubious that such boards would provide any mitigation but is willing to accept the principle of providing two information boards.
- 3.1.2 The Applicant notes that the wording of the rDCO does not refer to parking areas but to lay-bys. The Applicant notes that much of the scheme involves embankments and false cuttings and space in lay-bys is therefore necessarily restricted to minimise land take. The Applicant’s subject matter expert has advised that boards would require to be assessed for road safety as, for example, they cannot be placed in the deflection zone of barriers. It may not be possible to accommodate these in the laybys while meeting the required safety standards given the lack of unused space. The Applicant therefore requests that, should the Secretary of State consider that information boards are required, the wording is amended to specify that 2 are required and that these are to be ‘along the route’ rather than ‘in laybys’ in order that these can be placed in safe locations.

rDCO changes

- 3.1.3 The Applicant requests that requirement 12(2) of the rDCO is amended as follows;

(2) The details to be approved under this requirement must include:

a signage strategy for the authorised development, including 2 information boards ~~in laybys~~ along the route to set out the history of the road;

3.2 rDCO requirement 20; No through road signage at Traits Lane and Gason lane

- 3.2.1 The Applicant has no objection in principle to providing no through road signage in these locations. The Applicant does however have some concerns with the drafting proposed in the rDCO and notes that it was never given an opportunity to comment on the wording.
- 3.2.2 The Applicant has always submitted that where required these signs could be provided through a very simple s278 agreement with Somerset County Council. The Applicant has prepared such an agreement and it is submitted to

the Secretary of State along with this submission (Annex A). The Applicant objects to the timing in the rDCO however as delivery of the road signs is in the hands of Somerset County Council, not the Applicant. These closures are one small element of the larger programme which will have commenced some time before these signs are needed, and preventing the programme proceeding because there has been a delay in providing signage by a third party would increase the length of the construction period with attendant costs and a greater degree of inconvenience for road users, landowners and communities.

- 3.2.3 The Applicant notes that it signed a section 278 with Somerset County Council for other works which were due to commence in March 2020 (Annex B). Those were delayed within the pre-election period due to the General Election as this impacted the ability to conduct public consultation with the Parish Council at that time. Following this, the impact of Covid-19 and Somerset County Council's requirement to reprioritise their work again delayed the works and they are now scheduled for commencement in August 2020. Such a delay is entirely out of the Applicant's hands (and Somerset County Council's - this point is not in any way a criticism of Somerset County Council).
- 3.2.4 Where the Applicant has, in good time, legally committed to funding the provision of signage by the local highway authority in its highway, the scheme programme should not be held up if there is a delay in delivery. The Applicant accordingly requests that the requirement should only impose on it a need to have provided a scheme which secures its funding of the signage, as delivery is not within its ultimate control.

rDCO drafting

- 3.2.5 The Applicant requests that requirement 20 of the rDCo is amended as follows;

No through road signs for Traits Lane and Gason Lane

20. Notwithstanding any provision in this Order the existing junctions of Traits Lane and Gason Lane with the A303 must not be closed to traffic until **a scheme securing the delivery of** no through road signs ~~have been to be~~ installed at the southern junctions of these roads with Blackwell Road ~~in accordance with a scheme that, has,~~ after consultation with the traffic authority, been submitted and approved in writing by the Secretary of State.

3.3 rDCO requirement 21: Speed limit on B3151

- 3.3.1 The Applicant does not consider this requirement to be appropriate. However, should the Secretary of State determine that it is, the Applicant would seek a similar amendment to the wording to that sought for requirement 20.
- 3.3.2 The Applicant submits that promotion of a TRO can be secured through a s278 agreement with Somerset County Council. That is however subject to its own legal processes and no party can guarantee that the order would be

made as anticipated. The Applicant should only be required therefore to commit to funding the promotion of the Order.

- 3.3.3 It is noted that in the current programming, this closure would not be required until 2023 so plenty time is available to promote and if necessary take that through a public inquiry.

rDCO drafting

- 3.3.4 The Applicant requests that requirement 20 of the rDCO is amended as follows;

Speed limit on B3151

21. Notwithstanding any provision in this Order the existing junction of the B3151 with the A303 must not be reconfigured until a [scheme securing the promotion of a traffic regulation order under the 1984 Act amending the speed limit of this road by Somerset County Council at the expense of the undertaker, has come into force in accordance with a scheme that](#), after consultation with the traffic authority, has been submitted and approved in writing by the Secretary of State.

3.4 rDCo drafting: requirement 22: Traffic monitoring and mitigation in Sparkford and West Camel

- 3.4.1 This requirement is unnecessary as the traffic calming works have been secured through a signed Section 278 Agreement, a copy of which is annexed to this submission as Annex B, and a design for both Sparkford and West Camel has already been produced (paid for by the Applicant) and delivered to Somerset County Council.
- 3.4.2 The Applicant's traffic modelling for the scheme shows no effect on traffic in Sparkford or West Camel which requires to be mitigated. All of the junctions work well within capacity in the design year.
- 3.4.3 Parsonage Road in West Camel is forecast to have an increase of 300 vehicles per day (AADT) by 2038 as a result of the scheme compared with the base year. The traffic in future years would reduce due to the difficulty of using the junctions on the A303 with Howell Hill and Plowage Lane. The significance of the increase in traffic through West Camel has been assessed by considering the implications on junction performance; air quality; noise and safety. The cross-roads between Parsonage Road and West Camel Road is forecast to perform within capacity in all future scenarios, as detailed in Tables 7.1 and 7.2 of the Transport Report (APP-150). The safety implications were assessed using COBALT as described in Chapters 13 and 14 of the ComMA Report (APP-151). A minor adverse effect in West Camel would not have necessitated a traffic calming scheme. The Applicant however acknowledges that there is an existing problem which has led to some minor accidents. The traffic calming scheme to which the Applicant has already committed is an enhancement to help address that pre-existing problem.
- 3.4.4 The significance of the increase in traffic through Sparkford has been assessed by considering the implications on junction performance; air quality;

noise and safety. The junction between Sparkford High Street and The Avenue is forecast to perform within capacity in all future scenarios, as detailed in Tables 7.1 and 7.3 of the Transport Report (APP-150). The safety implications were assessed using COBALT as described in Chapters 13 and 14 of the ComMA Report (APP-151). Due to the lack of any accidents in the recorded 5-year period, there is no forecast accident implication on the High Street itself. There were 2 slight accidents recorded at the junction between Sparkford High Street and the Avenue, at which junction the accident implications are considered to be slight adverse and therefore insufficient to warrant traffic calming measures. There were 9 accidents (some slight and some serious) recorded at Hazlegrove Roundabout, at which location the accident implications of the scheme are significantly beneficial. Accordingly, no traffic calming measures were assessed to be required.

- 3.4.5 . Designated funding cannot be used to provide scheme works, and that offer was made outside of the DCO process. It was explained to the Examining Authority that seeking to secure such works in the DCO would remove the ability to access the funding already identified.
- 3.4.6 West Camel Traffic Calming was approved at Designated Funds Investment Design Committee (DFIDC) in September 2019. The design was completed by Highways England and scheduled for delivery by Somerset County Council via a s278 Agreement. The planned construction of the scheme was delayed by the pre-election period due to the General Election as this impacted the ability to conduct public consultation with the Parish Council at that time and was originally scheduled to commence in March 2020.
- 3.4.7 Following this the impact of Covid-19 and Somerset County Council's requirement to reprioritise their work, this is now being planned for commencement in August 2020. The Applicant is currently agreeing a variation to the original s278 agreement to cover additional costs for designer support during the works.
- 3.4.8 Sparkford Traffic Calming was also approved at DFIDC in September 2019 for the detailed design of a traffic calming scheme in Sparkford. This design was completed by Highways England in March 2020 in consultation with the local Parish Councils and has been passed to Somerset County Council so that if they wish they can take this forward to delivery.
- 3.4.9 Accordingly, the inclusion of requirement 22 is unnecessary as a s278 has been agreed. Inclusion of this requirement would remove the ability of the Applicant to deliver traffic calming works using the identified and approved designated funds provision. The Applicant requests that requirement 22 of the rDCO is deleted.

4 Bridleway provision and equestrian crossing at Hazlegrove Roundabout

4.1 Summary

- 4.1.1 The Examining Authority has sought to impose a length of bridleway and a Pegasus crossing by way of a new requirement (requirement 18). The Applicant would point out that this cannot be delivered within the Order limits and would not in any event deliver improved overall safety or better NPSNN compliance given the wider bridleway network position.

During the Examination, the Applicant was asked if provision of a Pegasus crossing in this location would provide a road safety benefit [REP2-004, REP4-020 and REP6a-002]. The Applicant noted that the very low usage of this area meant that provision of a Pegasus crossing is not warranted. The Applicant was never asked to design and assess such a crossing.

4.2 Examining Authority recommendation

- 4.2.1 The NMU route between points BR, BS, BT and BU is scheduled in the DCO to be a footway and cyclepath. In the rDCO, the Examining Authority has inserted a new requirement 18 that part of this link is changed to a bridleway and that a pegasus crossing which is not in the current design is added:

Bridleway at Hazlegrove roundabout

No part of the authorised development is to commence until a scheme for the provision of a bridleway connecting the points marked “BS” and “BU” on Rights of way and Access Plans Regulation 52(2)(k) and 5(2)(o) Sheet 4 of 4 HE5510507-MMSJV-LSI-000-DR-UU-2105 Revision C has, after consultation with Somerset County Council, been submitted to and approved in writing by the Secretary of State. The scheme shall also include provision for a ‘Pegasus crossing’ between the points marked “BS” and “BT” on the said drawing. The route must be available for use prior to the opening of the Hazlegrove junction westbound on slip to operational traffic.

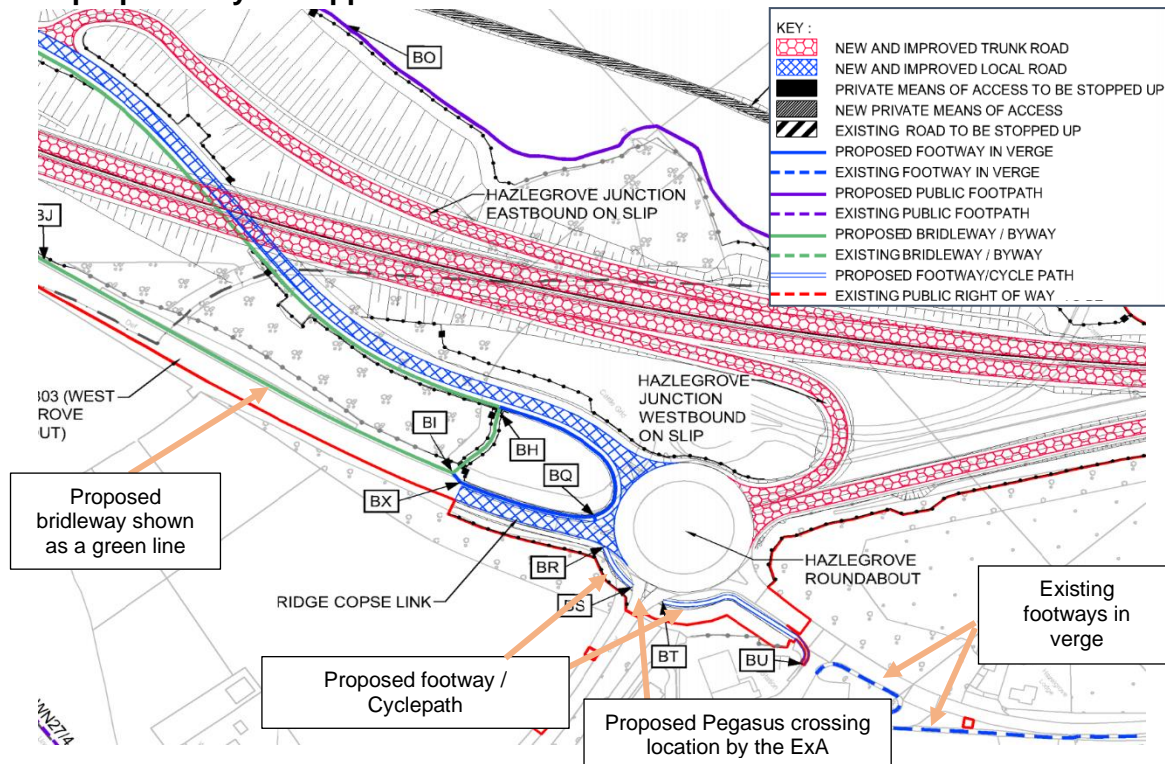
- 4.2.2 The Applicant submits that:

- The proposed crossing cannot be provided within the Order Limits and cannot be delivered through the current DCO;
- There are road safety concerns with installing an equestrian crossing between points BS and BT
- The design of a crossing has never been assessed as part of the scheme. The Examining Authority is not a highways designer and has not taken any account of the relevant standards applicable to the road safety aspects of design of this crossing;
- There is no existing bridleway provision in this area which is affected by the scheme for which mitigation is required;
- There is no bridleway provision to the east or south of the scheme which the Examining Authority requested section would link to (see Figure 4.1 below); and,

- The requirement sought by the Examining Authority is undeliverable through the current DCO and would result in the scheme not being able to be constructed or a Grampian style requirement to, in effect, require a future change to the granted DCO which would be a very unusual approach.

4.2.3 The area concerned and points referred to in describing the relevant section are shown Figure 4.1 below.

Figure 4.1: Extract of REP8-001, rights of way and access plans sheet 4, showing routes as proposed by the Applicant



4.3 Design – Order Limits and Road Safety

4.3.1 Signalised pedestrian/Pegasus crossings on the exits of roundabouts are not commonplace and there is various advice across a number of design manuals which would be relevant to considering one. The Applicant asked their subject matter expert to review the Examining Authority's proposal from a technical perspective and their advice can be summarised as:

- Traffic Signs Manual Ch 6, 15.12.2 requires minimum car length (6 metres) from the exit of the roundabout, and DMRB CD143 states the corral dimensions (10 x 5 metres) for the horses which results in an arrangement which extends beyond the Order limits.
- The position of the crossing would ultimately depend on traffic flows to avoid backing up onto the roundabout (Traffic Signs Manual Ch 6, 15.13.2 and 15.13.4).
- From a design perspective it would also be difficult to install accurate detection with a crossing point located so close to the exit of a roundabout.

4.3.2 The traffic signals manual provides:

15.12.2. *Where a crossing is on a minor road, drivers of vehicles turning into that road need time to judge the situation and space in which to stop. Crossings on a minor road should be sited far enough from a give way or stop line to allow at least one car to stop before the crossing. Generally the nearer the crossing is to the major road the greater will be the distance to be crossed.*

15.12.3. *The exact distance between a crossing and the junction will depend on the volume of turning vehicles and the pedestrian desire lines, but there should be sufficient distance*

between the crossing and the priority marking for at least one waiting vehicle. For signal-controlled crossings, it is important to make sure signal heads are aligned so that drivers cannot mistake a vehicular green signal on the signal-controlled crossing as a priority signal over traffic on the major road.

15.13 Approach to a roundabout

15.13.1. *When crossings are needed on the approaches to a roundabout extra care is needed in the siting. There is no set minimum distance for a crossing from a roundabout but the considerations are similar to those in 15.12. The use of different types of crossing at the same site is not recommended as this could lead to confusion. A Zebra crossing is preferred as it avoids any ambiguity as to priority that a signal-controlled crossing can create for the driver approaching or exiting the roundabout.*

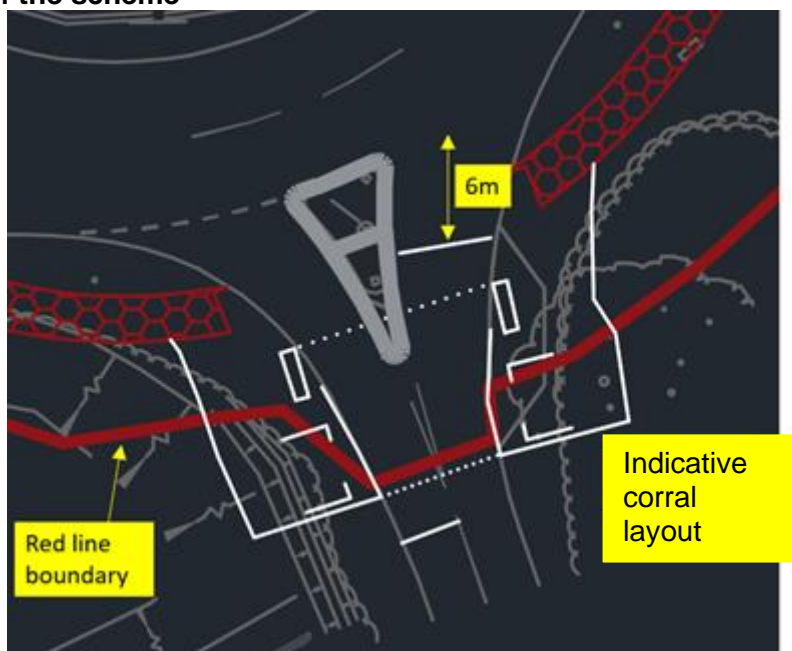
15.13.2. *If a signal-controlled crossing is provided, it should preferably be staggered to avoid excessive delays at the exit points, blocking circulation. The pedestrian desire line, vehicle speeds, visibility, pedestrian/vehicle flows, size of roundabout, and length of crossing/road width should be considered when deciding the optimum location. Crossings away from flared entries are preferable as the carriageway is narrower and vehicular traffic movements are simpler.*

15.13.4. *The impact on driver behaviour of a crossing on the exit arm of a roundabout should be considered. Drivers concentrating on negotiating the roundabout may not be expecting to see pedestrians crossing.*

4.3.3 CD143 from Design Manual for Roads and Bridges provides: “5.24 Where at-grade equestrian crossings are provided, a fenced, grassed holding area of 10.0 metres wide by 5.0 metres long shall be provided in the verge”.

4.3.4 Taking into account the design standards set out above, the Applicant's advisors have produced a very rough, illustrative drawing to show the overlay of an equestrian crossing and the Order Limits (red line) of the scheme (Figure 4.2 below).

Figure 4.2: Illustrative drawing to show overlay of an equestrian crossing and the Order Limits of the scheme



- 4.3.5 The white lines in Figure 4.2 illustrate the potential location of a crossing. Figure 4.2 shows that a Pegasus crossing cannot be accommodated within the Order Limits and accordingly cannot be consented in the DCO. Further land would be required outside the Order Limits, which could only be delivered through a future change to the DCO.
- 4.3.6 The requirement sought by the Examining Authority is accordingly undeliverable as part of the DCO and would result in the scheme not being able to be constructed.
- 4.3.7 The Examining Authority concluded that “Pegasus crossings at this location would provide a significant safety improvement in accordance with paragraphs 4.64 and 4.66 of the NPSNN particularly at the Hazlegrove roundabout where it would allow riders to cross the A359 safely and would accord with NPSNN policies”¹⁷.
- 4.3.8 For the design reasons set out above the Applicant disagrees. The Examining Authority is not a highways designer and has not taken any account of the relevant standards applicable to the road safety aspects of design of this crossing. A poorly located crossing will not improve safety overall. The design of a crossing requires to have regard to all users and the interactions between them. In this case, no regard has been had to the safety aspects of vehicles exiting the roundabout immediately into a signal-controlled crossing. As noted in Section 15.13.1 of the Traffic Signals Manual, extra care is needed in siting crossings near to roundabouts.
- 4.3.9 The Applicant submits that a properly qualified assessment of a crossing in this location, having regard to all aspects of highway safety and taking account of traffic flows, vehicle speeds, sight lines, how signals would be

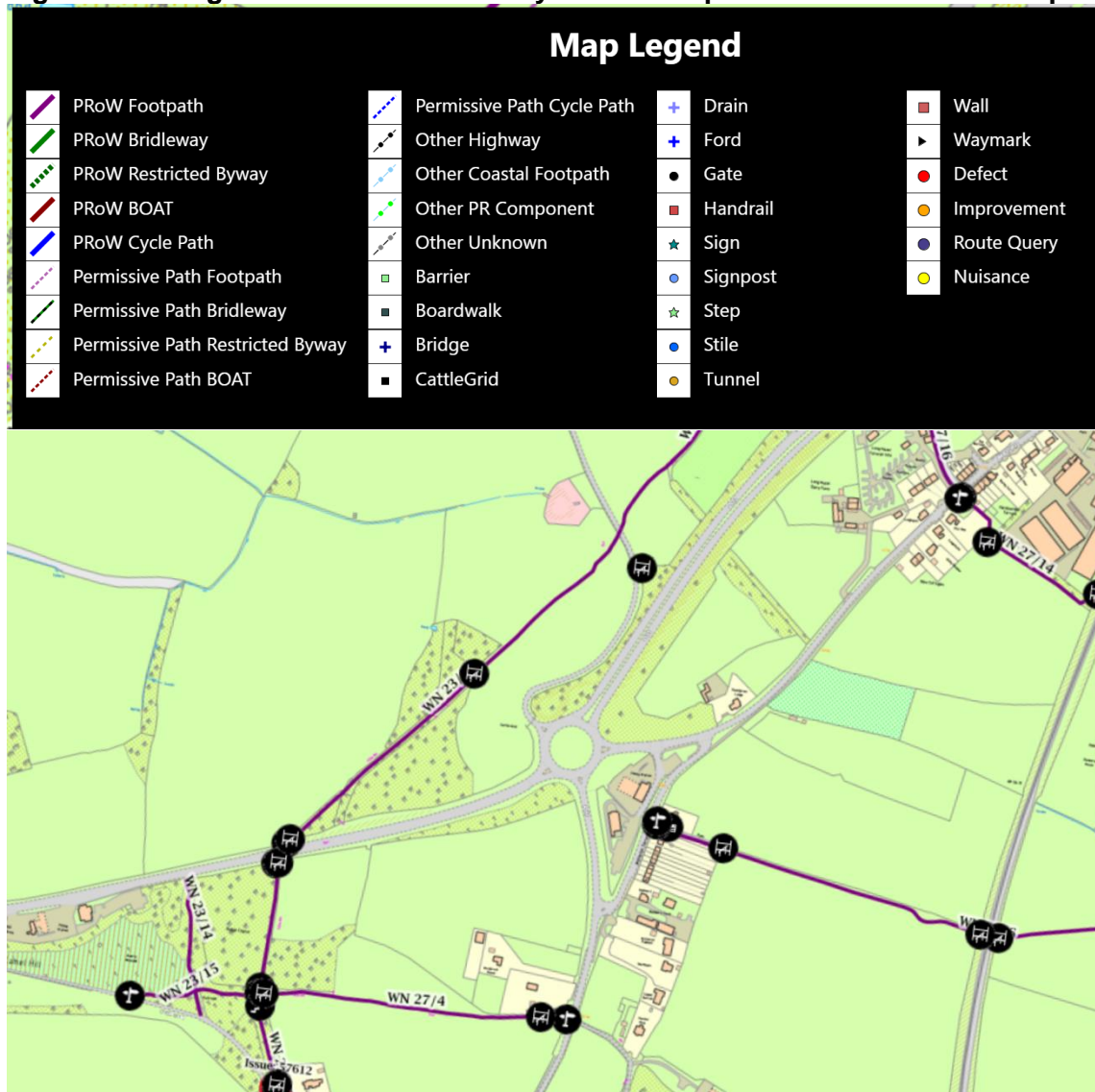
¹⁷ Recommendation report, paragraph 10.5.85

perceived by drivers and the impact on the functioning of the roundabout would be required to reach a conclusion on the impact on safety. It is simply not reasonable for the Examining Authority to conclude that this crossing would provide a significant safety improvement on the information available to them.

4.4 Existing Bridleways

4.4.1 There is no existing bridleway provision in this area which will be affected by the scheme and for which mitigation is required. The image from Somerset County Council mapping in Figure 4.3 below shows the rights of way in the area around the roundabout. The purple lines are footpaths. No bridleways are shown in the area, and Figures 4.4, 4.5 and 4.6 below show no existing NMU crossing points on the southern side of the Hazlegrove roundabout.

Figure 4.3: Image from Somerset County Council Explore Somerset online map



<https://roam.somerset.gov.uk/roam/map> (accessed 07 August 2020)

Figure 4.4: Google maps image looking north towards Hazlegrove roundabout from the A359: there are no NMU crossing facilities and no NMU routes either side of the carriageway



Figure 4.5: Google maps image looking west towards Hazlegrove roundabout from the A359 into Sparkford: there are no NMU crossing facilities and no NMU routes either side of the carriageway



Figure 4.6: Google maps image looking east towards Hazlegrove roundabout from the A303: there are no NMU routes either side of the carriageway



- 4.4.2 There are accordingly no bridleway links connecting to the section and crossing sought by the Examining Authority. The scheme will provide a bridleway to the west of the roundabout, which provision is submitted to be an improvement over the current situation.
- 4.4.3 Chapter 12 People and Communities of the Applicant's ES (APP-049) concludes that the scheme has Slight Beneficial and Moderate Beneficial effects for NMUs. These assessments considered changes in journey length and time, provision of new and improved facilities for NMU, safety and changes in journey experience for NMUs. The scheme has the potential to increase usage of the NMU network in the area which could have a beneficial effect on physical activity.

4.5 Conclusion

- 4.5.1 The Applicant fully accepts that there are elements of the NMU provision which the Examining Authority may reasonably consider could be improved on, however the proposed provision has been designed to link to existing networks and will provide a considerable improvement over the current situation at Hazlegrove roundabout for NMUs. The Applicant therefore submits that it is compliant with NPSNN without the bridleway section sought by the Examining Authority. As already highlighted, the Examining Authority's proposals cannot in any event be delivered within the Order limits.

4.6 rDCO drafting

- 4.6.1 The Applicant requests that Examining Authority requirement 18 is deleted.

5 Drainage Maintenance Tracks

5.1 Summary

- 5.1.1 There is no justification for imposing 6-metre-wide maintenance tracks. This would have an unnecessary adverse impact on biodiversity.

5.2 Applicant's scheme proposal

- 5.2.1 Five drainage balancing ponds are proposed within the Applicant's DCO application. The location and design of each of these ponds can be seen within the Outline Drainage Works Plans¹⁸. The Applicant has proposed maintenance access tracks of a 4-metre width around each of the five ponds.
- 5.2.2 It was determined during the Examination that the Applicant would be responsible for the ongoing maintenance of each of these ponds as they all serve the strategic highway. All the ponds will therefore be retained by the Applicant and maintained as part of Highways England's estate in accordance with the limits of responsibility plans to be approved under requirement 12(2).
- 5.2.3 The Applicant agreed a Statement of Common Ground (SoCG) with the Somerset Internal Drainage Boards Consortium (the Consortium) [REP5-018]. All items in that SoCG are agreed other than a point relating to the width of the maintenance access tracks around the five ponds. It is the Consortium's view that a 6-metre access track is required in order to provide enough space for the machinery required to undertake adequate maintenance of the ponds (specifically, de-silting). The Applicant was asked to submit plans during the Examination setting out whether or not a 6-metre access track around each of the ponds could be achieved. That response was included in REP7-027 at the response to Action Point 25.
- 5.2.4 The Applicant's previous response concluded that, whilst a 6 metre access track could be achieved at four of the five ponds (with a 4.5 metre track possible around Pond 2), the Applicant's Operations team had confirmed that a 4 metre track is sufficient to allow them to safely maintain the ponds.

5.3 The Examining Authority's recommendation

- 5.3.1 The Examining Authority considers¹⁹ that "to ensure resilience in the long term over the life of the road and its drainage features a possible maintenance track as wide as possible is necessary. This would allow for greater flexibility and allow for greater options as practices change over time. While the maintenance track for Pond 2 would not be 6 metres wide it could be made wider than proposed to enhance its resilience". The Examining Authority suggests that this change could be secured by amending requirement 13(2) to ensure that this is accommodated and the Examining Authority recommends as such. The amended requirement 13(2) would read:

¹⁸ (Revision C02) [REP7-008]

¹⁹ Paragraph 12.7.6 of the Recommendation Report

“(2) The details to be approved under this requirement must include:

...(i) provision for a 6 metre wide maintenance track to Ponds 1, 3, 4, and 5 and a 4.5 metre maintenance track to Pond 2 as identified on the general arrangement plans.”

5.4 The Applicant's response to the Examining Authority's recommendation

- 5.4.1 The Applicant does not agree with the amendment to requirement 13(2) as the change is unnecessary and will have adverse effects on the delivery of biodiversity provision. It remains the Applicant's view that a 6 metre access track around each of the ponds is not required in order to ensure that they are adequately maintained and that it, as the party responsible for carrying out the work, is confident that 4 metres is sufficient.
- 5.4.2 The detailed design of the ponds is currently in progress and includes 4-metre-wide tracks. The width of these tracks has been the subject of consultation with the Applicant's Operations Department who have confirmed that the width proposed is acceptable, and this has been re-confirmed to the Applicant in preparing this response.
- 5.4.3 There is no known issue regarding resilience which would require a wider path. To the contrary, the Applicant submits there is no ground to believe that wider tracks will be required in future as it is more probable plant will become smaller and more manoeuvrable as technology advances, not less.
- 5.4.4 As previously advised by the Applicant in its response to Action Point 25 (REP7-027), there is space within the red line boundary to increase the width of most of the access tracks to 6 metres. This remains the case. However, the result of the unnecessary increase to the width of the access tracks is the unfortunate effect of reducing the areas of wildflower grassland and woodland planting that is proposed by the Applicant in these areas. This has a negative impact on the biodiversity net gain that is being provided by the scheme whilst providing no practical benefit.

5.5 Conclusion

- 5.5.1 It is the Applicant's position that the amendment to requirement 13(2) recommended by the Examining Authority should not be incorporated into the DCO. It has not been shown that it is necessary to include such a provision and to do so would be to the detriment of the additional biodiversity that is being provided by the scheme.
- 5.5.2 As the party who will be responsible for undertaking this maintenance, the Applicant advises that 6 metres is not required, and it is entirely confident that appropriate machinery for the activities required is readily available which can be accommodated within the 4 metre width currently shown.

6 Protective Provisions

6.1 Approval by Somerset County Council – paragraph 33(2)

6.1.1 The Applicant notes that at paragraph 16.6.57 of the Recommendation Report, “The Examining Authority concludes that the following changes to the preferred DCO are necessary to ensure that Protective Provisions are appropriate and ensure sufficient safeguards for Somerset County Council...Additional provisions should be included to deliver a Provisional Certificate, but with revised drafting to ensure that Somerset County Council did not have an approval role”. The Applicant submits however that proposed drafting does give Somerset County Council an approval role contrary to the conclusion quoted.

6.1.2 Paragraph 33 provides:

“33—(1) Before commencing the construction of, or the carrying out of any Works the undertaker must provide to the local highway authority the Design Detailing and the Other Detailed Information;

(2) The undertaker must not commence construction of the Works to which the Design Detailing relates until approval has been given by the local highway authority to the Other Detailed Information;” (*emphasis added*)

6.1.3 The Other Detailed Information includes timing of works and traffic management which will follow the detail approved under requirements 3 (CEMP), 11 (traffic management) and 12 (detailed design) on which Somerset County Council are a consultee. The Applicant submits that it is entirely reasonable that Somerset County Council is consulted on and has a meaningful role in the development of these points and that agreement on them is sought; however that will be in the context of the programme for delivery of the scheme and Somerset County Council should not be able to prevent commencement by refusing to approve the timing under the protective provisions. In the context that Examining Authority concluded that Somerset County Council should not have an approval role, the Applicant requests that paragraph 33(2) is deleted.

6.2 Paragraphs 37(6) and the Examining Authority text added to (7)

6.2.1 The drafting of these sub-paragraphs is predicated on a misunderstanding of the law.

6.2.2 The Applicant cannot undertake any works for which it does not have consent. While the DCO would allow for the detail of works to be brought forward later, in determining whether to approve the detail the Secretary of State’s team will have regard to whether the detail gives rise to any new or materially different adverse effects from those identified in the Environmental Statement related to the DCO consent. If it does, the detailed design would be outside the scope of the consented DCO and consent to the detailed design would not be granted. They could not be considered to be consented by the DCO and cannot be brought forward under a requirement.

- 6.2.3 Regulations 22 to 25 relate to cases where further environmental information is required to allow the proper determination of subsequent applications (which would include discharge of requirements); that process does not allow the original consent to be varied. These regulations allow submission of information demonstrating that no new or materially different adverse effects from those identified in the Environmental Statement are created by the detail submitted; but do not allow new works with new effects to be retrospectively incorporated into the initial consent.
- 6.2.4 The correct procedure to authorise works with new or materially different adverse effects from those identified in the Environmental Statement is to seek a change to the consent itself; thereby allowing consideration of the new or materially different effects to be undertaken as part of that determination.
- 6.2.5 These paragraphs are accordingly misconceived in law and policy and should be deleted.
- 6.2.6 The Applicant does not wish to challenge any of the other changes made to Schedule 8.

6.3 rDCO drafting

6.3.1 The Applicant requests that the rDCO is amended as follows:

Deletion of paragraph 33(2); and

Deletion of paragraph 37(6) and the first sentence of paragraph 37(7).

Annex A: Signed Section 278 Agreement for Traffic Calming Works

THIS AGREEMENT is made this 31st day of MARCH. 2020
BETWEEN

1 **HIGHWAYS ENGLAND COMPANY LIMITED** registered in England and Wales with company number 09346363 of Bridge House 1 Walnut Tree Close Guildford Surrey GU1 4LZ ("**Highways England**"); and

2 **SOMERSET COUNTY COUNCIL** of County Hall, Taunton, Somerset, TA1 4DY ("**the Council**")

and collectively referred to as the "Parties" or individually referred to as "the Party"

WHEREAS

- (A) The Council is the Local Highway Authority for the administrative area in which the Scheme is located.
- (B) Highways England is the strategic highways company appointed by the Secretary of State by virtue of the Appointment Order.
- (C) Highways England have applied for a Development Consent Order to carry out the Scheme in order to dual a section of the A303 trunk road between Sparkford and Podimore for which Highways England is the Highway Authority under the Act.
- (D) The Parties have agreed that minor traffic calming works to the local highway network in West Camel for which the Council is the Highway Authority under the Act would complement the works proposed in the Scheme. Highways England has designed a scheme of works within West Camel which form the basis of the West Camel Traffic Calming Works (and associated Signage Works).
- (E) The Parties have agreed to enter into this Agreement to facilitate the design and delivery of the West Camel Traffic Calming Works (and associated Signage Works) with the intention that works are delivered by the Council at the expense of Highways England.

NOW IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

1.1 In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:

"**Act**" means the Highways Act 1980 (as amended);

"**Appointment Order**" means the Appointment of a Strategic Highways Company Order 2015;

"**Consents**" means approvals, consents, licences, permissions, or registrations other than planning permission under the Town and Country Planning Act 1990;

"**Development Consent Order**" or "**DCO**" means the Order for Development Consent to construct and operate the Scheme applied for by Highways England and given planning inspectorate reference TR010036 and includes any Order granted by the Secretary of State pursuant to that application;

"DMRB" means the Design Manual for Roads and Bridges published by Highways England and any amendment to or replacement of it for the time being in force;

"RSA" or "Road Safety Audit" means a review of the proposed design or any works and any road safety impacts carried out in accordance with DMRB or such other standard as the parties may agree;

"Scheme" means the A303 Sparkford to Ilchester Dualling scheme for which consent is sought in the DCO;

"Signage Works" means the signage to be installed by the Council in accordance with the proposals shown on drawing number HE406360AD-MMSJV-HGN-000-DR-CH-3016 to 3020 (P03) at the cost of Highways England;

"West Camel Traffic Calming Works" means the provision of traffic calming measures designed by Highways England shown generally on drawing number HE406360AD-MMSJV-HGN-000-DR-CH-3001 to 3014 (P02) attached and the completion of all necessary RSA and technical approval processes, all such works to be carried out by the Council at the cost of Highways England (subject to clause 6.1).

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Any reference to a statute or statutory provision includes a reference to that statute or statutory provision as amended extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statute or statutory provision.
- 1.5 Words importing one gender shall be read and construed to include any other gender.
- 1.6 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa.
- 1.7 Reference to any person includes any reference to a body corporate unincorporated association or a partnership and vice-versa.
- 1.8 Reference to any right exercisable by any Party hereunder shall be construed as including (where appropriate) the exercise of such right by all other persons having a like right.
- 1.9 References to a statute or a provision of a statute include any statute or provision of a statute amending consolidating or replacing it for the time being in force.
- 1.10 Words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to permit or to allow infringement of the same.

- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 STATUTORY PROVISIONS

- 2.1 This Agreement is made pursuant to section 278 of the Act. The Council enters into this Agreement pursuant to section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3 COMMENCEMENT

- 3.1 This Agreement shall take effect on the date of this Agreement.

4 WEST CAMEL TRAFFIC CALMING WORKS

- 4.1 As soon as reasonably practicable after the date hereof Highways England shall, in consultation with the Council, prepare detailed plans and specifications of the West Camel Traffic Calming Works and submit those to the West Camel Parish Council. Where the West Camel Parish Council raises no objection to the detailed plans and specifications of the West Camel Traffic Calming Works within 14 days of submission, the detailed plans and specifications shall be submitted to the Council for approval.

- 4.2 Where following submission of detailed plans and specifications of the West Camel Traffic Calming Works to the West Camel Parish Council under clause 4.1, the West Camel Parish Council objects, Highway England may, at its sole discretion, either;

(a) amend the detailed plans and specifications of the West Camel Traffic Calming Works, in consultation with the Council, and submit those to the West Camel Parish Council, which amended detailed plans and specifications shall for the purposes of the agreement be treated as if they have been submitted under clause 4.1 or

(b) terminate this agreement with immediate effect. Any termination shall be without prejudice to any accrued rights of the Parties against each other for any breach of this Agreement which occurred before termination.

Highways England shall, within 3 working days of any objection to the detailed plans and specifications of the West Camel Traffic Calming Works being made by the West Camel Parish Council under clause 4.1, notify the Council of its decision under this clause 4.2. and provide the Council with a copy of any objection received.

- 4.3 The Council shall be responsible for obtaining any Consents required to carry out the West Camel Traffic Calming Works.

- 4.4 The Council shall be responsible for approving, procuring, carrying out, supervising and, inspecting the West Camel Traffic Calming Works in accordance with the detailed plans and specifications of the West Camel Traffic Calming Works approved under clause 4.1 and thereafter for maintaining the same.
- 4.5 In approving the West Camel Traffic Calming Works under Clause 4.4 the Council may have regard to affordability of those works with respect to the balance of the sum paid to it under clause 6.1 and accounting for the costs of the Signage Works. Where the Council consider that the costs of the West Camel Traffic Calming Works as set out in detailed plans and specifications submitted by Highways England would exceed the sum available to it for the costs paid under clause 6.1, it shall be entitled to approve the detailed plans and specifications of the West Camel Traffic Calming Works in part only and shall be liable only to deliver the approved part(s).
- 4.6 The Council shall be responsible for carrying out RSA stages 1 and 2. Highways England shall be entitled to participate in and review any documents associated with or produced by those RSAs. The Parties shall agree any changes to the design following RSAs 1 and 2.
- 4.7 The Council shall be responsible for carrying out RSA stages 3 and 4. Highways England shall be entitled to participate in and review any documents associated with or produced by those RSAs where they request to do so. The Parties shall agree any changes if appropriate.
- 4.8 The Council will carry out the West Camel Traffic Calming Works as soon as reasonably practicable following the approval of the design pursuant to clause 4.1 (and grant of any consents where applicable), and will use reasonable endeavours to commence the works within 6 months of approval of the design under clause 4.1.

5 SIGNAGE WORKS

- 5.1 As soon as reasonably practicable after the date hereof Highways England shall, in consultation with the Council, prepare detailed plans and specifications of the Signage Works.
- 5.2 The Council shall be responsible for approving, procuring, carrying out, supervising and, inspecting the Signage Works in accordance with the detailed plans and specifications of the Signage Works and thereafter for maintaining any of the Signage Works which are erected in the highway for which it is the Highway Authority. Highways England shall be liable to maintain any Signage Works erected in highways for which it is the Highway Authority.
- 5.3 Where any part of the Signage Works are to be carried out on or require access from the highway for which Highways England is the highway authority, Highways England at its discretion shall grant to the Council such permission as may be required from it to allow the carrying out of the Signage Works as soon as reasonably practicable in a form to be agreed.

- 5.4 The Council will carry out the Signage Works as soon as reasonably practicable following the approval of the design pursuant to clause 5.2 with the aim of the Signage Works being effective at the time the West Camel Traffic Calming Works are in use, and dependent on the West Camel Traffic Calming Works going ahead and completing.

6 PAYMENT OF COSTS AND RECONCILIATION OF SPEND

- 6.1 Highways England shall pay to the Council the sum of One Hundred and Ninety Thousand Pounds sterling (£190,000) no later than 31 March 2020.

- 6.2 The Council may use the sum paid under clause 6.1 towards the payment of all costs properly incurred by the Council in fulfilling its role and duties associated with development and delivery of the West Camel Traffic Calming Works and the Signage Works only and for no other purpose.

- 6.3 Highways England shall have no liability for any cost in excess of the sum paid under clause 6.1 above.

- 6.4 The Council covenants with Highways England that it will repay to Highways England such amount of any payment made by Highways England to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose). Repayment under this clause shall be due on the earlier of

(a) 3 calendar months after the date of termination of this Agreement in accordance with clause 4.2; or

(b) 30 June 2023; or

(c) the first anniversary of the date of the first RSA4 report produced for the West Camel Traffic Calming Works or any part thereof;

together with any interest which may have accrued from the date of payment to the date of refund.

- 6.5 The Council shall provide to Highways England such evidence, as Highways England shall reasonably require, in order to confirm the expenditure of the sum received from Highways England under this Agreement pursuant to clause 6.1.

7 COMMUNICATIONS

- 7.1 All communications between the Parties hereto shall be valid and effectual if dispatched by first class recorded delivery or letter to the Party to whom such notice request demand or other written communication is to be given or made under this agreement and addressed as follows:

- (a) in the case of the Council to the Strategic Manager (Infrastructure Programmes Group), Somerset County Council, County Hall, Taunton TA1 4DY;
- (b) in the case of Highways England to the Highways England A303 Sparkford Project Manager; Elliot Hayes, Highways England, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6HA

or such other name and address for service as shall have been previously notified to the other Party.

8 SETTLEMENT OF DISPUTES

- 8.1 In the first instance in the event of a disagreement arising between the Parties, the Parties will raise the disagreement with their respective Regional Delivery Directors and/ or Chief Executives for further discussion in an effort to reach agreement on the dispute.
- 8.2 In the event of any dispute or difference arising between the Parties to this Agreement which is not satisfactorily resolved through the means outlined in clause 8.1 in respect of any matter contained in this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the Institution of Civil Engineers and such person shall act as an expert whose decision shall be final and binding on the Parties in the absence of manifest error and any costs shall be payable by the Parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the Parties in equal shares.
- 8.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days following receipt of any file or written representation.

9 GENERAL

- 9.1 No consent or approval modification alteration or waiver of any of the provisions of this Agreement except as otherwise herein provided for shall be effective unless the same is in writing and signed on behalf of all of the Parties hereto and annexed to this Agreement.
- 9.2 Any termination of this Agreement is without prejudice to the rights of the parties against each other for any breach of this Agreement which occurred before termination.
- 9.3 For the purposes of the Contracts (Rights of Third Parties Act) 1999 it is agreed and declared that nothing herein shall confirm any third party rights.

- 9.4 This Agreement is strictly personal to each Party who shall not be entitled to part with or assign in any way with its interest and obligations under this Agreement unless to a successor body in its statutory function as Highway Authority under the Act.
- 9.5 The validity, construction and performance of this Agreement shall be governed by English law.
- 9.6 The provisions of this Agreement shall come into force immediately upon its execution and, with the exception of clause 6.4, shall remain in force until discharged by performance or until this Agreement is terminated in accordance with clause 4.2, whichever is the earlier.
- 9.7 Clause 6.4 shall survive termination under clause 4.2, and clause 6.4 will remain in force until any refund due under that clause has been paid in full.

10 GOVERNING LAW

- 10.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter of formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS whereof the Parties have executed this document on the day and year first before written.

Agreement [Redacted]
Executed as a ~~Deed~~ by affixing the common
seal of **SOMERSET COUNTY COUNCIL** in
the presence of:



Number in Register **33985**

..... [Redacted]
Authorised Signatory

Agreement

Executed as a Deed by affixing the common
seal of **HIGHWAYS ENGLAND COMPANY
LIMITED** in the presence of:

AN AUTHORISED SIGNATORY

Nick ANDWORTH (REGIONAL DELIVERY DIRECTOR)

Director or Authorised Signatory

.....
~~Director or Company Secretary or Authorised
Signatory~~



Annex B: Applicant's proposed Section 278 Agreement for signage and a Traffic Regulation Order

THIS AGREEMENT is made this

day of

20 .

BETWEEN

1 **HIGHWAYS ENGLAND COMPANY LIMITED** registered in England and Wales with company number 09346363 of Bridge House 1 Walnut Tree Close Guildford Surrey GU1 4LZ ("**Highways England**"); and

2 **SOMERSET COUNTY COUNCIL** of County Hall, Taunton, Somerset, TA1 4DY ("**the Council**")

and collectively referred to as the "Parties" or individually referred to as "the Party"

WHEREAS

- (A) The Council is the Local Highway Authority for the administrative area in which the Scheme is located.
- (B) Highways England is the strategic highways company appointed by the Secretary of State by virtue of the Appointment Order.
- (C) Highways England have applied for a Development Consent Order to carry out the Scheme in order to dual a section of the A303 trunk road between Sparkford and Podimore for which Highways England is the Highway Authority under the Act.
- (D) The Parties have agreed that works to the local highway network at Traits Lane, Gason Lane and the B3151 in the vicinity of Podimore for which the Council is the Highway Authority under the Act are required as a consequence of the works proposed in the Scheme.
- (E) The Parties have agreed to enter into this Agreement to facilitate the design and delivery of the Works with the intention that works are delivered by the Council at the expense of Highways England.

NOW IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

1.1 In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:

"**Act**" means the Highways Act 1980 (as amended);

"**Appointment Order**" means the Appointment of a Strategic Highways Company Order 2015;

"**B3151**" means that part of the B3151 highway situated between the A303 and extending westwards to the current, continuous extent of the national speed limit, and which is situated within the area shown on the plan 1 annexed to this Agreement,

"**Consents**" means approvals, consents, licences, permissions, or registrations;

"**Development Consent Order**" or "**DCO**" means the Order for Development Consent to construct and operate the Scheme applied for by Highways England and given planning

inspectorate reference TR010036 and includes any Order granted by the Secretary of State pursuant to that application;

"Gason Lane" means the public highway known as Gason Lane which has a junction with the A303, which junction is to be stopped up as part of the Scheme, and which is shown on the plan 2 annexed to this Agreement;

"RSA" or **"Road Safety Audit"** means a review of the proposed design or any works and any road safety impacts carried out in accordance with DMRB or such other standard as the parties may agree;

"Scheme" means the A303 Sparkford to Ilchester Dualling scheme for which consent is sought in the DCO;

"Traits Lane" means the public highway known as Traits Lane which has a junction with the A303, which junction is to be stopped up as part of the Scheme, and which is shown on the plan 2 annexed to this Agreement;

"Works" means the works listed in Schedule 1 to this Agreement;

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Any reference to a statute or statutory provision includes a reference to that statute or statutory provision as amended extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statute or statutory provision.
- 1.5 Words importing one gender shall be read and construed to include any other gender.
- 1.6 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa.
- 1.7 Reference to any person includes any reference to a body corporate unincorporated association or a partnership and vice-versa.
- 1.8 Reference to any right exercisable by any Party hereunder shall be construed as including (where appropriate) the exercise of such right by all other persons having a like right.
- 1.9 References to a statute or a provision of a statute include any statute or provision of a statute amending consolidating or replacing it for the time being in force.
- 1.10 Words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to permit or to allow infringement of the same.

- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 STATUTORY PROVISIONS

- 2.1 The Council enters into this Agreement which is made pursuant to Section 278 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3 COMMENCEMENT

- 3.1 This Agreement shall not commence and shall have no effect unless and until:
- (a) The Secretary for State for Transport grants the DCO; and
 - (b) Highways England, having reviewed the DCO as granted, decides it wishes to proceed to construct the Scheme.
- 3.2 Where the DCO is granted, Highways England shall notify the Council within 3 working days of taking any decision whether or not it will proceed to construct the Scheme.

4 THE WORKS

- 4.1 Highways England shall, as soon as reasonably practicable as the coming into force of this Agreement, notify the Council of the anticipated dates for the following:
- (a) Closure of the junction of Gason Lane and the A303;
 - (b) Closure of the junction of Traits Lane and the A303; and
 - (c) Start of works for the reconfiguration of the junction of the B3151 and the A303 as part of the Scheme.
- 4.2 The Council shall be responsible for obtaining any Consents required to carry out the Works.
- 4.3 The Council shall be responsible for drafting, consulting on, making and seeking confirmation of any legal order required as part of the Works under the Road Traffic Regulation Act 1984 or any other legislation in accordance with the applicable regulations.
- 4.4 The Council shall be responsible for approving, procuring, carrying out, supervising and, inspecting any Works in accordance with the detailed plans and specifications of the Works approved under clause 4.2 and thereafter for maintaining the same.
- 4.5 In approving the Works under Clause 4.2 the Council may have regard to affordability of those works with respect to the balance of the sum paid to it under clause 5.1.

4.6 The Council shall be responsible for carrying out any RSAs which are required for the Works. Highways England shall be entitled to participate in and review any documents associated with or produced by those RSAs where they request to do so.

4.7 The Council will use best endeavours to carry out the Works;

- (a) to Gason Lane in advance of with the date notified to it under clause 4.1(a);
- (b) to Traits Lane in advance of with the date notified to it under clause 4.1(b); and
- (c) to the B3151 in advance of with the date notified to it under clause 4.1(c).

5 PAYMENT OF COSTS AND RECONCILIATION OF SPEND

5.1 Highways England shall pay to the Council thirty two thousand nine hundred pounds sterling (£32,900) to design and deliver the Works. This sum shall be paid in one instalment within 30 days of the coming into force of this Agreement.

5.2 The Council may use the sum paid under clause 5.1 towards the payment of all costs properly and reasonably incurred by the Council in fulfilling its role and duties associated with development and delivery of the Works, including the time of its own officers.

5.3 Highways England shall have no liability for any cost in excess of the sum paid under clause 5.1 above.

5.4 The Council covenants with Highways England that it will repay to Highways England such amount of any payment made by Highways England to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose). Repayment under this clause shall be due on the earlier of

- (a) the date being ten working days after the date of completion of the Works; or
- (c) the first anniversary of the date of the any RSA4 report produced for the Scheme or any part thereof;

together with any interest which may have accrued from the date of payment to the date of refund.

5.5 The Council shall provide to Highways England such evidence, as Highways England shall reasonably require, in order to confirm the expenditure of the sum received from Highways England under this Agreement pursuant to clause 5.1.

6 COMMUNICATIONS

6.1 All communications between the Parties hereto shall be valid and effectual if dispatched by first class recorded delivery or letter to the Party to whom such notice request demand or other written communication is to be given or made under this agreement and addressed as follows:

- (a) in the case of the Council to the Strategic Manager (Infrastructure Programmes Group), Somerset County Council, County Hall, Taunton TA1 4DY;
- (b) in the case of Highways England to the Highways England A303 Sparkford Project Manager; Elliot Hayes, Highways England, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6HA

or such other name and address for service as shall have been previously notified to the other Party.

7 SETTLEMENT OF DISPUTES

7.1 In the first instance in the event of a disagreement arising between the Parties, the Parties will raise the disagreement with their respective Regional Delivery Directors and/ or Chief Executives for further discussion in an effort to reach agreement on the dispute.

7.2 In the event of any dispute or difference arising between the Parties to this Agreement which is not satisfactorily resolved through the means outlined in clause 8.1 in respect of any matter contained in this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the Institution of Civil Engineers and such person shall act as an expert whose decision shall be final and binding on the Parties in the absence of manifest error and any costs shall be payable by the Parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the Parties in equal shares.

7.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days following receipt of any file or written representation.

8 GENERAL

8.1 No consent or approval modification alteration or waiver of any of the provisions of this Agreement except as otherwise herein provided for shall be effective unless the same is in writing and signed on behalf of all of the Parties hereto and annexed to this Agreement.

8.2 For the purposes of the Contracts (Rights of Third Parties Act) 1999 it is agreed and declared that nothing herein shall confirm any third party rights.

8.3 This Agreement is strictly personal to each Party who shall not be entitled to part with or assign in any way with its interest and obligations under this Agreement unless to a successor body in its statutory function as Highway Authority under the Act.

8.4 The validity, construction and performance of this Agreement shall be governed by English law.

8.5 The provisions of this Agreement shall come into force in accordance with clause 3, shall remain in force until discharged by performance or until this Agreement is terminated by agreement between the parties.

8.6 Clause 5.4 shall survive termination and will remain in force until any refund due under that clause has been paid in full.

9 GOVERNING LAW

9.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter of formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

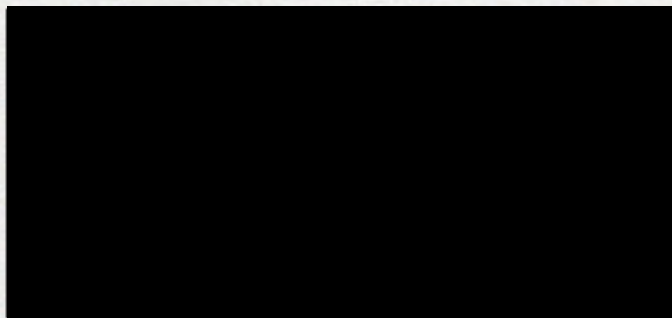
IN WITNESS whereof the Parties have executed this document on the day and year first before written.

Executed as an agreement by affixing the
common seal of **SOMERSET COUNTY**
COUNCIL in the presence of:

.....

Authorised Signatory

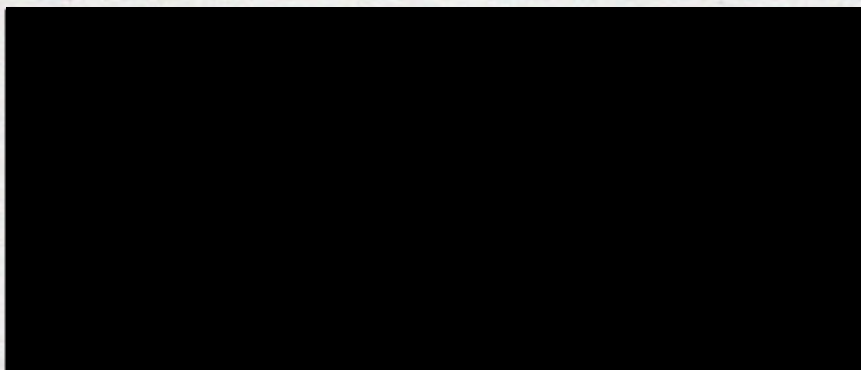
Executed as an agreement by ~~affixing the~~
~~common seal of~~ **HIGHWAYS ENGLAND**
COMPANY LIMITED ~~in the presence of:~~



REGIONAL DELIVERY DIRECTOR

.....

Director or ~~Authorised Signatory~~



Director or ~~Company Secretary or Authorised Signatory~~

Sponsorship Director (RIP South West)

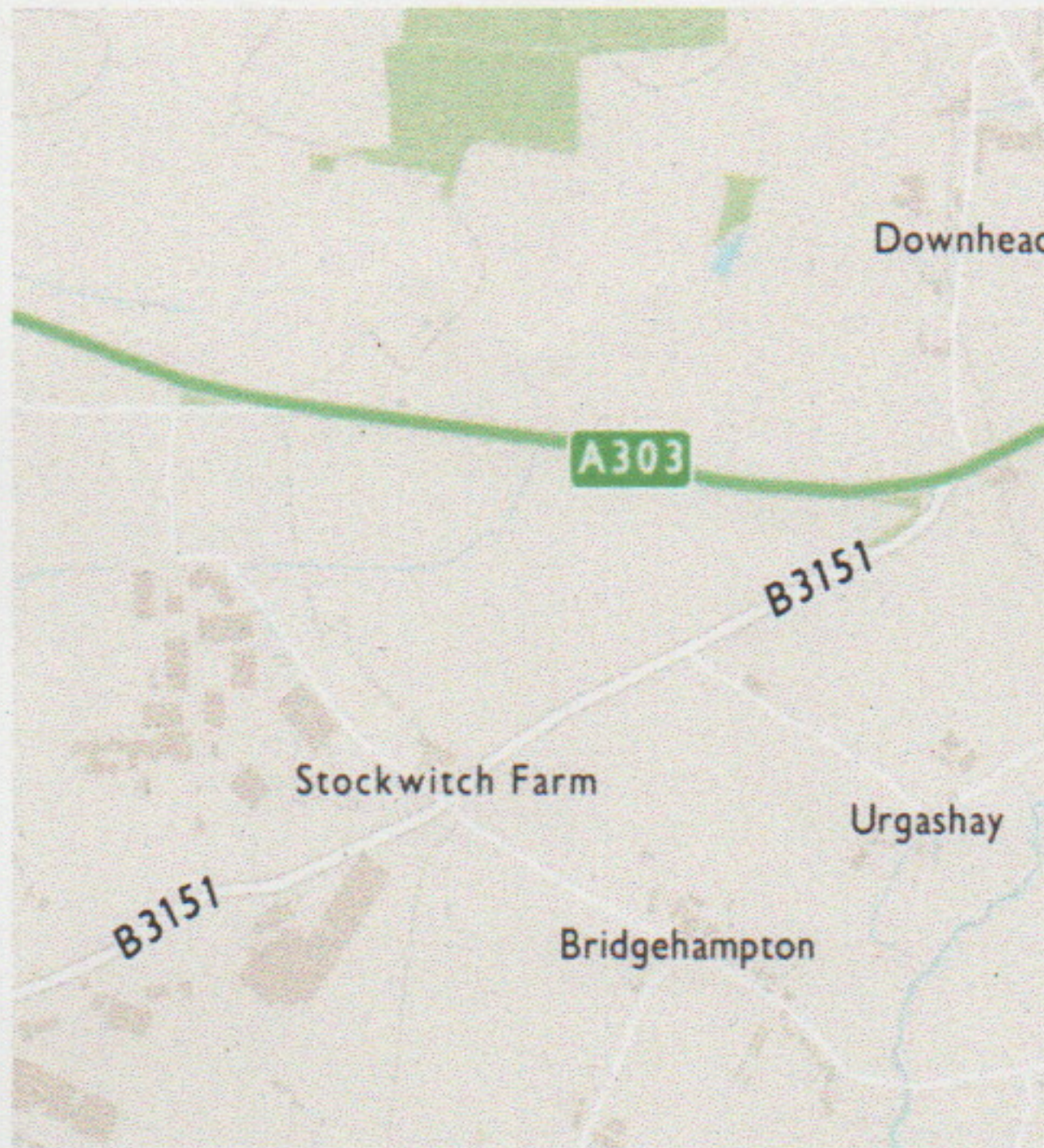
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Schedule 1: the Works

The Works :

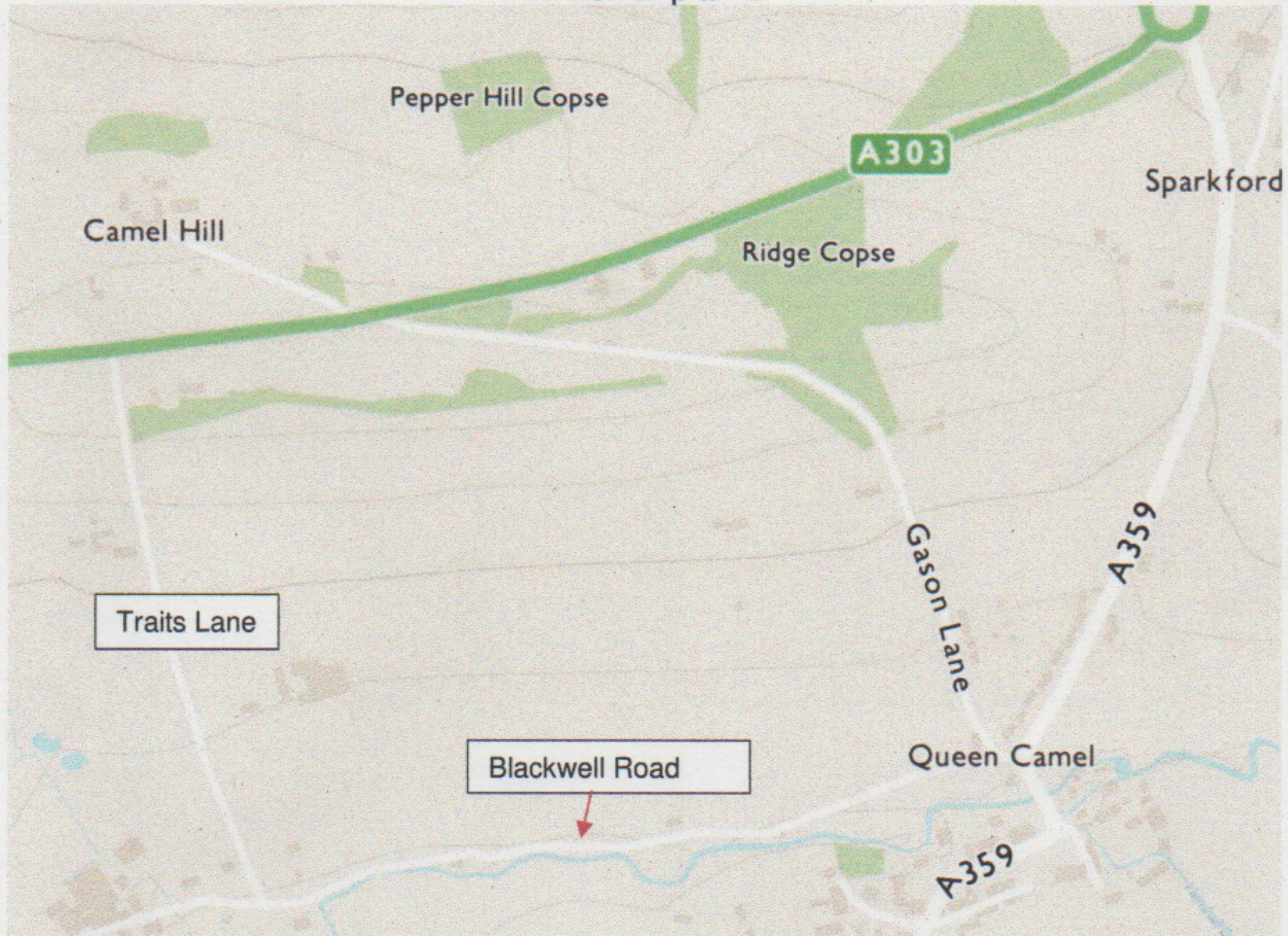
- 1 to the B3151 are: an order under the Road Traffic Regulation Act 1984 to amend the speed limit on the B3151 to 50 miles per hour;
- 2 to Gason Lane are: installation of no through roads signs on Gason Lane at or in the vicinity of its junction with Blackwell Road;
- 3 to Traits Lane are: installation of no through roads signs on Traits Lane at or in the vicinity of its junction with Blackwell Road;

Annex 1: Plan 1



This is the plan 1 referred to in the Agreement between Highways England Company Limited and Somerset County Council under s278 of the Highways Act 1980 and dated the day of 20[].

Annex 2: plan 2



This is the plan 2 referred to in the Agreement between Highways England Company Limited and Somerset County Council under s278 of the Highways Act 1980 and dated the day of 20[].