



National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Customer Services: 0303 444 5000  
Email: A417MissingLink  
@planninginspectorate.gov.uk

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Applicant, Natural England, Cotswolds  
Conservation Board and  
Gloucestershire County Council

Your Ref:

Our Ref: TR010056

Date: 14 January 2022

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Dear Sir/ Madam

## **Planning Act 2008 – section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 17**

### **Application by National Highways (formerly Highways England) for an Order Granting Development Consent for the A417 Missing Link**

#### **Request for Further Information**

We write to request further information from the Applicant, Natural England (NE), Cotswolds Conservation Board (CCB) and Gloucestershire County Council (GCC) under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010.

In the first set of Written Questions (ExQ1), we asked at 1.5.17 if the Applicant could explain the need for and purpose of Article 20 related to the Cotswold Way National Trail, and provide legal submissions regarding the need for its inclusion in the Development Consent Order (DCO) and the legislative basis upon which it is permissible. Specifically, we sought to understand how this Article was intended to interact with the process where the Secretary of State (SoS) is required to issue a direction under section 55 of the National Parks and Access to the Countryside Act 1949 (the 1949 Act).

In response, the Applicant has drawn attention to the Cotswold Way National Trail Diversion Report. However, whilst at 1.1.7 d reference is made to 'details of how the proposed diversion would be legally and physically established', the report does not go on to set this out in detail and how this interacts with the Planning Act 2008 (PA 2008). We are also cognisant of the conclusion at 8.1.3 which states that 'pursuant to Section 55(2) of the 1949 Act, should the Secretary of State be minded to grant the DCO for the scheme, it is expedient for the Secretary of State to direct by way of their decision on the DCO application that the Cotswold Way National Trail shall be varied in accordance with this report'.

Unfortunately, this does not address the basis of the question that we asked. Specifically, we are looking for the Applicant to provide the following information:

- Submissions setting out the legal basis on which the Applicant is able to include Article 20, which is in effect a direction under s55(2) of the 1949 Act, within the DCO by reference to the relevant provisions in the PA 2008 and provide detailed justification for it.
- An explanation as to why the Applicant considers it appropriate to proceed by including a direction under s55(2) within the DCO from the SoS DfT rather than seeking consent for it separately from the SoS who designated the National Trail.
- The National Trail Diversion Report also includes a section on Consultation. Could the Applicant confirm whether any discussion or consultation on the Applicant's approach has been undertaken with DfT or Defra, and if so what the response was.

In terms of Consultation, the Applicant has stated it has consulted with NE and that they have agreed this approach. However, before any direction under s55(2) of the 1949 Act can be made the SoS must consult directly with NE.

The ExA therefore requests that NE provide its views on:

- the Applicant's proposed diversion of the Cotswold Way National Trail;
- the legality and appropriateness of including a direction under s55(2) of the 1949 Act within a DCO; and
- the appropriateness of SoS DfT making this direction.

The Cotswold Way National Trail Diversion Report identifies that maintenance is conducted on behalf of NE by CCB and that GCC also have maintenance responsibilities. The views of CCB and GCC on the above matters are also therefore sought.

Detailed responses should be provided by **Deadline 3 (Wednesday 2 February 2022)**. **Issue Specific Hearing 1 (ISH1) on the DCO (Tuesday 25 January 2022)** will also afford an opportunity for further discussion, and for you to provide clarification and an update on how you are progressing on the matter.

If you have any further queries, please do not hesitate to contact the Case Team using the email address above.

Yours faithfully

*Ken Stone*

**Lead Member of the Examining Authority**

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