

A417 Missing Link
TR010056

8.20 Response to Rule 17 - Cotswold
Way National Trail Diversion

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(Applications: Prescribed Forms
and Procedure) Regulations 2009**

A417 Missing Link

Development Consent Order 202[x]

Response to Rule 17 - Cotswold Way National Trail Diversion

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Table of contents

	Pages
1 Response to Rule 17 - Cotswold Way National Trail Diversion	1
1.2 Legal basis	1
1.3 Cotswold Way National Trail Diversion Report	2
1.4 Disapplication of s.55 and consultation	3

1 Response to Rule 17 - Cotswold Way National Trail Diversion

- 1.1.1 This document has been prepared on behalf of National Highways (the “**Applicant**”) in response to the examining authority’s request for further information under rule 17 of the infrastructure planning (examination procedure) rules 2010 dated 14 January 2022 (ref: TR010056). In particular, the applicant was asked to provide:
- a. 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;
 - b. 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; and
 - c. 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?
- 1.1.2 By way of background, the Cotswold Way National Trail is required to be diverted in order to facilitate the A417 Missing Link scheme (the “**Scheme**”). The draft Development Consent Order (dDCO) (Document Reference 3.1 (Rev 1), REP1-003) for the scheme provides for the diversion of the public rights of way along the affected section of the Cotswold Way, by way of drafting that is commonplace in DCOs. However, a national trail designation must be varied in accordance with the statutory mechanism set out in s.55 of the National Parks and Access to the Countryside Act 1949 (the “**1949 Act**”).

1.2 Legal basis

- 1.2.1 The Applicant, following consultation with Natural England and CCB, had proposed to follow the statutory mechanism set out in s.55(2) of the 1949 Act requiring a direction from the Secretary of State to vary the Cotswold Way. On reflection, having considered the Examining Authority’s Rule 17 request and comments made during recent hearings, the Applicant thinks that it would be more expedient to disapply s.55 of the 1949 Act instead. This approach better accords with the ethos of the Planning Act 2008 regime as a “one stop shop” for the consenting of nationally significant infrastructure projects and is lawful and appropriate for the reasons given below.
- 1.2.2 Section 120 of the Planning Act 2008 sets out what may be included in a DCO and is a flexible provision allowing for a DCO to cover a wide range of matters, subject to any other express provision to the contrary. In particular:
- 1.2.3 s.120(3) provides that a DCO ‘*may make provision relating to, or to matters ancillary to, the development for which consent is granted*’; and
- 1.2.4 s.120(5)(a) provides that a DCO may ‘*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order*’.

- 1.2.5 We note that s.55 of the 1949 Act is not a prescribed consent for the purposes of s.150 of the Planning Act 2008, meaning that consent to disapply the provision is not required from any regulatory body.
- 1.2.6 Section 120 of the Planning Act 2008 therefore provides the legal basis for the disapplication of s.55 of the 1949 Act under Article 3 of the dDCO and for a separate provision to give effect to the diversion of the Cotswold Way under Article 20 of the dDCO.
- 1.2.7 The Applicant proposes to remove the reference to s.55(2) of the 1949 Act from Article 20 but otherwise retain this article as drafted. The following words would be deleted from the dDCO (at the end of Article 20(2)(b):
- “as directed by the Secretary of State by way of this Order in accordance with section 55(2) of the 1949 Act.”*
- 1.2.8 An updated version of the dDCO will be provided at the next appropriate deadline.
- 1.2.9 Article 20 of the dDCO will ensure that the diverted section of the Cotswold Way continues to benefit from the enhanced protection provided to national trails under Part 4 of the 1949 Act.

1.3 Cotswold Way National Trail Diversion Report

- 1.3.1 The purpose of the Cotswold Way National Trail Diversion Report (Document Reference 7.11, APP-427) (the “**Report**”) is to detail the proposed diversion of a national trail for approval. The Report was prepared in order to satisfy the requirements under the 1949 Act where new or revised national trails are proposed. It was therefore based on previous reports prepared by Natural England for that purpose, and developed in consultation with Natural England and CCB. Similarly, the Applicant has drafted Article 20 to mirror the statutory mechanism for the variation of national trails under s.55 of the 1949 Act.
- 1.3.2 Section 2 of the Report, together with the plan at Appendix A, details the proposed diversion of the Cotswold Way National Trail. The rest of the Report provides supporting information, including an environmental assessment and details of consultation. In particular, Section 5 (Establishment and maintenance) sets out how the diversion of the national trail interacts with the dDCO.
- 1.3.3 The Cotswold Way National Trail Diversion Report is not intended to secure the detailed design of any part of the scheme, which will be prepared and delivered in accordance with the dDCO Requirements.
- 1.3.4 The Report does not secure the temporary or permanent diversion of the public rights of way that underpin the national trail. The relevant public rights of way are stopped up and substituted under the dDCO, as detailed in Schedules 3 and 4 and shown on the Rights of Way and access plans (Document Reference 2.5 (Rev 1), AS-039).
- 1.3.5 Further details on management measures for public rights of way impacted by the scheme can be found in the Environment Statement Appendix 2.1 EMP Annex F Public Rights of Way Management Plan (Document Reference 6.4, APP-323). The EMP is secured under Requirement 3 and must be consulted on with the relevant planning and highway authorities before being submitted for approval by the Secretary of State.

1.4 Disapplication of s.55 and consultation

- 1.4.1 The Applicant considers that it is appropriate and expedient to disapply s.55 within the dDCO. If the Applicant was required to seek a separate direction under s.55, this could delay or risk the delivery of the scheme's significant benefits, including to the safety of users of the Strategic Road Network. Article 20 within the dDCO provides the mechanism by which the diversion of the National Trail will take effect and ensures that the diversion is implemented in accordance with the Cotswold Way National Trail Diversion Report (Document Reference 7.11, APP-427).
- 1.4.2 As a matter of best practice, noting that express consent is not required under s.150 of the Planning Act 2008, the Applicant intends to consult with Defra and if possible, obtain its agreement to this approach. The Applicant is in the process of seeking to obtain Defra's views on the Cotswold Way diversion, in liaison with the national trails Partnership Manager at Natural England who has been assisting with this matter to date. The Applicant will provide a further update once it has identified an appropriate contact at Defra with whom to consult.
- 1.4.3 The Applicant has not undertaken any express consultation directly with DfT on the diversion of the National Trail. However, the scheme, including the diversion of the Cotswold Way, has been discussed with DfT throughout its preliminary design.