

A1 in Northumberland Alnwick to Ellingham

Section 51 Advice –draft Application Documents by Highways England for PINS review

This advice relates solely to matters raised upon PINS review of the draft application documents submitted by Highways England (“the Applicant”), and not the merits of the proposal. The advice is limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. It is provided to assist the preparation of the next iteration.

Abbreviations used [delete/add where appropriate]

PA2008	<i>Planning Act 2008</i>	BoR	<i>Book of Reference</i>	dDCO	<i>draft Development Consent Order</i>
EM	<i>Explanatory Memorandum</i>	ExA	<i>Examining Authority</i>		
PINS	<i>Planning Inspectorate</i>	SoR	<i>Statement of Reasons</i>	SoS	<i>Secretary of State</i>

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
1.	General		The Applicant should ensure that all cross references and legal footnotes within the dDCO are checked and corrected where necessary/relevant.
2.	Article 4 – maintenance of the authorised development		Although this would be a matter for examination the Applicant should consider whether the limitation to the extent of maintenance authorised in this Article 4 (and via the definition) should apply to maintenance authorised elsewhere in the DCO.
3.	Article 6 – planning permission		Notwithstanding precedent, this article requires further justification. The Applicant should consider why it needs to secure planning permission for development within the Order limits? i.e. why would development required to complete or enable use/operation of the authorised development not have been authorised through the DCO?

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
4.	Article 11 – power to alter layout etc. of streets		This is a wide power – authorising alteration etc with <u>any</u> street within the Order limits. The Applicant should demonstrate why this power is necessary and consider whether it should be limited to identified streets.
5.	Article 12 – street works		Notwithstanding precedent, the Applicant should explain why the wide power is necessary in this particular case. How do the works within streets identified in Schedule 1 (and authorised through article 3 (1)) relate to the works authorised through articles 11 and 12?
6.	Article 15 – temporary stopping up and restriction of use of streets		Notwithstanding the precedents, it will be for the ExA to consider, depending on the facts of this particular DCO application, whether it is necessary/ appropriate to authorise the use of streets as temporary working sites. Further justification in the EM would be helpful.
7.	Article 17 – access to works		The Applicant should consider why this power is necessary.
8.	Article 22 - Powers in relation to relevant watercourses		The applicant should be prepared to provide full justification for this article – including the nature of the works, those affected and what consultation has been carried out
9.	Article 24 – protective works to buildings		Notwithstanding drafting precedent in other DCOs, the EM should explain why this power is necessary in the circumstances of this particular NSIP.
10.	Article 25 – authority to survey and investigate land		Notwithstanding drafting precedent in other DCOs, the EM should explain why this power is necessary in the circumstances of this particular NSIP.

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
11.	Article 29 – compulsory acquisition of rights		<p>Full justification should be provided for the power to impose restrictive covenants. The Applicant should note paragraph 26 of Advice Note 15: “Before deciding whether or not the power is justified the Secretary of State will need to consider issues such as proportionality; the risk that the use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose restrictive covenants”.</p> <p>Note also the Secretary of State’s decision (paragraph 62 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO) “to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used”.</p>
12.	Article 40 – felling or lopping of trees and removal of hedgerows		The Applicant should follow the guidance in section 22 of Advice Note 15 . If this has not been followed the applicant should justify why this is the case.
13.	Article 44 – defence to proceedings in respect of statutory nuisance		The Applicant should explain why this article is necessary in the circumstances of this NSIP.
14.	Schedule 3 – classification of roads, etc.		Currently not completed, to be completed on submission of application.

Draft Development Consent Order			
Q No.	Article (A)/ Requirement (R)	Extract from dDCO (for ease of reference)	Comment/Question
15.	Schedule 4 – permanent stopping up of streets, public rights of way and private means of access		Currently not completed, to be completed on submission of application.
16.	Requirement 3		<p>The preferred wording for this requirement is in bold (which has precedent in A19/A184 Testo’s Junction DCO, for example):</p> <p>Detailed design 3.—(1) The authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.</p> <p>(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.</p>
17.	Schedule 1		Is it intended that the grid references will remain in Schedule 1 when describing the works?

Draft Explanatory Memorandum			
Q No.	Paragraph	Extract from dEM (for ease of reference)	Question/comment
1.	General draft EM (dEM)		<p>Generally, the dEM tends to explain the <i>effect</i> of the relevant provision in the DCO, rather than explaining <i>why</i> it its necessary.</p> <p>Further explanation and evidence (including the outcomes of any consultation) is required to explain why the content of each article, schedule etc to the dDCO is relevant and required for this proposal. Please refer to AN15.</p> <p>This should include reference to the particular circumstances of this development and an explanation as to why this is necessary or desirable.</p>

Draft Land Plans			
Q No.	Land Plan Ref	Extract from Plan Key (for ease of reference)	Question/Comments
1.	All		It would be helpful to include a mini version of the key on each page so viewers can see where the sheet fits in the bigger picture (see the Land Plans for M25 Junction 10/A3 Wisley Interchange scheme).
2.	3-1x and 3-1y		The Applicant may wish to consider using an insert to enlarge these plots in order provide clarity to the reader.
3.	General		<p>It appears that some parcels of land are divided into multiple parts by boundaries, for example 2/5k and 2/5m.</p> <p>The Applicant is advised to ensure that each individual parcel of land has clearly defined boundaries and their own plot references.</p> <p>If additional plot numbers are added, the Applicant is advised to ensure that their details are reflected in the BoR, dDCO, SoR and any other relevant documentation.</p>
4.	General		There appears to be a number of instances where plots listed in the BoR are not depicted on the Land Plans, for example 1/1d and 3/7c.

Draft Land Plans			
Q No.	Land Plan Ref	Extract from Plan Key (for ease of reference)	Question/Comments
5.	General		How was the approach to run the plans from south to north chosen? This approach makes it difficult to navigate down the route on a screen.

Draft Works Plans			
Q No.	Work Plan Ref	Extract from Schedule 1: Authorised Development (PART 1)	Question/Comments
1.	All		It would be helpful to include a mini version of the key on each page so viewers can see where the sheet fits in the bigger picture (see the Works Plans for M25 Junction 10/A3 Wisley Interchange scheme).

Draft Consultation Report			
Q No.	Paragraph/Section	Extract from CR (for ease of reference)	Question/Comments
1.	2.1.5	<i>A copy of the 2016 non-statutory consultation report is provided at Appendix A of this Report</i>	Appendix A is a copy of the A1 Morpeth to Ellingham non-statutory consultation brochure. The 2016 non-statutory consultation report is Appendix J12.
2.	2.2.5		The percentage values of the non-statutory results do not equate to 100% in total. Is this an error?
3.	2.2.8	<i>the non-statutory consultation can be found in the Public Consultation Report at Appendix A</i>	Appendix A is a copy of the A1 Morpeth to Ellingham non-statutory consultation brochure.
4.	2.4.1		PINS acknowledges that the documents submitted are in the draft stage and notes that there are bracketed sections of this paragraph to be finalised on submission.
5.	3.4.1	<i>On 23 February, the Applicant...</i>	PINS suggests that it could be helpful to add the year, for clarity to the reader.
6.	3.5.4	<i>(only available on the webpage)</i>	It may be helpful to provide a link/address to the webpage.

Draft Consultation Report			
Q No.	Paragraph/Section	Extract from CR (for ease of reference)	Question/Comments
7.	4.3.1 onwards		Paragraphs are not numbered correctly from this point leading to duplicate paragraph numbering.
8.	Appendix L		PINS recognises that the documents submitted are in the draft stage and notes that there are sections in the tables to be finalised on submission.
9.	General		It appears that the newspaper notices are referenced incorrectly a number of times, for example <i>'newspaper notices as noted in Table 10 are provided within Appendix L'</i> . Appendix K of the submitted documents contains the newspaper notices.
10.	General		Appendix B is missing from the suite of Appendices.
11.	General		PINS notes that the report is in draft stage and there are incomplete references. When referencing other application documents within the CR, it would be useful if the Applicant provides the full document reference number, eg. Para XX (x bullet point)" The Book of Reference [TR010054/APP/XX] title of the paragraph/section."

Draft Book of Reference			
Q No.	Paragraph/Section	Extract from BoR (for ease of reference)	Question/Comments
1.	General		PINS acknowledges that this document is in draft form and notes that there are incomplete references to Articles.
2.	General		Is the Applicant content that the approach conforms with the guidance in Annex D, paragraph 10 of the Planning Act 2008 Guidance related to the procedures of the compulsory acquisition of land?

Draft Book of Reference			
Q No.	Paragraph/Section	Extract from BoR (for ease of reference)	Question/Comments
3.	General		PINS suggests adding a paragraph explaining the approach for plots for which the ownership and/or occupation is unknown.

Draft Statement of Reasons			
Q No.	Paragraph/Section	Extract from SoR (for ease of reference)	Question/Comments
1.	1.7.1	<i>the Applicant has identified all special category land which is affected by the compulsory acquisition powers sought in the DCO.</i>	This conflicts with Chapter 9 of the SoR and the BoR which identifies no Special Category Land to be acquired for the proposed development.
2.	2.2.8	<i>Option [x] is the dualling of the A1 between Alnwick and Ellingham</i>	PINS notes that the option being referred to has not yet been specified.
3.	5.6.4 Table 2	<i>Unregistered land interests within the Order limits relevant to Permanent Acquisition</i>	PINS notes that this table has not yet been completed.
4.	8.1.2		It is noted that this paragraph has been numbered but is blank.
5.	General		PINS acknowledges that this document is in draft form and notes that there are incomplete references to chapters and references.
6.	General		PINS notes that Annexes A and B are incomplete at this stage.

Draft Habitats Regulations Assessment			
Q No.	Paragraph/Section	Extract from HRA (for ease of reference)	Question/Comments
1.	Throughout the HRA Report and page 15	<p><i>'The Scheme has been assessed not to be hydrologically linked with the European site'</i></p> <p><i>'The abundant arable landscape which surrounds the scheme means the arable habitat losses do not represent a significant loss of black-headed gull foraging habitat'</i></p> <p><i>'Due to the distance between the Scheme and the European Site...impacts to the European Site from noise, lighting and odour are not anticipated'</i></p>	Some assertions made in the HRA Report are not supported by evidence. For example, surface/groundwater modelling and baseline water maps or dilution rates should support the statement that the Proposed Development is not hydrologically linked to European sites. The Applicant should provide and reference such evidence including any associated figures and plans.
2.	Table B-4, Matrix 3 and Table 2-1 Page 11	<p><i>'Qualifying features</i></p> <ul style="list-style-type: none"> • <i>Great Cormorant</i> • <i>European Shag</i> • <i>Black-headed Gull</i> • <i>Black-legged Kittiwake'</i> <p><i>And</i></p> <p><i>Box 'Key Features of the European Site including the Primary Reasons for Selection and any other qualifying interests'</i></p>	<p>It is stated that these features form part of an assemblage qualification which is the 'seabird assemblage' defined by Natural England (2015). The features have been defined individually within the HRA Report however, some features making up the assemblage have been omitted from the screening assessment; Northern Fulmar, Great Black-Backed Gull, Lesser Black-Backed Gull and Razorbill.</p> <p>The Applicant should ensure that all the relevant features to the assemblage have been assessed in the HRA Report</p>
3.	Paragraph 1.1.4 and throughout the HRA Report	<i>'This Report will be sent to Natural England (NE) for comment with any required amendments undertaken prior to the final DCO submission'</i>	There is no further reference to consultation within the HRA Report. The Applicant should provide evidence of consultation with Statutory Bodies regarding the methodology, scope and conclusions of their assessment of likely significant effects on Natura 2000 sites.

Draft Habitats Regulations Assessment			
Q No.	Paragraph/Section	Extract from HRA (for ease of reference)	Question/Comments
4.	Appendix 2, Matrix 3 'Northumberland and Marine SPA'	<i>Footnote E: 'Except for the Black-Headed Gull, the European Site does not contain habitat suitable to support the qualifying bird species'</i>	It appears this is a typing error due to its contradictory nature and as footnote D of matrix 3 quotes the same sentence but refers to the 'study area' rather than the European Site; please can the Applicant amend accordingly.
5.	Appendix 2 footnotes and throughout the HRA Report	<i>Survey area and study area definitions</i>	Can the Applicant clarify what is being referred to by the terms 'study area' and 'survey area' throughout the report and within the matrix footnotes and ensure that their scope are justified
6.	Appendix 2 Footnotes D, E and F of Matrix 3 and page 14	<i>References 10, 11, 12 and 13</i>	<p>It is unclear where the figure 130,000 pairs of Black-Headed Gulls derives from as Ref 10, 12 and 13 are all quoted in the report text and matrix footnotes. Similarly, the figure 2.2million birds are referenced to Ref 11, 14 and 13.</p> <p>The Applicant should ensure that evidence referencing is consistent and accurate throughout the HRA Report.</p>
7.	Appendix 2 Matrix 3 footnotes and 'Assessment Criteria' on page 14	<i>Page 13 and 87 'Assessment Criteria' and Matrices 3 and 7, footnotes D, E and F in Appendix 2</i>	<p>Details within footnotes and the 'assessment criteria' boxes are the same between the HRA and the matrices in Appendix 2 with the exception of page 13 and matrix 3 where the information does not correspond.</p> <p>Please ensure that the information put forward for the assessment is consistent, relevant and applicable in both the HRA Report and the screening matrices.</p>

Draft Habitats Regulations Assessment			
Q No.	Paragraph/ Section	Extract from HRA (for ease of reference)	Question/Comments
8.	HRA Report Pages 7 and 13	<i>'Other major road schemes'</i>	It is noted that the traffic modelling assessment includes other 'major road schemes'. The HRA Report describes these schemes in a relatively non-descript way e.g. 'Morpeth to Felton and a further ten highways schemes' on page 7. The HRA Report should be specific in referring to the schemes addressed within the in-combination assessment. There is no evidence/reference/agreement as to which schemes have been scoped into or out of the in-combination assessment and why, this should be included in the HRA Report. The in-combination assessment should include evidence of the consultation undertaken with relevant consultation bodies including evidence of agreements reached in this regard.
9.	Appendix 2, Footnotes J, K and H	<i>'As the Scheme would have no risk of any adverse effects on the European Site or its qualifying resources alone, there would be no In-combination effects of the Scheme that would have effects on the European Site'</i>	The HRA Report has not provided an in-combination effects assessment; this should be included within the HRA Report. Additionally, the term 'resources' relates to the qualifying features of the designated sites in this paragraph; the Applicant should ensure the correct terminology is used consistently throughout the HRA Report and any related documents.
10.	HRA Report	<i>Invasive Non-Native Species (INNS)</i>	The HRA Report does not address whether the spread of INNS has been considered relevant to the assessment of likely significant effects. The Inspectorate notes that there is reliance placed on measures within the CEMP to control such species. The HRA Report should assess likely significant effects to European sites in the context of INNS and the measures necessary to avoid or reduce such effects.

Draft Habitats Regulations Assessment			
Q No.	Paragraph/Section	Extract from HRA (for ease of reference)	Question/Comments
11.	'Land-take' box Page 6 and 'Disturbance' box Page 15	<p><i>'There will be no land-take from within the boundaries of the European Site...no direct impacts on the European Site as a result of land-take during the construction or operation of the Scheme'</i></p> <p><i>'Several smaller flocks of between 30 and 50 birds [Black-Headed Gulls] and small groups of less than 10 and individuals [were surveyed] across the survey area... The land take of the Scheme represents a loss of 166.23ha of arable habitat from areas immediately adjacent to the soft estate of the A1. The abundant arable landscape which surrounds the scheme means the arable habitat losses do not represent a significant loss of Black-Headed Gull foraging habitat'</i></p>	<p>The assessment of Land Take states that there will be no direct impacts on the European site in relation to the Northumberland Marine SPA. It is later stated that there would be a reduction of foraging land of the Black-Headed Gull (166.23ha in total) and that this would not represent a significant loss, however there is no data or evidence to support this.</p> <p>The Land Take assessment should provide evidence in the form of empirical data to support their assertion that there would be no likely significant effects either directly or indirectly.</p>
12.	Throughout the HRA Report and page 15	<p><i>'The Scheme has been assessed not to be hydrologically linked with the European site'</i></p> <p><i>'The abundant arable landscape which surrounds the scheme means the arable habitat losses do not represent a significant loss of black-headed gull foraging habitat'</i></p> <p><i>'Due to the distance between the Scheme and the European Site...impacts to the European Site from noise, lighting and odour are not anticipated'</i></p>	<p>Some assertions made in the HRA Report are not supported by evidence. For example, surface/groundwater modelling and baseline water maps or dilution rates should support the statement that the Proposed Development is not hydrologically linked to European sites. The Applicant should provide and reference such evidence including any associated figures and plans.</p>

1. Where references are provided to other Application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of sign-posting) as well as their respective reference number.
2. [DCLG: Application form Guidance](#), paragraph 3 states: *The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6.*