



National Infrastructure Planning
Temple Quay House
Temple Quay
Bristol
BS1 6PN

12 February 2022

Dear Mr Johansson

**APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING DEVELOPMENT
CONSENT FOR A47 NORTH TUDDENHAM TO EASTON (TR010038)**

EXAMINATION DEADLINE 10 SUBMISSION

Deadline 10 Submission Documents

In response to Deadline 10, dated 12 February 2022, in the Rule 8 letter please find enclosed the following documents:

- Joint letter providing an update on the Ørsted co-operation agreement confirming to the Examining Authority that the co-operation agreement was completed on Friday 11 February 2022 and the request for protective provisions by Ørsted is hereby withdrawn. The parties hereby confirm that all outstanding matters have now been resolved and Ørsted has no objections in relation to the DCO application.
- 8.11 Statement of Common Ground – A C Meynell, owner of Berry Hall Estate, Rev.2_FINAL (SIGNED) – a fully signed version of the Deadline 9 issue (**REP9-032**), with no changes to the content so no track changes version provided.
- 9.37 Applicant's Response to the Rule 17 Request in February 2022 (**TR010038/EXAM/9.37**)
- 9.38 Statutory Undertakers' Schedule (**TR010038/EXAM/9.38**)

We have also enclosed an updated 9.1 Guide to the Application, Revision 10 (**REP9-002**), in tracked and clean versions, to show the DCO application documents revision changes.

Minor Update Request to Draft Development Consent Order (REP9-008)

National Grid Gas ("NGG") wrote to the Applicant following Deadline 9 and highlighted that a cross-reference in the protective provisions included for the benefit of NGG was incorrect. The error is contained in paragraph 17(2) of Part 3 of Schedule 9 (page 152) of the draft DCO, which should read article 10 and not article 11.

Given the minor correction to the above, and that there are no other changes to the draft DCO submitted at Deadline 9, the Applicant is not proposing to update the draft DCO nor prepare a Schedule of Changes, but wanted to highlight this error to the Examining Authority for their attention.

Applicant's response to NCC D9 Submissions

The Applicant re-iterates its submissions at Deadline 9 and its view that the unheralded request for protective provisions at this late stage of the Examination is prejudicial to the

Applicant and others who may wish to comment on their inclusion. The Applicant maintains that it has not been given enough time by Norfolk County Council ("NCC") to review and negotiate the form of protective provisions and so on that basis it is only able to comment on points of principle arising in the proposed protective provisions.

Commuted Sum

The inclusion of a request for a commuted sum is not agreed. It is not required to address a direct impact of the Scheme and goes above and beyond that which is necessary to make the Scheme acceptable in planning terms. The Applicant is of the view that there is a mechanism in place already that provides for local highway authorities to receive funding for the highways that it is responsible for. The highways that are to be handed over to NCC will be included in budget calculations so that adequate funding is provided from Central Government to cover NCC's costs of maintaining the highways it is responsible for. On this basis the inclusion of a commuted sum in addition to the funding that NCC will receive from Central Government would in fact amount to double recovery.

The Applicant agrees in principle to a period of maintenance during which the Applicant remains responsible for maintaining the highways to be de-trunked (the length of time will be Scheme specific and is still to be agreed). The protective provisions submitted by NCC also require a maintenance period. On that basis there is no need for the payment of a commuted sum for maintenance as well. It does not serve any purpose as the responsibility for initial maintenance is already placed on the Applicant, so there is no impact to be mitigated, nor does it serve to protect any existing infrastructure (as is usually the case with protective provisions). This submission is supported by the fact that NCC has not submitted any evidence to demonstrate that there will be any direct impact financially on NCC as a result of the Scheme and proposed handover of assets. On the basis no evidence has been submitted, the Applicant is unable to consider the proposed calculation for the commuted sum included in the Protective Provisions. Nevertheless, the open ended nature of such mechanism and absolute discretion afforded to the local highway authority is entirely unacceptable and could render the delivery of the Nationally Significant Infrastructure Project (NSIP) unviable.

Section 120 of the Planning Act 2008 sets out what items may be included in a DCO, including (at s120(2)(a)) "*requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, [...] which [...] would have been required for the development*". Conversely if matters are not required for the development, then they may not be included in the DCO. As set out above, NCC have done nothing to demonstrate or justify the need for a commuted sum. Therefore, it is the Applicant's position that this is not required to mitigate any impacts arising from the Tuddenham Scheme, nor is it required for the protection of existing infrastructure. On that basis, the inclusion of a commuted sum does not meet the test in section 120 of the 2008 Act and therefore cannot be included in the A47 North Tuddenham to Easton DCO.

Norwich Western Link Stub

The Applicant notes that reference has been included in the protective provisions for the provision of the Norwich Western Link ("NWL") Stub. The purpose of the inclusion of the NWL Stub as part of the scheme was to assist NCC in their future proposals for delivering the NWL road scheme. The NWL proposals have not yet been finalised and no consent has been granted. Work No 98 of the draft DCO (**REP9-008**) was included in the Tuddenham Scheme to allow the NWL to link into the Wood Lane northern roundabout and to create efficiencies with public spending in the event that the NWL does come forward. It should be noted that the NWL Stub will not be dedicated as a road, but treated as a private parcel of land unless and until NCC choose to adopt it as part of the NWL Scheme. The protective provisions seek to ensure the delivery of the NWL Stub by the Applicant regardless of whether the NWL has been granted consent. The Applicant is unclear what purpose this is serving in protecting NCC's existing assets, nor what relation it has to the handover of

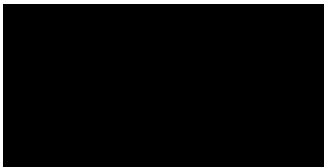
assets as the NWL Stub will not be dedicated as a road. There is no doubt that the delivery of the NWL stub will be beneficial to NCC and it is understandable that there is a desire to see this element delivered by the Applicant but at NCC's costs. However, this drafting has no place in the protective provisions nor anywhere else on the face of the dDCO. The NWL stub has been included as part of the Tuddenham Scheme and it is for the Applicant to decide if and when this element is constructed. Nevertheless, the Applicant has every intention of working closely with NCC and is currently negotiating heads of terms that deal with the delivery of the NWL stub as part of the implementation of the DCO.

As set out above, section 120 of the Planning Act 2008 sets out what items may be included in a DCO. The Applicant is of the view that the provisions relating to the NWL Stub do not qualify as conditions which must be placed on the delivery of the Tuddenham Scheme to make it acceptable in planning terms and fail to meet any of the criteria set out in section 120 of the 2008 Act. Therefore this element of the protective provisions cannot be included in the A47 North Tuddenham to Easton DCO.

The Applicant is disappointed that it has not been afforded an opportunity by NCC to provide detailed comments on the form of the protective provisions and, on that basis, the Applicant maintains its objection to the inclusion of protective provisions for the benefit of the local highway authority. Notwithstanding this, the Applicant does request that the above points of principle are considered by the Examining Authority. The Applicant will continue to honour the approach originally agreed with NCC and will work with NCC in order to agree an overarching handover agreement for the three A47 DCO schemes.

If you have any queries on any of these matters please do not hesitate to contact me.

Yours sincerely



Senior Project Manager
Highways England

A47NorthTuddenhamtoEastonRIS@highwaysengland.co.uk