

A47 North Tuddenham to Easton

Scheme Number: TR010038

Volume 9 **9.33 Applicant's Responses to Deadline 8** **Comments**

The Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8(1)(c)

Planning Act 2008

February 2022

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure) Rules 2010**

A47 North Tuddenham to Easton
Development Consent Order 202[x]

**9.33 APPLICANT'S RESPONSE TO THIRD PARTY COMMENTS
AT DEADLINE 8**

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1 INTRODUCTION

1.1.1 The Development Consent Order (DCO) application for the A47 North Tuddenham to Easton scheme was submitted on 15 March 2021 and accepted for examination on 12 April 2021.

1.1.2 The purpose of this document is to set out Highways England's (the Applicant) comments on the submissions by third parties at Deadline 8 (25 January 2022). The following sections present the responses where additional information or clarity by the Applicant is presented in response to.

- A C Meynell Comments on any additional information/submissions received by D7 (**REP8-020**).
- A C Meynell Comments on Applicant's CAH3 Written Submissions - Late submission accepted at the discretion of the Examining Authority (**REP8-029**).
- Norfolk County Council Protective Provisions (**REP8-017**).
- Orsted Hornsea Project Three (UK) Limited Comments on any additional information/submissions received by D7 (**REP8-018**).
- Orsted Hornsea Project Three (UK) Limited Protective Provisions (**REP8-019**).
- Richard Hawker Response to HE submission to Deadline 6 and 7 Document Index (**REP8-027**).
- Transport Action Network Summary of Applicant's Response at ISH1 (**REP8-028**).

1.1.3 The Applicant acknowledges the below third party Deadline 8 submissions and has no comments to make as either none are required from the Applicant or the Applicant has responded previously during the Examination process to the issues raised:

- Brown & Co on behalf of Food Enterprise Park Ltd (FEP) and Honingham Thorpe (HTF) Update following Issue Specific Hearing (**REP8-021**)
- Brown & Co on behalf of Food Enterprise Park Ltd (FEP) and Honingham Thorpe (HTF)) Comments on any additional information/submissions received by D7 (**REP8-022**).
- Environment Agency Comments on Document 7.4 Environmental management Plan - Rev 1 (**REP8-016**).
- Dr Andrew Boswell on behalf of Climate Emergency Policy and Planning (CEPP) Rev 2 of Deadline 6 Submission – Tracked Changes (**REP8-023**).
- Dr Andrew Boswell on behalf of Climate Emergency Policy and Planning (CEPP) Deadline 8 Submission - Rev 2 of Deadline 6 Submission - Clean (**REP8-024**).
- George Josselyn Written Summary of oral submissions at ISH3 on 6 January 2022 (**REP8-025**).
- George Josselyn Written Summary of oral submissions at CAH3 on 5

January 2022 (REP8-026).


2 KEY ABBREVIATIONS

2.1.1 The following common abbreviations have been used in the Applicant's submissions to the Examination:

- dDCO = draft Development Consent Order
- DMRB = Design Manual for Roads and Bridges
- ExA = Examining Authority
- NPSNN = National Policy Statement for National Networks 2014
- NWL = Norwich Western Link
- the Scheme = the A47 North Tuddenham to Easton dualling scheme

3 A C MEYNELL

- 3.1.1 A C Meynell's Deadline 8 submission 'Comments on any additional information/ submissions received by D7' (**REP8-020**) is available at:
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010038/TR010038-001581-DL8%20-%20A%20C%20Meynell%20-%20Comments%20on%20any%20additional%20information%20submissions%20received%20by%20D7.pdf>
- 3.1.2 A C Meynell's Deadline 8 submission 'Comments on Applicant's CAH3 Written Submissions' (**REP8-029**) is available at:
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010038/TR010038-001590-%20submissions%20received%20by%20D7.pdf>
- 3.1.3 The following table presents the responses where additional information or clarity from the Applicant is required.

Comment	Applicant Response
<p>2. Lack of appreciation of the designated heritage status</p> <p>The Applicant is wrong to say that there is “no additional designated heritage status under the IHTA” or that Historic England confirmed this view.</p> <p>Quite obviously the Estate has been designated as a heritage asset under the IHTA (See REP1-050 and 051). Historic England say in their reply at ExQ3 (REP6-022) which the Applicant has quoted, only that they defer to Natural England to deal with Ex A’s question about the designation because it was Natural England and not Historic England whose responsibility it was to scrutinize and if they agreed, recommend, the application as they did. Historic England then go on to repeat that the handling of the grade II listed status of Berry Hall was for the local authorities, not them.</p> <p>If what the Applicant means here is that the IHTA designation is not within the definition of “designation” in the same way as a grade II listing is “designation” for the NNPS, the issue as to what weight should be given to the IHTA designation by the S of S determining this DCO application is dealt with by ACM in his RRs at RR-075, his WRs at REP1-044 paras 43-65 and in the WS of his ISH 2 submissions at REP4-023 paras 46-62.</p> <p>Historic England is in any event wrong to say, as it goes on to do half-way down the quoted reply, that the Undertakings are just for maintenance of the land and “not the buildings”, for they do include the structure of all the Estate buildings erected pre-1948.</p> <p>a. ACM’s Undertaking to HMRC (in the part viewable publicly at the Estate’s listing at www.visitukheritage.gov.uk as referred to at REP1-045 para 14) states:</p> <p>“The owners of the land edged red on the map undertake as follows:</p> <p>i. to take all reasonable steps for its maintenance and the preservation of its character and for securing reasonable access to the public in pursuance of which they will abide by the terms of the Heritage Management Plan drawn up in January 2002 in conjunction with The Countryside Agency, in so far as this Management Plan applies to the property”; (underlining and bold added).</p> <p>b. The Heritage Management Plan dated January 2002, introduced in ACM’s statement at REP1-045, para 10, contains a full description of all the Estate buildings in vol 2 entitled “Buildings” (REP1-049) together with the works required to each. The main volume 1 (REP1-048), sets out at section 6 (page no. ACM 03.3 / 35) the works programme for the works to be carried out under the Plan in the first 5 years following designation, those to the buildings being on that and the following page. Confirmation of the carrying out of the works pursuant to the Undertakings and other works more recently, after the first five years, pursuant to the Undertakings and paid for from the funds in the Maintenance Fund, is given in ACM’s annual reports to HMRC at REP1-052, referred to at REP1-045 para 23.</p>	<p>COMMENT ON SCOPE OF ITA DESIGNATION</p> <p>Under the Inheritance Tax Act 1984 (Section 31(1) Designation and undertakings¹) <i>the Treasury may designate sites for any of the following reasons:</i></p> <ul style="list-style-type: none"> • <i>land of outstanding scenic, historic or scientific interest</i> • <i>buildings of outstanding historic or architectural interest</i> • <i>land essential for the protection of such a building</i> • <i>objects historically associated with such a building</i> <p><i>The letter designating [REDACTED] confirming the exemption only states ‘land’(see REP1-050 ACM 3.5 –2003 designation letter). It is noted that this excludes the buildings and the land required for the buildings from the designation since they are not quoted in the designation letter.</i></p> <p>This was previously demonstrated in the ‘Applicant’s Response to Relevant Representations’ (REP1-013), response RR-061.2 stated: “[REDACTED] is described by HMRC as “An area of outstanding scenic interest in Norfolk” (see HMRC document at [REDACTED] with a screen capture from 02/08/2021 at 14:30 included below for reference).”</p>  <p>COMMENT ON ROLE OF NATURAL ENGLAND AND HISTORIC ENGLAND</p> <p>It is also worth noting that the roles of Historic England and Natural England are defined in:</p> <ul style="list-style-type: none"> • The National Heritage Act 1983² created the Royal Commission (Historic England) and set out the functions in Sections 32 and 33. • The Natural Environment and Rural Communities Act 2008³ created Natural England and its remit is set out in Section 2. Section 7 concerns management arrangements.

¹ Available at: <https://www.legislation.gov.uk/ukpga/1984/51/section/31>

² Available at: <https://www.legislation.gov.uk/ukpga/1983/47/contents>

³ Available at: <https://www.legislation.gov.uk/ukpga/2006/16/contents>

Comment	Applicant Response
<p>In order not to have realised this himself, Mr Bennett must have not read ACM's statement (REP1-045) where ACM's obligations for the buildings' upkeep is explained at para 185, or to have read or remembered the relevant parts of the Heritage Management Plan volumes 1 and 2 (REP1-048 and REP1-049) just referred to or to have opened its volume 2 and to wonder why it is entitled "Buildings". This is notwithstanding that they have been available since before Deadline 1 when they were provided to the Applicant's Counsel Mr Michel Fry, and that at REP4-015 Annex C – the Applicant's Written Summary of Mr Bennett's ISH 2 heritage submissions, Mr Bennett refers in paragraph 18 to Volume 1 of the Heritage Management Plan for copies of various nineteenth century plans.</p>	<p>The Applicant understands that this means there is no intended overlap or cultural heritage remit for Natural England. This is reflected in the guidance '<i>Conditional exemption and Heritage Management Plans: An introduction for owners and their advisers</i>⁴' which contains the following statements.</p> <p><u>Page 3</u> states "<i>HM Revenue & Customs will seek advice from Natural England for outstanding land and from English Heritage for outstanding buildings, designated historic sites and historically associated objects.</i>"</p> <p>This infers Natural England are only consulted by HMRC with regards land to be designated for outstanding land. HMRC are required to consult Historic England (previously English Heritage), not Natural England, on tax relief designations related to outstanding buildings, designated historic sites and historically associated objects.</p> <p>Historic England stated in their Deadline 6 submission (REP6-022), "<i>Historic England were not consulted by Her Majesty's Revenue and Customs during the designation of this Inheritance Tax Act (ITA) claim, ...</i>".</p> <p><u>Page 5</u> contains the below two paragraphs that show coverage within the Heritage Management Plan does not mean it is all related to the basis of the designation and that the ITA undertakings for scenic land (and therefore [REDACTED]) is only: "<i>... in so far as this Management Plan applies to the property</i>", where the property is the land not the buildings.</p> <p><i>"Under the Inheritance Tax Act 1984 Section 31, claimants are statutorily required to agree with HM Revenue & Customs the steps that are necessary to maintain the property and to secure reasonable public access to it, and set them out in undertakings. In the case of outstanding land, undertakings have to include maintenance of the land and the preservation of its character."</i></p> <p><i>"The legislation, quoted above and in the footnotes, is concerned with what might be termed 'mandatory' steps. Owners may wish to include wider management work in the Heritage Management Plan that goes beyond the 'mandatory' steps necessary for tax relief purposes. The Agencies would encourage this. These additional steps would be non-mandatory and hence voluntary. It is important to make clear which steps are mandatory and which are voluntary within any Heritage Management Plan that contains both types."</i></p> <p>With regards the mandatory requirements it is important to note that Historic England confirmed, in their Responses to the ExA's further Written Questions (REP6-022), that the designated status under the Inheritance Tax Act 1984 stated: "<i>...relates to the importance of the landscape, not the listed buildings on the estate. This is reflected in the Undertakings which concern maintenance of the land, not the buildings.</i>"</p> <p>COMMENT ON APPLICABILITY WITHIN NNNPS</p> <p>Response RR-061.2 in document '9.2 Applicants Response to the Relevant Representations' (REP1-013) stated:</p> <p><i>"With reference to whether this tax designation is a heritage designation: NPS NN section 5.123 states:</i></p> <p><i>Some heritage assets have a level of significance that justifies official designation. Categories of designated heritage assets are: World Heritage Sites; Scheduled Monuments; Listed Buildings; Protected Wreck Sites; Protected Military Remains; Registered Parks and Gardens; and Registered Battlefields; Conservation Areas.</i></p> <p><i>NPPF Annex 2 defines designated heritage assets as: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.</i></p> <p><i>This guidance is clear that the tax designation of the estate per se is not a "designated heritage asset". However, the Listed Buildings and their setting are designated heritage assets and have been fully taken</i></p>

⁴ Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/350305/NE64-conditional-exemption-heritage-management-plans.pdf

Comment	Applicant Response
	<i>into account in the EIA.”</i>
<p>9. NWL / No NWL – REP4-016 (Applicant’s response to Ex A action list after first hearings Nov 2021) and REP5-016 (Applicant’s response to D4 comments)</p> <p>ACM does not recognise any question he had asked to which the Applicant replied in REP5-016 relevant to this subject. He does not think the answer at this item is directed to him?</p> <p>Would the Applicant clarify?</p>	<p>In the Applicant’s Responses to Deadline 6 Comments (REP7-015), the Applicant was responding to ACM’s statement “<i>There is no evidence provided to demonstrate how the factors considered produced the conclusion which was reached.</i>” in response to the Applicant’s Deadline submission REP5-016.</p>
<p>10. Wood Lane Junction cross sections in reply to ExQ3 (REP7-017).</p> <p>ACM notes that if the Inscribed Circle Diameter (ICD) of the south dumbbell were to be reduced to 70m, the roundabout as well as being retained within the northern woodland belt of the Estate (see REP7-037, App C, photo 6), would have its south-western segment at current ground level or whereabouts and not need an embankment at sections E and F. Will the Applicant confirm?</p>	<p>The Applicant has submitted a Scheme which has been designed to take into account the Scheme objectives and traffic modelling as presented within the Scheme Design Report, Rev.1 (AS-009) and the Case for the Scheme (APP-140).</p> <p>The Scheme design has been through independent governance with the Technical Advisor (Atkins), Highways England’s Safety, Engineering & Standards (SES) and consulted on with the Local Highway Authority and 3 District Councils who form the Local Planning Authorities.</p> <p>The Applicant has submitted final SoCGs at Deadline 9 which confirm the support on the position and form of the Wood Lane Junction of the local highway authority and the three local planning authorities.</p>
<p>D) REP7-036 – Revised Environmental Management Plan (Vol 7, 7.4)</p> <p>ACM has the following comments on the provisions in the above, without prejudice to his primary submission for the adoption of one of the Alternative options, as to requirements for the proper protection of the Estate and its residential and agricultural receptors.</p>	<p>None of the proposed changes to the Environmental Management Plan (EMP), Rev.1 (REP7-036) can be accepted for the following reasons:</p> <p>1) The EMP is designed to apply to the whole Scheme, thus statements are specifically designed to be all encompassing, whilst land parcel specific requirements / commitments are managed through land agreements.</p> <p>This would apply to the following actions in table 3.1 of the EMP:</p> <ul style="list-style-type: none"> • Ch8 – re: protection of vegetation. • LV1 – re: retention of the hedgerows and woodland ride. • LV2 – re: management of landscape planting on south-west and south-east side of Wood Lane junction. • LV3 – re: engagement of arboricultural consultant and felling on trees on the estate. • LV4 – re: retention, replacement and reinforcement of existing vegetation. • BD1 – re: establishment and removal of Satellite Compound 2. • GS6 – re: managing impacts on field drainage and water supply. • NV1 – re: reduction of construction noise by the cattle shed and Merrywood House. <p>2) Some requests relate to issues that are already committed to within the Scheme design, so are not required to be covered in the EMP. This would apply to the edits proposed to the following actions in table 3.1 of the EMP:</p> <ul style="list-style-type: none"> • <u>NV3 – re: operational low noise road surface 500m either side of Wood Land junction.</u> NV3 already provides this requirement: “<i>The A47 dual carriageway as shown on the Environmental Masterplan (TR010038/APP/6.8) shall be surfaced with a low-noise road surface.</i>” As stated in ES Chapter 11, paragraph 11.9.22, part of the embedded mitigation measures, within the Scheme design, include the whole of the A47 dual carriageway within the Scheme extents would be surfaced with a low-noise road surface. <p>3) Some requests are managed as part of detailed design discussions and agreements as part of consent applications to the relevant determining authorities, such as the Environment Agency, Norfolk County Council (as Lead Local Flood Authority(LLFA)) and Norfolk Rivers Internal Drainage Board (IDB). This would apply to the edits proposed to the following actions in table 3.1 of the EMP:</p> <ul style="list-style-type: none"> • RD1 – re: sediment control for discharges into the ditch beside Berrys Bridge and subsequently the River Tud. • RD9 – re: management of Scheme’s impact on flood risk upstream of Berrys Bridge. <p>4) Some of the requests cannot be delivered as the relevant</p>

Comment	Applicant Response
	<p>Environmental Statement chapter does not identify a significant effect warranting investment in provision of such mitigation.</p> <p>This would apply to the edits proposed to the following actions in Table 3.1 of the EMP:</p> <ul style="list-style-type: none"> <p>CH2 – re: vibration monitoring for the crinkle cranke wall As stated in Section 4 of the Applicant's Response to the Written Representations (REP3-022), no Scheme construction plant would use the New Back Drive past the wall, as this section lies outside the DCO boundary. Table 11.6 in ES Chapter 11 Noise and Vibration (APP-051) sets out indicative distances, defined by guidance based on historical field measurements, at which certain construction activities are expected to result in a level of vibration below 1mm/s peak particle velocity (PPV). The furthest distances range from 10m for heavy construction vehicles to 30m for rotary bored piling. The DCO boundary is approximately 30m from the wall at its closest point, but at this point the wall is only at risk from construction activities that have a vibration risk range of 10m; the most vibration intense activities would be located around the Wood Lane junction, further reducing the risk of vibration impacts.</p> <p>NV1 – re: construction traffic along Berrys Lane via Berrys Bridge. Construction traffic will access the construction work area from the A47 and northern end Berrys Lane, not along Berrys Lane from Mattishall Road to the south. No construction activity is required south of Berrys Bridge over the river Tud. This commitment will be managed through the traffic management plan, secured through Requirement 10 'Traffic Management' of the dDCO (APP-017).</p> <p>NV2 – re: operational noise and visual bund. Screening for visual and noise purposes is provided where required as identified by the assessments undertaken and proposed mitigation detailed within Environmental Statement Chapter 7 Landscape & Visual (APP-046) and Chapter 11 Noise & Vibration (APP-051). For [REDACTED] there is no requirement for the provision of a noise bund during operation of the Scheme and visual screening is provided by landscape planting, as illustrated within the Environmental Masterplan, Rev.4 (REP8-011). It is also not possible to use the proposed temporary construction screening bund as that will comprise the topsoil cleared from the compound and construction work area, so will be required to restore the land for agricultural use post construction.</p>

Comment	Applicant Response
<p>ACM comment</p> <p>ACM welcomes the commitment to minimise permanent land take in the detailed design stage if the DCO is granted.</p> <p>In this connection ACM, without prejudice to his beliefs as to the merits of the Alternative options, invites the Applicant to commit and by legal agreement with ACM agree that in the course of the detailed design of the Wood Lane Junction (WLJ) south dumbbell roundabout and the roads entering it if the DCO were otherwise to be approved, to seek to reduce its adverse impact on the Estate by</p> <ol style="list-style-type: none"> 1) minimising the inscribed circle diameter (ICD) of the WLJ south dumbbell roundabout by appropriate adjustment of the three most significant variables relating to each entry as recommended in CD116¹, to achieve, if feasible, an ICD not more than or not significantly more than, 70m and 2) minimising the land to be taken up by the curve leading to the roundabout of the proposed spur road taking the detrunked A47 to the WLJ south dumbbell, through agreement with Norfolk County Council as the Overseeing Organisation for the detrunked A47 that Manual for Streets or Designing Streets may be used in its design in accordance with the recommendation in GG101 para 2.1.1, or 3) in each case, by other design means, <p>with a view, using all reasonable endeavours, to procuring that the highway boundary of the WLJ south dumbbell roundabout and its detrunked A47 approach road from the east will, while adhering to the principal objectives set out in the introduction to CD116² remain, while on land acquired from the Estate, within woodland groups G232 and G159.</p>	<p>As stated in the 'Applicant's Written Summary of Oral Submissions at CAH3 (REP7-016),</p> <p>"The reduction of temporary and permanent land take will form part of the process undertaken at the detailed design stage. This is a standard approach for the delivery of major highways schemes. As part of this process the Applicant will seek to minimise land take, on the basis of more up-to-date information and detailed design. Once the Applicant has analysed the further geotechnical information this too will assist in scaling back the land take and the Applicant is committed to following this process. The Applicant cannot say what that will be at this stage without the detailed design process being undertaken. The Applicant is committed to delivering this as the Project moves forward."</p> <p>Therefore, the Applicant cannot make specific land reduction commitments in a land agreement.</p> <p>The Applicant has also responded to the 70m ICD proposal above.</p>

4 NORFOLK COUNTY COUNCIL

4.1.1 Norfolk County Council's Deadline 8 submission 'Protective Provisions' (REP8-017) is available at:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010038/TR010038-001538-DL8%20-%20Norfolk%20County%20Council%20Protective%20Provisions.pdf>

4.1.2 The following table presents the responses where additional information or clarity from the Applicant is required.

Comment	Applicant Response
<p>Norfolk County Council has been in discussions with the Applicant in relation to the management of the handover process of roads that are to be de-trunked under the DCO and new local roads that are to be created under the DCO; as well as the management of the construction and handover of the 'stub' for the Norwich Western Link.</p> <p>Whilst NCC hopes that the parties can agree a legal agreement as to the management of these processes, some key outstanding issues remain; as NCC seeks to ensure that the additional financial burden that is created by the de-trunking and new road creation process carried out by National Highways is appropriately minimised.</p> <p>In light of an Agreement not yet being able to be reached and the forthcoming end of the Examination, NCC is seeking to ensure that its position is protected above and beyond the high level consents and 'satisfaction' that it is required to give under articles 14 and 17 of the draft DCO, through ensuring that there are proper processes and demarcation of responsibilities between the parties.</p> <p>As such, the county council is minded to submit draft Protective Provisions for its benefit which NCC would request are included in any DCO that is made for the Scheme. These draft</p>	<p>The Applicant agrees with Norfolk County Council's position that the parties have been in detailed discussions over a significant period to agree the heads of terms for a handover agreement. It was agreed with NCC that the handover agreement would cover the three A47 Schemes for which NCC is the local highway authority and that are currently the subject of DCO applications to the Planning Inspectorate: A47 Blofield to North Burlingham (TR010040), A47 North Tuddenham to Easton (TR010039) and A47/A11 Thickthorn Junction (TR010037).</p> <p>The remaining elements of NCC's submissions at Deadline 8 were somewhat of a surprise to the Applicant. As mentioned above the Applicant and NCC have been in discussions surrounding the handover agreement for a number of years and a SoCG between the parties has been progressing throughout the Examination. At no point in those discussions has NCC raised that it would like to have protective provisions included within the DCO. Protective provisions have not been raised as part of the SoCG either. Furthermore NCC has been engaged in the Examination process from the very beginning, has made numerous submissions on the draft DCO and other points, and attended all of the hearings, and again, has made no mention of requiring protective provisions in the DCO.</p> <p>For NCC to bring up the issue at this very late stage is manifestly unfair on the Applicant, given the ample number of opportunities NCC has</p>

Comment	Applicant Response
<p>Protective Provisions would seek to deal with all issues relating to the construction and handover of local highways and the Norwich Western Link (NWL) stub dealt with by the DCO, to ensure that NCC's position as local highways authority is appropriately considered and protected.</p> <p>These Protective Provisions we have in mind would primarily be adapted from Protective Provisions for the local highways authority agreed to by National Highways on the A303 Sparkford to Ilchester DCO; whilst also having regard to precedent local highway authority Protective Provisions that are in the made DCOs for the Tilbury2, West Midlands SRFI, Northampton Gateway SRFI and the East Midlands Gateway SRFI projects.</p> <p>NCC will continue to discuss its concerns with National Highways, including in relation to the drafting of its Protective Provisions, with the hope of agreeing all issues between us. However, failing this Agreement, NCC must ensure its interests as local highways authority are adequately protected and, to this end, the county council is minded to bring forward draft Protective Provisions.</p> <p>The county council also intends to respond in relation to matters raised at the Issue Specific Hearing (3) on 6 January 2022. Taking into account the amount of material the county council is having to consider we have been unable to meet Deadline 8 but will submit responses to matters raised on the following topics as soon as we are able:</p> <ul style="list-style-type: none"> â€¢ Western Longville Traffic Measures â€¢ Assessment of the junction proposals at Wood Lane â€¢ Walking and cycling matters. 	<p>had to request protective provisions. Despite heralding that NCC was considering requesting the inclusion of protective provisions in the DCO at Deadline 8, it has so far not provided any wording to the Applicant to consider. NCC did suggest to the Applicant that it would provide wording by Wednesday 2 February for the Applicant to review, in order that initial comments at the very least could be returned to NCC and submitted to the ExA in time for Deadline 9. However, this was not done and so at this stage the Applicant is not in a position to be able to understand or provide any comments on NCC's proposals. There is not enough time in the remaining Examination timetable for the Applicant and NCC to agree the protective provisions, nor is there enough time for the ExA to consider the request and carry out its own duties to properly examine the proposals. The consideration of the protective provisions at this stage would be prejudicial to the Applicant and any other parties who may wish to comment on the protective provisions.</p> <p>The Applicant's view is that there are sufficient protections in Article 12 of the DCO for NCC as local highway authority in relation to the handover of assets and local highways. This Article requires the approval of all highways that are not Trunk Roads to be completed to the reasonable satisfaction of the local highway authority and that any such roads will be maintained by the local highway authority from completion. In addition, the Applicant is committed to entering into a more detailed handover agreement with NCC, which will deal with the detailed mechanisms for the handover of the assets.</p> <p>The Applicant notes the reference to protective provisions having previously been approved in the A303 Sparkford DCO. However, there are very limited (if any) other Highways England DCOs that include protective provisions for the benefit of the local highway authority due to the drafting of Article 12. The usual approach is for separate agreements to be entered into by Highways England and the local highway authority (as it was agreed would take place here). The ExA should also be made aware that those protective provisions were requested at an early stage of the A303 Sparkford Examination meaning the ExA was able to properly examine the provisions and arguments by both parties before writing his recommendation to the Secretary of State. A comparison to Tuddenham cannot be drawn here.</p> <p>Given the comments above, the Applicant is of the view that it would be inequitable to consider including the protective provisions submitted by NCC at Deadline 9.</p>

5 ORSTED HORNSEA PROJECT THREE (UK) LIMITED

- 5.1.1 Orsted Hornsea Project Three (UK) Limited's Deadline 8 submission 'Comments on any additional information/submissions received by D7' (**REP8-018**) is available at:
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010038/TR010038-001541-DL8%20-%20Orsted%20Hornsea%20Project%20Three%20Limited%20submissions%20received%20by%20D7%201.pdf>
- 5.1.2 Orsted Hornsea Project Three (UK) Limited's Deadline 8 submission 'Protective Provisions' (**REP8-019**) is available at:
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010038/TR010038-001540-DL8%20-%20Orsted%20Hornsea%20Project%20Three%20Limited%20-%20Comments%20on%20any%20additional%20information%20submissions%20received%20by%20D7.pdf>
- 5.1.3 The following table presents the responses where additional information or clarity from the Applicant is required.

Comment	Applicant Response
<p>Written submission of Orsted Hornsea Project Three (UK) Limited for Deadline 8:</p> <p>Following the issue specific hearing on 6 January 2022, the Applicant has provided comments and suggested amendments to Orsted Hornsea Project Three (UK) Limited on the draft protective provisions submitted at Deadline 4 [REP4-021].</p> <p>A number of the amendments are acceptable to Orsted Hornsea Project Three (UK) Limited and have been included in an updated version of the protective provisions submitted by Orsted Hornsea Project Three (UK) Limited at Deadline 8.</p> <p>However, some of the amendments requested by the Applicant are not acceptable to Orsted Hornsea Project Three (UK) Limited as they would have resulted in a risk to the deliverability of Hornsea Three, a consented nationally significant</p>	<p>The co-operation agreement is close to finalisation and on that basis the Applicant's position is that protective provisions are not needed and these have not been included in the final dDCO submitted at Deadline 9.</p> <p>The Applicant hopes to be in a position to confirm that the co-operation is agreed before Deadline 10.</p>

Comment	Applicant Response
<p>infrastructure project.</p> <p>Orsted Hornsea Project Three (UK) Limited is keen to work collaboratively with the Applicant and discussions are ongoing in respect of the protective provisions and a separate collaboration agreement. However, in the absence of such an agreement, Orsted Hornsea Project Three (UK) Limited requires certain assurances and procedures to be included in the DCO so as to ensure that Hornsea Three can be constructed without impediment including minimising any construction programme delays or additional costs.</p> <p>This includes requirements to:</p> <ul style="list-style-type: none"> • obtain consent from Orsted Hornsea Project Three (UK) Limited prior to exercising any powers in the DCO that may interfere or conflict with the powers already granted in the Hornsea Three Offshore Wind Farm Order 2020; • obtain consent from Orsted Hornsea Project Three (UK) Limited prior to discharging any requirements relating to those parts of the authorised development that interact with, or are required for, Hornsea Three; • ensure that any new rights that are granted to Orsted Hornsea Project Three (UK) Limited are no less favourable than its existing rights; • obtain consent from and provide plans to Orsted Hornsea Project Three (UK) Limited for approval prior to undertaking works that may affect Hornsea Three; and • compensate Orsted Hornsea Project Three (UK) Limited for reasonable costs and expenses incurred as a result of the authorised development including the approval of plans and obtaining new rights and/or consents. <p>In the absence of such provisions, there is a real risk that the authorised development will cause serious detriment to Hornsea Three.</p> <p>It is noted that Part 1 of Schedule 9 to the draft DCO [REP7-004] already includes protective provisions for the benefit of licence holders under the Electricity Act 1989 in respect of existing apparatus. It also includes bespoke protective provisions for the benefit of National Grid Electricity Transmission plc in Part 3 of Schedule 9. These provisions include restrictions on the exercise of DCO powers without the consent of the licence holder or National Grid, obligations to provide new rights that are no less favourable, requirements to provide plans for approval prior to undertaking works and obligations to compensate for costs and expenses. However, the provisions in Part 1 only apply to apparatus that is already installed and in operation. Bespoke protective provisions for the benefit of Orsted Hornsea Project Three (UK) Limited are therefore required to ensure that the construction of new apparatus as part of Hornsea Three is not impeded, particularly in light of the temporal and physical overlap with the construction of the authorised development.</p> <p>Orsted Hornsea Project Three (UK) Limited is the holder of a generation licence pursuant to the Electricity Act 1989 and Hornsea Three includes high voltage underground electricity cables that will connect to the national electricity transmission network operated by National Grid. Orsted Hornsea Project Three (UK) Limited is seeking similar protections to those already granted to other Electricity Act 1989 licence holders and National Grid in the draft DCO. Orsted Hornsea Project Three (UK) Limited therefore considers it necessary, reasonable and proportionate for protective provisions for its benefit, in the form submitted at Deadline 8, to be included in the DCO.</p>	

6 RICHARD HAWKER

6.1.1 Richard Hawker's response to the Applicant's Deadline 6 and 7 submissions (**REP8-027**) is available at the link below:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010038/TR010038-001583-DL8%20-%20Richard%20Hawker%20-%20Comments%20on%20any%20additional%20information%20submissions%20received%20by%20D7.pdf>

6.1.2 The following table presents the Applicant's response to the issues raised.

Comment	Applicant Response
<p>1) Traffic and transport.</p> <p>a) The Applicant challenges me to offer examples of where I believe their traffic modelling predictions have been very inconsistent. I have done so at most opportunities. In REP5-017 I asked 19 questions, some regarding inconsistencies, and my appendices pointed out in great detail, with diagrams, where there appear to be very significant inconsistencies in both the base</p>	<p>The Applicant responded to all 19 questions presented by Mr Hawker at Deadline 5 (REP5-017) at Deadline 6 in document '9.23 Applicant's Responses to Deadline 5 Comments' (REP6-017), which Mr Hawker mentions in paragraph (b) that he has reviewed.</p>

Comment	Applicant Response
<p>model and the predictions. I received no response to those observations; I have restructured them as specific questions in deadline 7.</p> <p>b) Regarding turning counts, the applicant kindly refers me, in REP6-017 Q4, to HE's e-mail of 8 June 2021, which included a spreadsheet of information.</p> <p>i) It is not clear to me whether these figures are outputs from the 2015 SATURN model (and I still do not know whether the output from a model necessarily conforms with an actual count), or the 2019 turning counts mentioned in Mr Powis' e-mail; I can find no reference to month or year in the tables themselves.</p> <p>ii) In each table given, it is not stated which direction the figures are referring to; it is not possible to say whether traffic is going from Road A into Road B, or Road B into Road A. Such information would help to refine the content of my REP5-017 report.</p> <p>iii) Although there is indeed a table for Wood Lane/Berry's Lane (my mistake), there is no table for the Roundwell junction, and that at Norwich Road, the next junction further east. The junction furthest east for which turning counts are shown is the Easton/Lower Easton junction.</p>	<p>i) Observed 2015 and 2019 traffic survey data was provided in the spreadsheets.</p> <p>ii) The turning count data are defined in a Origin – Destination table format, with the rows defining "From Road" and the Columns defining the "To Road"</p> <p>The traffic model data in the tables within the Case for the Scheme (APP-140) have a column defined the direction of traffic, such as EB (eastbound), WB (westbound), SB (southbound) and NB (northbound).</p> <p>iii) Paragraphs 4.2.5 to 4.2.9 of the Case for the Scheme (APP-140) describe the traffic surveys (Manual Classified Turning Counts (MCTCs) and Automated Traffic Counts (ATCs)) undertaken along the A47 Scheme section and across the surrounding network in 2015, 2016 and 2019.</p> <p>Figures 4.2 and 4.4 show these survey locations included Honingham roundabout, where Norwich Road meets the existing A47, and Taverham Road / Blind Lane junction (the position of the proposed Norwich Road junction).</p> <p>The Applicant assumes 'Roundwell junction' is a reference to the Roundwell Monument, Longwater Lane/Dereham Road Junction east of in New Costessey, east of Longwater Retail Park. Figure 4.3 shows ATCs were taken at this junction in 2016.</p>
<p>2) Landscape</p> <p>I do not understand how the landscape impact on the viewpoint at the bridge over the River Tud in Hockering can be considered slight, at any time during or after building of the road. It is massive. Even with planting of trees, the current vista from that location will be seriously compromised. How can the building a four-lane road around 25 metres away ever be considered less than severe?</p>	<p>With regards visual effects from vicinity of the bridge over the River Tud in Hockering, the Applicant assumes Mr Hawker refers to Appendix 7.5 (APP-093) and the assessment of visual effects from Viewpoint 3 which is located in proximity to the River Tud. A full description is provided regarding the baseline view, which includes the existing A47, and the assessment of effects during construction, opening year (Year 1) and fifteen years following the opening of the scheme (Year 15). In addition, this assessment is supported by verified photomontages in Figure 7.6.4 (APP-062).</p> <p>In reference to landscape impact, the applicant refers Mr Hawker to Appendix 7.3: Landscape Character Assessment (APP-091) and specifically section 1.3 which assesses the landscape effects of the scheme on Breckland Landscape Character Area A5: Upper Tud, within which the location Mr Hawker refers to is located. A full description is provided regarding the baseline landscape character description and the assessment of effects during construction, opening year (Year 1) and fifteen years following the opening of the scheme (Year 15).</p> <p>In both the landscape and visual assessments, the assessment at Year 15 takes into account the mitigation planting proposed throughout the scheme, as illustrated within the Environmental Masterplan, Rev.4 (REP8-011).</p>

7 TRANSPORT ACTION NETWORK (TAN)

7.1.1 TAN's Deadline 8 submission 'Summary of Applicant's Response at ISH1' (**REP8-028**) is available at:
<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010038/TR010038-001585-DL8%20-%20TAN%20follow%20up%20letter%20about%20NH%20legal%20statements.pdf>

7.1.2 The following table presents the responses where additional information or clarity from the Applicant is required.

Comment	Applicant Response
<p>National Highways badly worded representation of the RIS2 legal challenge</p> <p>In REP7-015 (page 12) National Highways requests that we retract our comments about its representation of the RIS2 legal challenge made in our letter on 14 December, 2021. It appears particularly aggrieved at the suggestion it might have deliberately misled the Examination:</p> <p><i>This is a very serious allegation that the Applicant has deliberately misrepresented factual matters to the Examination.</i></p> <p>It is wholly unwarranted and wrong. I am happy to withdraw the suggestion that it might have been done deliberately although it is worth reiterating that in our letter dated 14 December, 2021, I stated that the misrepresentation was either deliberate or in error and not definitively deliberate. However, having spoken to our lawyers, the statement made by the Applicant contains at least one factual error and was also badly worded which has led to the confusion.</p> <p>To expand on this, the wording in REP4-015 on page 28 states:</p> <p>Summary of Applicant's Response at ISH1</p> <p><i>This case is not specifically to do with the determination of applications for DCO projects, it was an application for judicial review into the road investment strategy (RIS) decision of the Secretary of State's on the 11th March 2020, pursuant to section 31 of the Infrastructure Act 2015.</i></p> <p>This is incorrect as it should be section 3(5)(a), not section 31 of the Infrastructure Act 2015.</p> <p>Secondly and the reason I was confused by the Applicant's wording is that they state that:</p> <p><i>Dr Boswell doesn't refer to the case in relation to this Scheme other than to note that there is an appeal against the refusal of full permission for judicial review.</i></p> <p>That is wrong as there's no such thing as "full permission": you either get permission or not; if you don't, then you appeal the refusal of permission; but our situation was that we got permission, so our appeal was against the refusal of the substantive claim by the High Court. While the Applicant claims [REP7-015] that they made this clear in REP4-015, at no point did they use the word substantive to describe the claim.</p> <p>Regardless of whether there was any intent or not, this wording was misleading which is what my letter of 14 December 2021 was attempting to point out.</p> <p>I trust this helps clarify things and clears up any confusion.</p>	<p>TAN is incorrect to refer to section 3(5)(a). Justice Holgate referred to section 3(1) of the Infrastructure Act 2015, though we acknowledge the transcription had recorded this as section 31 (see page 14 of EV-032).</p> <p>However, at 36mins 06 seconds in the 'Recording of Issue Specific Hearing 2 (ISH2) - Environmental Matters, Part 1, Session 4 (4 November 2021), (EV-024a) the Applicant is clearly heard saying Section 3(1) not 31.</p> <p>As to the second point, whilst there may have been some uncertainty regarding the Oral Submissions in isolation, they were presented alongside the Applicant's additional comment on the Oral Submissions, so no doubt at all as to what the Applicant was saying.</p>