



District Council

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Your Project Ref: TR010062
Our Reference: FCM/DEV/A66statcon
Enquiries to:
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Date: 4 July 2022

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

Dear Mr Bartkowiak,

Planning Act 2008 (as amended) – Section 55
Application by National Highways for an Order Granting Development Consent for the A66
Northern Trans-Pennine Project
Adequacy of consultation request

I write in response to your letter dated 22 June in respect of the above Development Consent Order application that has been submitted by National Highways for the dualling of the A66 (Northern Trans-Pennine Project). I begin by considering whether the legal tests for consultation have been met.

Under section 55 of the Planning Act 2008 relevant local authorities must be consulted on whether the applicant has complied with their duties under sections 42, 45, 47 and 48 of the Act. This letter comprises Eden District Council's ('the Council') Adequacy of Consultation response, and sets out the Council's position in respect of these provisions. It also comments on the pre-application consultation process in general.

The Council confirms it's view that as outlined below, the provisions and formal requirements under the Planning Act 2008 have been satisfied. In general terms the Council accept that the Applicant has complied with Section 42 (the 'Duty to consult'), Section 45 (the 'Timetable for the Duty to Consult under Section 42'), Section 47 (the 'Duty to consult local community') and Section 48 (the 'Duty to publicise') of the Planning Act 2008.

Timetable for consultation under section 42 – Section 45 of Planning Act 2008

This section requires the applicant to notify the consultee of the deadline for receipt of comments in relation to the consultation which must not be earlier than 28 days after the consultation documents are received.

The public consultation on route options was undertaken in summer 2019 and Public Consultation on the preferred route between 24 September 2021 – 6 November 2021, in which the Council provided a S42 response. In addition to this, the Applicant ran additional supplementary targeted consultations during the spring of 2022. The supplementary consultations addressed alterations including walking cycling and horse riding provision, impact on Kemplay open space, junctions, landforms, construction compounds and Brough Horse Fair.

Duty to consult the local community – Section 47 of Planning Act 2008

This section requires the applicant to prepare and publish a statement setting out how it proposes to consult local people about the proposed application (the Statement of Community Consultation). The applicant must consult with the relevant local authority before publishing the statement, and the local authority must reply within 28 days.

The Council did provide comments on the draft Statement of Community Consultation, and considers that the final SoCC did adequately reflect these comments.

In reviewing compliance with section 47, the Councils have considered concerns raised by stakeholders around the gaps in the information provided by the Applicant during the Consultation stages but concluded that the legal requirements were met and in the Consultations were carried out in the manner set out in the Applicant's agreed Statement of Community Consultation.

Duty to publicise Section 48 of Planning Act 2008

This section provides that the applicant must publicise the proposed application in the prescribed manner. The Regulations specify a deadline of not less than 28 days for responses.

The Council accept that the S48 Notices were published as required and that the Applicant has fulfilled their obligations in this regard.

Conclusion on Tests

It is the view of the Council that the Applicant has met the legal tests for Sections 42, 45, 47 and 48 of the Planning Act 2008 and that the consultation has, therefore, been adequate in this respect.

As a general comment the Council has not seen the full Environmental Statement, nor draft copies of some of the more critical documents including for example the Transport Strategy in advance of the DCO submission. In reviewing compliance with section 42, and throughout the pre-application engagement process, the Council did highlight that significant information was not made available as part of the public consultation. Although the Applicant has sought to engage with the Council on the principles and strategic approaches, we would have preferred more detailed pre-application engagement in order to facilitate a fuller and more informed Section 42 response.

Wider Consultation Issues

Whilst acknowledging that the Applicant has been developing its proposals throughout this period, it would have significantly helped the Councils if more information had been available earlier for the Council to be as fully informed as possible. There was an ongoing concern throughout each stage of public consultation that detail and evidence were missing from the consultations. The Council still has many issues outstanding; more detailed evidence and information could have enabled a better understanding of these issues, and potentially resolved some of them. It is clear from the Council's responses at each stage of public consultation that we had requested more detail on a consistent basis. This absence of elements of information has not just created difficulties for the Councils but, we assume, for a wide number of consultees as well.

The Council has consistently sought to receive more information from the Applicant in order to be able to come to more informed judgements about the impacts of the scheme and to allow them to work more effectively on any mitigation proposals.

We are aware that several statutory consultees are also concerned about the level of information that has been made available through the consultation exercises.

Only now at the point of submission will we be able to review the proposal as a whole and make a considered and informed judgement. Such an approach means the Councils have, as a result, been silent on some issues. The lack of a comprehensive set of documents has also compromised the engagement that has taken place because the complex inter-relationship between all the documents means no single document can ever be understood in isolation. As such, the Councils have not been able to complete the engagement on the pre-application work with the Applicant as envisaged in the regime set out by the Planning Act 2008.

The Councils have been keen, at every stage, to progress with all the outstanding elements in a constructive way with all parties but are concerned that, with the substantial and complex work still to be done on the Statements of Common Ground, the s106 legal agreement and agreeing mitigation, there may not be adequate opportunity for the Examining Authority to undertake its work fully within the six months from the Preliminary Meeting. The Councils remain keen and ready to make progress on this matter.

The Councils welcome that to date the Applicant has provided resources to the Councils through agreed Planning Performance Agreements to date to undertake the necessary engagement and joint working. The Councils require an appropriate level of funding to continue to provide them with the required resources to engage fully with the Applicant on these matters.

The Council did highlight a significant number of key issues throughout the pre-application consultation process that we consider still remained unresolved. It is important that the process ahead provides the potential for these issues to be fully considered and that impacts and mitigation is fully understood and addressed prior to the granting of a Development Consent Order.

I set below these unresolved key issues (with more details provided in **Appendix A**): for ease of reference for the applicant and to give the opportunity for an early engagement with the Council, -

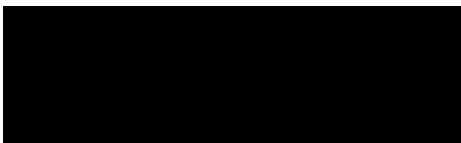
- East/West Link of Non-Motorised Traffic

- Provision of Additional HGV Facilities and Service Provision
- Provision of Biodiversity Net Gain
- Landscape
- Social Economics Impacts
- Workers Accommodations.
- Noise
- Brough Horse Fair
- Zero Carbon Strategy
- Traffic Impacts/Diversion Routes etc

We note that, comments from individual organisations have been presented in Annex N of the consultation report. There appear to be instances where Eden's comments have been misunderstood. Whilst in the timescale available have not been able to review these a spot check revealed some entries do not seem to reflect our position accurately. (**Appendix B** identifies three examples.) On a practical note it is extremely difficult to locate and relocate comments and responses in Annex N as there is no overall numbering system.

Although not specifically endorsing them as part of our Adequacy of Consultation Response we have been asked to draw to your attention a number of representations that have been made to us regarding the consultation process. These have been copied to you as attachments to the covering e mail.

Yours Sincerely,



Fergus McMorrow
Assistant Director Development

Eden District Council

Appendix A. Examples of Key Issues Requiring Engagement

Key Issues

Non-Motorised Traffic, East to West Link.

Throughout the Council's consultation responses, we have clearly stated our need to see the provision of a continuous route for east west non-motorised traffic including for Walking, Cycling and Horse-Riding users and for horse drawn vehicles as an integral part of the A66 DCO Project. The project provides a clear opportunity to address the currently shortfall in connectivity set forth in local planning policy.

The Council's S42 consultation response (November 2021) states that provision of continuous east-west route for non-motorised transport connectivity is an issue of particular significance for the Scheme. NMU provision is critical to supporting inter community connectivity, leisure/tourism and the economy but also the safety of those accesses Appleby and Brough Horse Fair, who's attendees rely heavily on NMU transportation options. The Council's concerned that inadequate provision will lead to fatalities.

The supplementary consultation for NMU provision, compounds and landforms undertaken by National Highways between 16th February and 20th March 2022 was targeted to statutory organisations only and the Council believes this has resulted in the exclusion of important contributors. The Council is most notably aware of the absence to consult Sustrans, the UK's leading sustainable transport charity and custodian of the National Cycling Network on design changes directly relating to walking and cycling. In addition to this, the supplementary plans provided denoted proposed WCH routes as consulted on during autumn 2021 in pink. Eden District Council are unable to confirm they received this information, nor were consulted during that period.

Provision of Additional HGV Facilities and Service Provision

A high percentage of traffic on the A66 currently is HGVs (estimated to be between 18 to 29% of traffic on the A66, depending on location and time of day, compared to the national figures of 12%). The Council has noted in the S42 consultation response, that current HGV facilities are considered inadequate. The Applicant's Local Transport Report provide during statutory consultation signifies that the Scheme will result in substantial additional pressure on these facilities with HGVs increasing to 34-39% of all traffic. The Council therefore wants to see improvement of services and facilities for motorised users, including specific HGV services, are included within the scope of the Scheme.

However, to date the Council is yet to receive design information pertaining to the potential inclusion of a HGV service facility or support following determination. The inclusion of HGV services would support the socio-economic development of Eden District providing the opportunity to develop skills, generate employment positions and support regional supply chains. The council would happy to enter into a dialogue on the potential location of such facilities on the route.

Provision of Biodiversity Net Gain

The Council has previously stated in their S42 response to the Environmental Scoping Report that the Project and should seek to achieve a 10% BNG. The Council are yet to received information throughout the consultation period, providing further information on how they will achieve this. The Council appreciates further information on the mitigation for impacts upon designated sites, priority habitats and protected species will be presented in the ES however this limits EDC's ability to input during the consultation period. Until the assessment of impacts upon these ecological receptors is finalised, the adequacy of any mitigation measures cannot be confirmed by EDC.

Landscape and Landforms

As part of the S42 Consultation Response (November 2021), EDC state that the level of information provided is limited but agree the principles of the landscape assessment and the viewpoints outlined in the Preliminary Environmental Impact Report are acceptable. The Council is yet to receive detailed landscape mitigation plans as part of the design and consultation periods. These details are imperative for the Council to ensure the minimisation of impacts of the Scheme on the character and quality of the existing environment. Within the S42 response and during the Technical Workshops held by National Highways, the Council has raised their desire to see particular attention paid to the user experience along the A66. At present it is felt consultation on this matter has been somewhat neglected.

As part of the Supplementary Design Consultation response, National Highways held an additional consultation period between 16th February and 20th March 2022. The Council appreciate the additional National Highways' Supplementary Design Consultation response provided in March 2022. However, the additional consultation period failed to clarify the potential impact on Wetheriggs Country Park as a result of the relocation of the highway boundary adjacent to the southern park boundary, loss of existing treeline and the potential for additional land requirements south of Penrith Cricket Club. In addition to this, similar to previous consultations the availability of information has been limited and no mitigation measures have been proposed.

During the Supplementary Design Consultation period (February - March 2022), EDC acknowledges the efforts made by National Highways to promote the consultation. The Council believes advertisement in Wetheriggs Country Park could have been more numerous and prominently displayed, with contact details provided in non-QR formats to help wider groups engage. The Council appreciates that National Highways altered the dates and times of the in-person events at Penrith Cricket Club at the request of the Council to ensure local committee members could attend.

Workers Accommodation

As part of the Council's S42 consultation response, EDC have requested an Accommodation Strategy, this would play an important role in minimising the social and economic impacts of the A66 NTP and maximising its benefits, consistent with the aims of the NPS NN. The response to S42 consultation, submitted in November 2021, stated the Strategy should be to ensure that additional demand created by non-home-based workers (approx. 1,200) does not place excessive pressure on the local housing market. The Council re-enforced this position in the submission of a Principles for

accommodation strategy, provided to National Highways in January 2022.

The applicant has not provided an Accommodation Strategy to date. The Accommodation Strategy would be consistent with the National Policy Statement for National Networks (NPS NN) in that: 'the Government expects applicants to avoid and mitigate environmental and social impacts', and in line with the ambitions of the Cumbria Local Enterprise Partnership's Local Industrial Strategy.

Socio Economic Impacts

In the S42 consultation response (November 2021), the Council requested that a Skills and Employment Strategy and Business Strategy be prepared; the purpose of these is to upskill and maximise the use of a local workforce and supply chains. The Council again requested the production of these documents in the Accommodation Strategy Working Draft submitted to the applicant in January 2022. It is therefore requested that NH work with the Council to develop and produce a Skills and Employment Strategy and Business Strategy to be included within the DCO.

Noise

The Council were consulted as part of the statutory consultation period between 16th February and 20th March 2022 (Landforms, NMU provision and construction compounds). The Council recognises the engagement but notes that previous comments raised in the S42 response (November 2021) were not addressed and the requested additional detail not provided. Most notably, the Council are concerned that Kirkby Thore will be subject to noise increases of up to 10dB, including multiple residential properties and the Primary School. There is no reference to the use of embedded noise reduction mitigations measures. The Council would want to see their inclusion, particularly an embankment at Kirkby Thore, rather than a noise barrier. The design could also include details of mitigation such as low noise surfacing.

Brough Horse Fair

Due to MoD land requirements as part of the revised A66 design in autumn 2021, the site currently used for the Brough Horse Fair would be lost. As a result, the Applicant proposed the use of an alternate site south of West View Farm Overbridge. The Applicant ran a consultation period for the relocation between March 11th and April 3rd 2021, shortly after the Landforms, NMU and Construction Compound consultation period. The Council believes the applicant failed to properly advertise the Brough Horse Fair consultation period sufficiently. The consultation period provided an insufficient time period for the Council to consult with its specialists and engage members of the public. The site proposed was unsuitable due to size, traffic impacts, land ownership and impact on residential properties. The Applicant has since removed this option following consultation and is yet to confirm a new site in agreement with the Council.

Zero Carbon Strategy

The council have asked for the applicants Strategy to support efforts to achieve Zero Carbon. This has not yet been forthcoming so at this point the approach to be adopted is unclear and needs to be subject to further discussion

Traffic Impacts and Diversion Routes

The Council are keen to make sure it understands the Transport Strategy and the impacts of construction on traffic as well as traffic management and mitigation measures that will be put place to deal with the impacts arising

Appendix B. Consultation Report Annex N Sample Variances

Examples (spot checks) of variances of responses recorded in NH Annex N to consultation report

Comment Ref	NH record in Annex N	Our Responses
139. PEI/Visual Landscape Page N-1 J40 - Kemplay	Cumbria County Council and Eden District Council expressing support for the scheme on the grounds that landscape and visual impacts have been appropriately identified and that the proposed mitigation measures are appropriate.	<p>The generic text about the landscape design and mitigation in our response says.....</p> <p>The Councils' Position</p> <p>How the Project sits and is accommodated within the landscape will depend upon the depth of any excavation and cutting, and height and establishment of any planting designed to screen it. This information isn't yet available and until detail is provided, it is not possible to identify and confirm whether the mitigation measures are appropriate and acceptable.</p> <p>There may be the need for further softening and an increase in the height of the embankment features to reduce visual and acoustic impacts further than they are at present. Highways England should liaise with the Councils with regard to their particular concerns which are dependent upon the route option that is adopted.</p> <p>With regard to the specific M6 to Kemplay section it says....</p>

		<p>'As an overarching comment, Eden District Council is concerned over the nature and scope of the consultation exercise. As host authority we would have preferred to see a wider exercise which involved a range of stakeholders as well as a longer consultation period and a more publicly accessible process that would allow consultees and residents to engage more fully with National Highways. (This is elaborated on six further paragraphs in our covering letter</p> <p>The supplementary consultation undertaken by NH has been targeted to statutory organisations only and EDC believes this has resulted in the exclusion of important contributors. EDC is most notably aware of the absence to consult Sustrans, the UK's leading sustainable transport charity and custodian of the National Cycling Network on design changes directly relating to walking and cycling.</p> <p style="text-align: center;">M6 Junction 40 to Kemplay Bank</p> <p>8.3.5. It would be helpful for a figure to be provided that indicates the boundary between the National Character Areas (NCAs) for this, and all other, Schemes. The affected NCAs are appropriately identified with the exception of the Orton Fells NCA, located to the south of the Scheme.</p> <p>8.3.6. The majority of LCUs are appropriately identified, however the reasons for scoping out the remaining LCUs need to be appropriately explained, and an assessment of the effects on impacted LCUs and relevant designations needs to be provided.</p> <p>8.3.7. The selection of viewpoints is appropriate given the information provided to date, however it is considered that additional viewpoints should be considered from:</p> <ul style="list-style-type: none"> ▪ The A66 looking east and approaching junction 40 of the M6, representative of users of the local road network; and ▪ The Eamont Bridge area, which may be impacted particularly during the construction phase. <p>8.3.8. It would be helpful to ensure that the orientation of views is focused on the relevant Scheme or Schemes. For example, proposed Viewpoint 1.1 Clifford Road where the orientation of the view might be more appropriate facing south or south-west rather than west.</p> <p>8.3.9. The proposed viewpoint locations to be provided as a photomontage are considered to be appropriate. All photomontages should be provided in line with Type 4, as outlined in Technical Guidance Note 6/19 published by the Landscape Institute, in order that a representation of the relevant Schemes is understood.</p>
<p>66. Process - Communication/ influence Page N1 – Comments on consultation</p>	<p>Respondents expressing support for the consultation process, in particular the level of communication and ability for respondents to influence the process, including local residents and landowners,</p>	<p>Relevant Eden Response 11/21 Statutory Consultation</p> <p>'The Council is concerned that the information included in the consultation documents does not yet provide a complete picture of what the development will be like or how it will be implemented. Not all assessments are complete, related impacts and the mitigation that will be required are also not always determined. Therefore the acceptability of the proposals cannot be determined at this stage. This will have implications for the programme going forward. We would expect to see that the views collected in the consultation are fully considered and that there is evidence that they are being taken into account in the design of the scheme. As there is more information</p>

	<p>stakeholders, and councils.</p>	<p>needed before the Council's fully considered views can be provided, we have concerns about whether this is achievable within the programme you have set.</p> <p>Eden District Council welcomes the opportunity to engage with Highways England over the A66 DCO Project. We are keen to engage over the mitigation of potential adverse impacts, and ensure that the Scheme represent that best available option for dualling the A66 and delivering benefits for local residents.</p> <p>4/22 Re Brough Hill Consultation Response. 'The relocation of Brough Hill Fair is a substantial issue in the local area that will raise a number of significant environmental and social impacts and will involve special interest groups. The Councils request that a full programme of public engagement is undertaken that allows all interested parties to comment upon and input into the final location.</p> <p>2/2022. Re Consultation in Relation to Scheme Amendments at Kemplay Bank:, Temple Sowerby to Appleby and Appleby to Brough</p> <p>'The Councils elected members feel that they have not had adequate time, or sufficiently detailed information, to effectively consult with their residents on the proposals. This consultation raises a several sensitive environmental issues, including: the loss of existing sports fields and open space (and measure to compensate for their loss); the provision of new junctions; and works in close proximity to a Scheduled Ancient Monument and the North Pennines Area of Outstanding Natural Beauty.</p> <p>In all these cases a genuine local input will be key in ensuring that negative impacts are minimised and that mitigation measures (particularly for the loss of open space) are as comprehensive and appropriate as possible. A longer engagement with local stakeholders and residents would have been beneficial to all parties in ensuring this'</p> <p>Eden District Council is also of the view that the public notices advertising the latest consultation periods are insufficient. Local public advertisement for planning application is a minimum A4 size and include descriptive details of the development and provide contact information to allow for in person or written responses. The posters erected by National Highways are A5 size, contain no description of the development and rely on the use of a QR code, which we feel could exclude some of our local community. Eden District Council would like more consultation notices used in public areas in any future consultation events.</p>
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		<p>Eden District Council is further concerned over the radius and methodology used as part of the leaflet distribution to 300 houses in the Kemplay Bank area. Following conversations with several members and local residents, they have not received the leaflet despite being adjacent to the Scheme area. The nature of the Public Open Space is that users may travel from some distance away, and a wider programme of consultation would have helped capture the views of all users.</p> <p>The Council feels that many of the changes are very significant and the relatively limited consultation that has taken place is insufficient. In addition, in order that the views of stakeholders can be genuinely used to influence the design of the project, to be submitted in Spring, more detailed information on impacts and proposed mitigation needs to be available. Without the latter it is not possible to determine whether the scheme can be supported in its current form. However, we do look forward to working with you to resolve the issues and consider the mitigation proposed to deal with the negative impacts that concern us.'</p> <p>3/22 Re. Response in relation to WCH, Compound locations and Landforms :</p> <p>'The supplementary consultation undertaken by NH has been targeted to statutory organisations only and EDC believes this has resulted in the exclusion of important contributors. EDC is most notably aware of the absence to consult Sustrans, the UK's leading sustainable transport charity and custodian of the National Cycling Network on design changes directly relating to walking and cycling'.</p> <p>'The Council notes that the consultation does not provide sections or elevation drawings that allow the authority to evaluate the impact of such landforms in terms of land removal or height of the landform. In the absence of this information, EDC is unable to comment upon the suitability of scale and location of these features on the visual landscape or as acoustic mitigation bunds. EDC requests Section drawings of these landforms prior to design finalisation.'</p>
<p>183. Construction - Construction documents</p> <p>Page N1 Construction</p>	<p>Eden District Council expressing support for the detail provided in the Construction Method Statement</p>	<p>5.1.1. The Draft Construction Method Statement (Draft CMS) is a useful document to explain, in terms that are understandable to the non-engineering professional, how the Project will be constructed, what measures will be adopted and what tools and methods will be used. However, its value to the Councils is limited in so far that it provides little detail of specific measures that will be adopted during the construction phase of the project whilst similarly clarifying that specific detail is still indicative and subject to change. This technical appraisal of the Draft CMS has therefore been undertaken with due consideration of this limitation.</p>



From: [REDACTED]
To: A66NTP@highwaysengland.co.uk
Subject: Supplementary Consultations

Hi

I have just been made aware of three supplementary consultations that are taking place on the A66 project. I am not able to access these from your webpage and they are not listed on your social media accounts so I have no way of seeing what is being proposed.

However, I have been told that there will be additional construction within the North Pennines AONB to the north of Warcop. As this is the case, I am very concerned that Friends of the Lake District have not been consulted by National Highways on the basis that we represent CPRE for the whole of Cumbria and have a particular interest in nationally protected landscapes.

Can you let me have links to the consultation documents, and also let me know why we weren't consulted as a Cumbrian based non-statutory stakeholder?

Many thanks

Kate Willshaw

Dr Kate Willshaw
Policy Officer

Please note I work part time, usually Monday to Thursday

Friends of the Lake District
***The only membership organisation dedicated to protecting
and enhancing Lake District and Cumbrian landscapes***

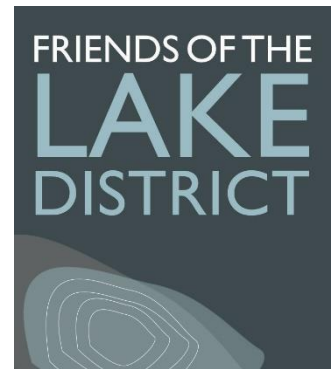
Friends of the Lake District, [REDACTED]

Tel: [REDACTED]

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Mr Lee Hillyard
Project Director A66
National Highways

(By email)

1st February 2022

Friends of the Lake District

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
info@fld.org.uk

[REDACTED] fld.org.uk

Dear Mr Hillyard

Inadequacies of the A66 Northern Trans-Pennine Upgrade Consultation

1. Friends of the Lake District is the only membership organisation dedicated to protecting and enhancing Lake District and Cumbrian landscapes. We represent CPRE the Countryside Charity as the Cumbria Branch
2. We are writing to make a formal complaint to National Highways regarding the inadequacies of the consultation process for the A66 Northern Trans-Pennine Design Consultation that was carried out in autumn 2021.
3. The issues which we consider to have been inadequately consulted comprise
 - a. A lack of engagement with non-statutory stakeholders and residents
 - b. Length of consultation period was much too short for a project of this magnitude.
 - c. The lack of consideration of a non-dualling "safety case" upgrade
 - d. A lack of clarity about routes in the documents
 - e. A lack of information about landscape impact, specifically and most concerning being a lack of photomontages

- f. The lack of a climate change position statement which includes a cumulative assessment of this scheme in conjunction with others
4. A copy of our response to the September 2021 Design Consultation is appended to the end of this letter.

Lack of engagement

5. There has been very little non-statutory organisation stakeholder engagement during the three years of development of this project. Stakeholder meetings were only ever held in Darlington which was inconvenient for Cumbrian stakeholders and biased attendance towards those stakeholders in the east of the project area. There were three Stakeholder meetings for non-statutory stakeholders in 2018, and after that there was nothing prior to the 2019 consultation the 2020 Route Announcement or the 2021 consultation. There has been a complete failure to engage with non-statutory stakeholders, which on a project with such a significant magnitude of impact is inexcusable.

Inadequate length of consultation period

6. Consultations for Nationally Significant Infrastructure Projects (NSIPs) should take place over a minimum of 12 weeks according to the Government's Code of Conduct¹ which also states that "*if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation*". It is worth pointing out that the consultation for the North West Coast Connections NSIP in 2016/17 was 14 weeks, further highlighting how inadequate the length of time allocated to the A66 consultation was.
7. The six weeks given was not long enough to consult properly on a single road scheme let alone such a complicated project. To put it in context, it involves eight different sections along a 50 mile stretch of road which passes through 5 Local Authority areas, through an AONB and the setting of a national park, affecting numerous local communities.
8. For this highly complex project (the A66 upgrade is effectively eight NSIP road schemes in one) the consultation should be at least 12 weeks long and have provided much clearer information for members of the public and other consultees who do not have expertise in major development consultations in order to allow them to take part in this process.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/2695/code-practice-consultations.pdf

9. We understand that the A66 Trans-Pennine upgrade scheme is part of the Government's Project Speed initiative. Inclusion this scheme in the Government's Project Speed initiative should not mean that National Highways stints on proper public engagement, but in this case it seems that the public have not been adequately engaged due to such a short consultation period. We therefore consider the public consultation was inadequate on this basis leading to a democratic deficit in the consultation.

Complexity of the consultation and lack of clarity in the route sections

10. There is a lot of very confusing information in the consultation documents meaning that an average member of the public would struggle to engage with the consultation in any significant way. The number of road sections and the inclusion of multiple options for some of the sections made understanding the proposals very difficult due to the complexity of the information put forward in the consultation documents. For example, the names and colours given to the various options are different to the previous names given to routes previously consulted on in 2019 and also the 2020 Preferred Route Announcement. This made the consultation documentation confusing and difficult to follow.
11. To expect members of the public to read, digest and respond to the quantity of information in the consultation which was not even all presented in one place (e.g. the Route Development Report was found on a different website to the PEIR, which was on a different page to the Scoping Opinion report) was virtually impossible, especially in the very short consultation period. This means that there was a significant democratic deficit in the consultation process.
12. There was also significant potential for the public to be misled as to what they could and could not comment on which could prejudice the outcome of the consultation. The consultation documents did not make it clear that comments are invited on all the options presented in the consultation despite Paragraph 5.4 in the Statement of Community Consultation² (SCI) stating that the consultation is on all the options including in the consultation (15 different options for eight different schemes). One would have to read all the documents to have known this was the case, most normal people trying to respond to this consultation in a very short period of time would not have known to read the SCI.

² [REDACTED]

Non-Technical Summary (NTS)

13. The Non-Technical Summary (NTS) for the scheme should be a simplified version of the PEIR. It should be possible for an ordinary member of the public to be able to understand and easily grasp the environmental impacts of a scheme, however, the NTS for this scheme extends to 89 pages which is clearly a very large amount of information for a supposedly simple document.
14. The NTS is full of highly technical assessments using specialist language. Long, complex tables using technical terminology have been copied directly from the PEIR, giving detailed technical information about all fifteen options. There does not appear to have been much attempt made to simplify and condense the environmental impact assessment so that the impacts are obvious and clear to ordinary members of the public. This again means that it would have been very hard for the average person to actually grasp what National Highways are proposing.

Lack of consideration of non-dualling options

15. Right the way through the pre-DCO submission process, Friends of the Lake District requested that National Highways investigate the feasibility of improving the safety of the A66 without dualling the entire length of the road. Safety improvements including redesigned junctions, speed limits, speed enforcement cameras and underpasses or bridges for farm and Kirkby Thore gypsum mine traffic should have been properly explored. A safety upgrade case for the whole route was never put forward as an option in any of the discussions or consultations with National Highways despite the fact it would have the lowest impact on the landscape and wildlife along the route as well as being a significantly lower carbon option whilst reducing accidents and increasing A66 users' safety, reducing landscape damage and significantly cheaper than what is being proposed. On the basis that this option has not been considered at all (where other options have been considered and dismissed), we cannot see how this project can be accepted for DCO permission.

Landscape Assessment is inadequate as no photomontages are provided

16. Viewpoints are identified in the consultation documents, however, there are no photomontages or visualisations of the proposed road provided in the consultation. A fly-through at 50m above the ground is an inadequate way of showing what the road will actually look like when viewed at ground level.
17. All other major infrastructure DCO applications (at this particular stage of the process) and EIA/Major Development planning applications at pre-application stage that we have been involved with have

provided photomontages to demonstrate how the proposed development will look from various viewpoints.

18. Principles for visualisation of development are set out in The Guidelines for Landscape and Visual Impact Assessment 3rd edition (GLVIA3). Consistent with the Environmental Impact Assessment Regulations (EIA Regs), GLVIA3 advocates proportionate and reasonable approaches to the scope of assessments. The *“Visual Representation of Development Proposals - Technical Guidance Note 06/19”* document published by the Landscape Institute³ sets out how and why visualisations should be produced as part of the consultation on major development. The document states:

a. *“It is critical that these visualisations are accurate, objective and unbiased. They should allow competent authorities to understand the likely effects of the proposals on the character of an area and on views from specific points.”*

19. The flythrough which accompanies the consultation documentation is considered by this guidance to be purely an *“illustrative visualisation intended for marketing or to support planning applications by conveying the essence of what a proposal would look like in context.... Generally speaking, they will not be used to explain design proposals within the planning process.”* The flythrough is in no way detailed enough to provide the information needed to make informed responses to the consultation. Indeed, it omits woodland and hedgerows, presenting the A66 corridor as a Disneyfied land of rolling green featureless grassland, totally unrepresentative of the actual landscape.

20. Visualisations need to be provided at human eye level, at various times of the year from a sufficient number of viewpoints (more in sensitive landscapes) to enable consultees and decision makers to develop an informed view of the impact of the infrastructure development.

21. *Section 2: Guiding Principles* of the document referenced above lays out what is required with regard to visualisations and why it is necessary to provide them. It notes that visualisations are particularly important in sensitive landscapes. The A66 route passes through and close to such landscapes including the North Pennines AONB and its setting as well as the setting of the Yorkshire Dales National Park.

³ [REDACTED]

22. We cannot understand how National Highways have come to the conclusions on landscape and visual impact as found in the impact matrices in the PEIR *without* using photomontages/visualisations. However, if visualisations *were* used by National Highways or their consultants to make these landscape impact decisions, then they should also have been provided for consultees to evaluate the decisions that were made. If no photomontages were produced, we would question the veracity of the decision-making process. If photomontages were produced, but not shared with in the consultation for consultees and local people to study, this surely invalidates the consultation process.
23. Friends of the Lake District is therefore of the opinion that the landscape and visual impact section of the consultation documents/PEIR do not provide enough information about the visual and landscape impact of the proposals for consultees to make informed judgements about the options that National Highways put forward in their consultation, and in fact if landscape and visual impact matrices have been developed without the use of visualisations, this is likely to invalidate their conclusions.

Cumulative impact of this road scheme on climate change

24. We do not consider that enough information on the cumulative impact of this major road scheme in combination with other major infrastructure schemes on greenhouse gas emissions has been provided in the consultation. The Examining Authority for the current A47-A11 Thickethorn Junction Project Examination in Public⁴ has made the following request of National Highways:
- a. “1. The ExA acknowledges that the Secretary of State for Transport (SoST) is requesting additional information on other highway projects (for example A1 Morpeth to Ellingham, A38 Derby Junctions scheme which was subject to High Court challenge, M25 Junction 28, and others) to assist a decision on climate change related impacts having regard to cumulative assessment concerns. In those circumstances and based on current submissions, the Applicant is requested to provide a Climate Change Position Statement which further addresses climate change and cumulative assessment of climate impact information issues being referred to for this scheme.
 - b. The statement should provide (or, to the extent that it has already been provided, identify) its assessment of the cumulative effects of Greenhouse Gas emissions from the scheme with other existing and/or approved projects on a local, regional and national level on a consistent geographical scale (for example an assessment of the cumulative effects of the Roads

⁴ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010037/TR010037-000739-220126%20TR010037%20A47%20A11%20Thickethorn%20Rule%208,%2013%20and%2017.pdf>

Investment Strategy RIS 1 and RIS 2 at a national level). This should take account of both construction and operational effects; identify the baseline used at each local, regional and national level; and identify any relevant local, regional or national targets/budgets where they exist and how the assessment complies with these (including the carbon budgets, the 2050 zero target under the Climate Change Act 2008, and the UK's Nationally Determined Contribution under the Paris Agreement). It should be accompanied by reasoning to explain the methodology adopted, any likely significant effects identified, any difficulties encountered in compiling the information, and how the assessment complies with the Environmental Impact Assessment Regulations. Confirmation should be given that the statement has been prepared by a competent expert."

25. This information should have been provided within the recent consultation as it will form an essential part of the evaluation of the project. Again, the lack of this information highlights inadequacy in the provision of information around the climate change impacts of the proposal. Without this information, the proposal cannot be effectively assessed.

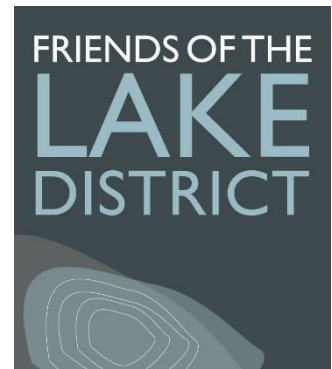
26. To reiterate, we consider that the National Highways A66 Trans-Pennine Upgrade consultation was inadequate on the basis that:
 - a. It did not give a sufficiently long enough consultation period for public consideration
 - b. The consultation was confusing and did not give members of the public a fair opportunity to understand the proposal (exacerbated by the short consultation period)
 - c. There was no consideration of a non-dualling, safety upgrade option
 - d. There were no photomontages provided, and therefore the conclusions reached in the landscape section of the PEIR have not been informed by visualisations of the scheme. If the conclusions have been informed by visualisations, why were these not included in the consultation document?
 - e. There is no consideration of the cumulative climate change impact of the scheme in combination with other major infrastructure schemes.

27. This letter is being copied to the Planning Inspectorate for information as well as Cumbria County Council and Eden District Council to inform their Adequacy of Consultation documents.

Yours sincerely,



Dr Kate Willshaw
Policy Officer
Friends of the Lake District



Mr Lee Hillyard
Project Director A66
National Highways

(By email)

3rd November 2021

Friends of the Lake District

[Redacted]
[Redacted]
[Redacted]
[Redacted]

info@fld.org.uk

Dear Mr Hillyard

Friends of the Lake District response to National Highways A66 Northern Trans-Pennine Design Consultation September 2021

1. Friends of the Lake District is an independent charity and the only membership organisation dedicated to protecting and enhancing Cumbria's landscapes. We believe that Cumbria and the Lake District offer some of the most spectacular and precious landscapes in England. We take action to protect and enhance the natural beauty of these landscapes for the benefit of local communities, visitors, wildlife and habitats. We represent CPRE as the Cumbria County Association.

Overarching comments

2. Right the way through the pre-DCO process, Friends of the Lake District has requested that National Highways look at the feasibility of improving the safety of the A66 without dualling the entire length of the road. Safety improvements including redesigned junctions, speed limits, speed enforcement cameras and underpasses or bridges for farm and Kirkby Thore gypsum mine traffic should have been properly investigated. A safety upgrade case for the whole route was never put forward as an option in any of the discussions or consultations with National Highways despite the fact it would have the lowest impact on the landscape and wildlife along the route as well as being a significantly lower carbon option whilst reducing accidents and increasing A66 users' safety.

3. We do not consider that a six weeks consultation period is long enough for a development of this magnitude and complexity. Many of the individuals and groups responding to the consultation are doing so on a non-professional basis. To expect them to read, digest and respond to this quantity of information which is not even all presented in one place (e.g. the Route Development Report is found on a different website to the PEIR, which is on a different webpage to the Scoping Opinion report) is virtually impossible. This means that there is a democratic deficit in the consultation process which should be addressed with further time for consultation.
4. This consultation is very confusing. Despite the announcement of a “Preferred Route” in 2020, the Design Consultation document proposes at least 15 different variations of routes. Consultees are then left at a loss as to which ones we are supposed to be looking at or commenting on. We are also very concerned at the lack of photomontages of the proposed development from a person’s point of view. A fly-through at 50m above the ground is a totally inadequate way of showing what the road will actually look like when viewed at ground level.
5. We consider that because of this, the current statutory consultation under S48 of the 2008 Planning Act is premature and there should have been at least one more round of non-statutory consultation. We therefore do not consider that this scheme is ready to enter the DCO process. We will be making our views clear to PINS that the consultation around this scheme has been inadequate, that questions posed to National Highways have not been answered and that there are very few areas of common ground.
6. Friends of the Lake District is particularly concerned that extra capacity on the A66 to the east of the M6 will lead to increased pressure to dual or widen non-dualled sections of the route to the west of the M6, within the Lake District National Park. This would be completely unacceptable in a National Park.

Landscape concerns

7. As made clear in our previous responses to this scheme and also at Highways England stakeholder events in Darlington in 2018, Friends of the Lake District is concerned that upgrading the A66 to a dual carriageway for its entire length from Penrith to Scotch Corner will make it more difficult to secure a sustainable future for Cumbria’s landscapes, people and wildlife. Implementation of this scheme would lead to significant damaging impacts on the natural capital of Cumbria and the North Pennines. This damage would include harm to protected landscapes, loss of and damage to habitats, severing of wildlife corridors, loss of flora and fauna, increases in noise, light and air pollution; local community severance and issues with flooding and run-off.

8. The stretch of road that Highways England propose to dual from Appleby to Brough runs along the southern boundary of the North Pennines Area of Outstanding Natural Beauty. Paragraph 5.152 of the National Networks National Policy Statement states:
 - a. *‘There is a strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in a National Park, the Broads and Areas of Outstanding Natural Beauty, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly. Planning of the Strategic Road Network should encourage routes that avoid National Parks, the Broads and Areas of Outstanding Natural Beauty.’*
9. In addition, paragraphs 5.150 and 5.151 of the National Policy Statement reiterate the more general presumption against major development in National Parks, which is also set out in paragraph 176 of the National Planning Policy Framework (NPPF). This paragraph of the NPPF has also recently been updated to include protection for the setting of National Parks **and AONBs**, and the new text states that development within these areas “should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas”. The Government also emphasised the additional planning protection for National Parks in the 25 Year Environment Plan (page 57) alongside strong support for greater enhancement of our landscapes.
10. The section of road around Kirkby Thore has been brought closer to the boundary of the North Pennines and lies within the setting of the AONB. It will clearly cause damage to the setting of the protected landscape due to its longer route, elevated position compared to the current line of the road and significant earth works and structures which are proposed.
11. As a public body, National Highways has a duty under the CROW Act 2000¹² to take account of the potential effect of their decisions and activities on the AONB’s statutory purpose (the statutory purpose of an AONBs is to conserve and enhance the natural beauty of its area). This includes activities undertaken outside AONB boundaries which may affect land within them.
12. Friends of the Lake District considers that the far-reaching harmful impacts of new road building provide clear grounds to reject these road plans as they stand. Whilst any congestion benefit from the upgrade of the A66 would be temporary due to induced traffic (additional traffic generated by the

¹ Section 85 of the Countryside and Rights of Way Act 2000

² [REDACTED]

road scheme itself; see 'Road Upgrade Assumptions' section below), the adverse environmental impacts would be lasting, irreversible and would significantly outweigh any benefits.

13. The lack of photomontages in the Chapter 10 Landscape and Visual of the PIER is of great concern on the basis that a fly-through from 50m height over an idealised landscape does not give the public or consultees any idea of what the proposed road when viewed at 1.5m above the ground. Lack of oblique imagery makes it impossible to determine the impact on the landscape from the point of view of people within the landscape.

Biodiversity – Habitats and Wildlife

14. The scale and magnitude of this road development will cause a considerable loss of many habitats which are important for protected species such as otter, bats, badger, polecat, red squirrel and brown hare. This is along with severance of wildlife corridors such as hedgerows, linear woodlands, scrub and field margins. For example, the Biodiversity report lists 56 locations where potential bat flight routes would be directly affected by the proposed scheme.
15. We are aware of a number of fields along the proposed route which are important for breeding and feeding waders including golden plover which are a qualifying species of the North Pennines SPA, as well as curlew, lapwing, snipe, redshank etc. These fields are not within protected sites, but are an important habitat for these wading birds many of which are IUCN Red List species of conservation concern
16. We consider that the huge land-take of the A66 will have an unacceptably damaging impact on wildlife along the route.

Climate Change

17. Transport is the largest single contributor to emissions in the UK and there is a large and growing gap between emissions and targets. Road building "business as usual" cannot continue in a time of climate crisis. The country cannot keep building roads as if we are unaware of the consequences of increased emissions. Building roads induces new traffic³, thus increasing demand and therefore emissions. The Climate Change Committee makes this clear to the Department for Transport in its 'Progress in reducing emissions 2021 report' where it states⁴

³ [REDACTED]

⁴ [REDACTED]

“Decisions on investment in roads should be contingent on analysis justifying how they contribute to the UK’s pathway to Net Zero. This analysis should demonstrate that the proposals would not lead to increases in overall emissions. Wherever possible, investment in roads should be accompanied by proportionate investment in EV charging infrastructure and in active travel and public transport.” And

“Ensure all departmental policy decisions, and procurement decisions, are consistent with the Net Zero goal”

18. The Welsh Government has started a review of all road schemes against net zero which asks two questions
 - a. Has sufficient consideration been given to non-transport solutions and solutions other than those increasing private car capacity on the road network?
 - b. Has sufficient consideration been given to whether the road proposal will lead to increased CO2 emissions on the road network, or cause significant impediment to achievement of our decarbonisation targets?

19. The result of the first review⁵ carried out on the Llanbedr by-pass was published on 1st November and determined that “The chair’s report concludes that the proposed scheme does not align well with new Welsh Government transport and climate policy, and advises that it is not taken forward. I (Secretary of State) have accepted the chair’s recommendations and Welsh Government will not support any further work on the current Llanbedr Access Road scheme.” It is striking that the Welsh Government is taking account of the impact of road schemes on carbon emissions. It would seem prudent for National Highways to adequately consider the CO2 emissions from this scheme.

20. The A66 project is the fourth largest road scheme in England in terms of greenhouse gas emissions. Whilst the statement is made within the “PEI Report – Climate” that *“It is very unlikely that the impact of a road project will in isolation affect the ability of the Government to meet its carbon reduction plan targets”* EIA legislation requires that the cumulative environmental impact of developments are assessed. We do not consider that an increase in emissions can be justified when emissions must be reduced by 78% by 2035 (sixth carbon budget), and 68% by 2030 (Paris Agreement) as well as any commitments that come out of COP26 which concludes after this consultation closes. Net zero by 2050 will not be met if schemes such as this go ahead. Whilst the emissions from one scheme may

⁵ <https://gov.wales/roads-review-panel-llanbedr-access-road-and-bypass>

seem negligible, the emissions from the many road schemes proposed by the government and local authorities add up to a major cumulative impact.

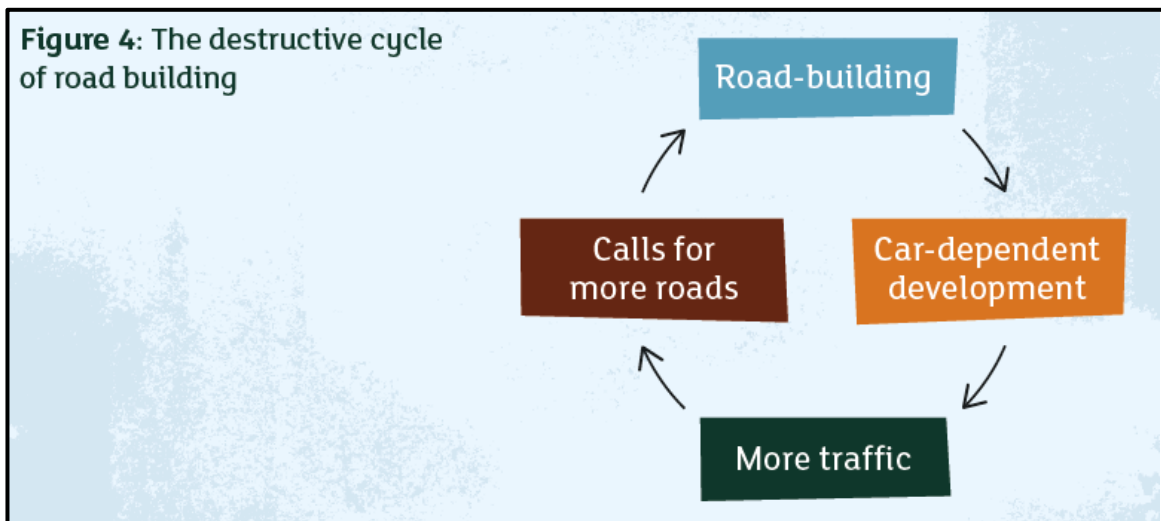
21. We do not consider that the proposed A66 upgrade is consistent with the need to reduce carbon right across Government departments. Stating that the road will only cause a 0.3% increase in net carbon emissions and is therefore negligible is disingenuous in the light of the cumulative impact of the DfT's programme of road building. The combined emissions from the road schemes will be equal to significantly more than 1% of England's carbon emissions at a time when carbon from roads needs to be falling, not rising.
22. In total, this scheme will lead to an increase of up to 4.4 million extra tonnes of carbon from additional traffic and the construction process. This is completely unacceptable in a climate emergency, and takes us further away from reaching our 68% cut by 2030 required under the Paris Agreement.

Road Upgrade Assumptions

23. Studies carried out over many years have demonstrated that building new roads, widening roads or upgrading roads to dual carriageway induces additional road use by bringing more vehicles onto the road that would not have otherwise used it, for example the Standing Advisory Committee on Trunk Road Assessments (SACTRA) report on Trunk Roads and the Generation of Traffic (1994)⁶, Campaign For Better Transport (2006)⁷. Using the formal Post-Opening Project Evaluation evidence CPRE's review⁸ of 80 road building schemes showed that they:
 - a. Generate more traffic – often far above background trends over the longer term
 - b. Lead to permanent and significant environmental and landscape damage
 - c. Show little evidence of economic benefit to local economies
24. The phenomenon of induced traffic (defined as additional traffic generated by the road scheme itself) is well-established. Any respite from congestion provided by a new or widened road is temporary, before the cycle starts again. The prevailing ideology is to continue ploughing funding into an unsuccessful policy of continually 'bypassing the bypass'.

⁶ [REDACTED]
[REDACTED]
[REDACTED]

25. The present economic development model of: roads → car-based development → traffic growth → more roads is unsustainable and ineffective. Provision of more road capacity does not deliver a stable situation: the more capacity is increased, the more capacity increases are 'needed'. (CPRE 2017).



26. A current example can be seen at the Dartford Crossing in Kent, where repeated increases in capacity have been overwhelmed by growing demand. In 2015, Highways England reported:

- a. 'Analysis of traffic data shows that traffic demand at Dartford has responded in step with capacity; such that whenever new capacity has been provided, it has filled up and created the need for more capacity. This has been a recurring pattern since the second tunnel was opened at Dartford in 1980 and then the QEII Bridge in 1991. Today there is insufficient capacity to cater for current and future traffic demand.'⁹

27. The consultation document states that investment in an upgrade would increase economic prosperity. However, it has been demonstrated by SACTRA's report *Transport and the Economy* in 1996¹⁰ and in the CPRE/Countryside Agency Report 'Beyond Transport Infrastructure: Lessons for the future from recent road projects (2006)' that there are no automatic economic benefits to be gained from providing extra highway capacity¹¹

⁹ Highways England "Lower Thames Crossing Pre-Consultation Scheme Assessment Report" 2015

¹⁰

https://webarchive.nationalarchives.gov.uk/20050304041634/http://www.dft.gov.uk/stellent/groups/dft_econappr/documents/pdf/dft_econappr_pdf_022512.pdf

¹¹

Road Safety Assumptions

28. We consider that safety on the A66 could be improved without making it a dual carriageway. For example by imposing lower speed limits on the most dangerous stretches of the road, including using average speed cameras to enforce the limits. Along with speed reduction, safety could be improved by the addition of features such as underpasses or bridges to replace crossings so that traffic no longer has to cross the carriageways of the A66. In particular the provision of a bridge across the road at Kirkby Thore to enable HGV traffic from the British Gypsum Works to safely access the opposite carriageway of the A66. Acceleration and deceleration lanes, coupled with underpasses or bridges to remove the need for vehicles to turn right across the carriageway would significantly reduce risk of accidents at hazardous junctions.

National Highways - unanswered questions

29. In our response to the 2019 consultation we asked for the following information
- a. Whether a cost-benefit analysis has been carried out looking at junction upgrades for safety reasons, but no dualling.
 - b. A list of benefits and whether they will outweigh the environmental costs (including increased greenhouse gas emissions)
 - c. How certain are Highways England that the proposed road scheme will not produce induced traffic; and
 - d. How the scheme fits with a net zero carbon UK by 2050.

It has not been possible to identify the answers to these questions in the current consultation.

30. In addition, we stated that

“Friends of the Lake District is not certain that reductions in journey time and ‘development of the Northern Powerhouse’ are satisfactory reasons for upgrading the A66 in the face of landscape damage in and adjacent to the North Pennines AONB and increasing greenhouse gas emissions during a climate change emergency. **We therefore would like Highways England to show how these issues will be addressed to ensure that there will be no net emissions increase.**”

31. We have had no contact with National Highways (Highways England) in the more than two years since we submitted our 2019 response which raises concerns that the organisation is not prepared to engage with consultees and stakeholders. This absence of engagement is of great concern as it shows a lack of will to deal with questions that NGOs and others put to National Highways and a lack of accountability in what is supposed to be a front-loaded process.
32. This will inevitably lead to a situation where we will not be able to agree Areas of Common Ground with National Highways in the run-up to the submission of the DCO to PINS.

Route specific comments

33. Friends of the Lake District is a Cumbrian-based charity therefore our route specific comments relate solely to the parts of the proposed development that lie within Cumbria. We refer you to comments that the Campaign for National Parks will be making with regard to the proximity of the proposed development to the Yorkshire Dales National Park on the east side of the Pennines.
34. We have particular concerns about the impact that the Temple Sowerby to Appleby and Appleby to Brough proposals will have on landscape and biodiversity and so will be concentrating on these two sections of road.

Temple Sowerby to Appleby

35. The Landscape and Visual Chapter of the PIER does not make it clear which of the three routes (Orange, Red or Blue) has actually been chosen to take forward to the DCO despite the “Preferred Route” having been published last year. On landscape and visual impact grounds as well as carbon emissions grounds the Orange Route has significantly less impact than the other two. The Blue and Red alternatives have major implications:
- a. For the setting of the North Pennines AONB;
 - b. For tranquillity and noise pollution;
 - c. For climate change on the basis that the route is longer, the construction and operation of the route would increase greenhouse gas emissions;
 - d. Time would be added to journeys rather than saved so it doesn’t even meet the National Highways road improvement criterion to make journeys faster.
36. As mentioned in paragraph 13, the lack of photomontages to show what the road would look like is of major concern. How is it possible to undertake a visual impact assessment without these in place? A fly through does not give a person-eye view of the route, we would have expected to see photomontages provided with the viewpoint photographs in Chapter 10 Figures. I have contacted the

A66 email address to ask for photomontages, but have not yet had a reply. In addition there aren't even fly through visualisations showing the three different route options around Kirkby Thore. If all three routes are being considered, then all three routes should be visualised. If all three routes are not being considered, then this should have been made clearer in the consultation documents.

37. The lack of photomontages means that it is not possible to adequately assess the impact of the three different routes in this section of the proposed development. For instance the Red and Blue routes will be changing the line of the road from the valley bottom to $\frac{3}{4}$ of the way up a slope to the north of the existing A66. We have no means of assessing the impact properly without photomontages as the flyover visualisations are not adequate to make landscape and visual impact assessments from.
38. The increase in elevation of the road will put it directly in the foreground when looking north east towards the North Pennines AONB, creating both a scar on the slope of the hill, but also creating both visual and aural disturbance in the landscape. The elevation of the road will amplify the road noise across the valley to Bolton and Crackenthorpe.
39. We are concerned with the number of hedgerows, hedgerow trees and wooded areas that will be lost with their connectivity being severed by the red and blue routes. The orange route would be somewhat better than the other two with regard to biodiversity, but there will still be a negative impact on the protected species and habitats in the area.
40. As stated above in paragraph 2, we want to see an assessment of a non-dual carriageway option of this stretch of road carried out by National Highways. As an example of a non-dualling option:
 - a. Create a road from a junction to the west of Kirkby Thore for traffic to access the village from the north; also relieving the HGV traffic from British Gypsum and other businesses from the village.
 - b. Close the road at the Bridge Bistro to force local traffic to use the new western link road to a safe junction
 - c. Implement a 40 mph speed limit along the single carriage-way road
 - d. Install average speed cameras along the road to enforce the speed limit

Appleby to Brough

41. We are very concerned about the impact of the dual carriageway on the North Pennines AONB. Whilst the line taken is more similar to that of the existing A66 than at Kirkby Thore, the land take is significantly greater, and the number of junctions along what is a short stretch of road is excessive. It seems particularly odd to actually propose a new junction to the east of Warcop which extends into the AONB itself.

42. The increased speed of vehicles on the dual carriageway will lead to more noise, light and air pollution whilst the extra traffic that the road will induce will multiply the impact of all three on the AONB. This is unacceptable in a nationally protected landscape, and as stated in section 8 above is contrary to Paragraph 5.152 of the National Networks National Policy Statement as well as paragraphs 5.150 and 5.151 of the National Policy Statement and paragraph 176 of the NPPF.

Conclusion

43. To reiterate

- a. National Highways should not proceed with a DCO planning application until they have consulted properly and are clear which option is being progressed, and consult on those proposals.
- b. National Highways should have put forward an option to improve the safety of the A66 through junction upgrades, underpasses and bridges and use of average speed cameras without making the road a dual carriageway. We want to know why this option was not considered.
- c. Upgrading the A66 to a dual carriageway for its entire length from Penrith to Scotch Corner will make it more difficult to secure a sustainable future for Cumbria's landscapes, people and wildlife. Implementation of this scheme would lead to significant damaging impacts on the natural capital of Cumbria and the North Pennines. This damage would include harm to protected landscapes, loss of and damage to habitats, severing of wildlife corridors, loss of flora and fauna, increases in noise, light and air pollution; local community severance and issues with flooding and run-off.
- d. The extra traffic from the eight schemes would increase carbon emissions by up to 3 million tonnes over the lifetime of the scheme (Table 7-2 in the GHG Emissions Assessment Appendix)
- e. The emissions resulting from the construction of the scheme would cause up to 1.4 million extra tonnes of carbon (Table 7-1 in the GHG Emissions Assessment Appendix)
- f. In total the scheme would lead to an increase of up to 4.4 million extra tonnes of carbon from extra traffic and the construction process. This is completely unacceptable in a climate emergency, and takes us further away from reaching our 68% cut by 2030 required under the Paris Agreement.

- g. It is unacceptable that consultees and the public were asked to assess this scheme without being provided with photomontages. A fly through over an inaccurately rendered cartoon depiction of the landscape at 50m height does not provide the information needed as it does not represent how people see the landscape.
- h. We have serious concerns about the sections from Temple Sowerby to Appleby (particularly at Kirkby Thore) and Appleby to Brough where the road goes into the North Pennines AONB.

Please take these representations as coming from Friends of the Lake District, CPRE Cumbria Branch.

Yours sincerely



Dr Kate Willshaw
Policy Officer

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7 April 2022

Dear Sirs

Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project ("NSIP")

1. We are instructed by Transport Action Network ("**TAN**") in relation to the above NSIP ("**the Scheme**"), which is currently at the pre-application stage of the Development Consent Order ("**DCO**") process. Our client has previously sent emails of 3 and 10 February 2022 regarding concerns over the lawfulness and transparency of the consultations for the Scheme and included concerns about the adequacy of the statutory consultation in their response of 6 November 2021.
2. The Scheme effectively is the combination of eight different NSIP schemes along a fifty-mile stretch of the A66, crossing nationally and internationally protected landscapes and habitats. Our client is extremely concerned that because the Scheme is part of "Project Speed", National Highways is rushing the scheme development, resulting in inadequate and potentially unlawful consultations.
3. In summary, our client's concerns are:
 - (i) The adequacy of the statutory consultation, including its complexity and period it was open for comments
 - (ii) Four consultations described as 'targeted non-statutory consultations' were effectively closed to the public due to them not being publicised, or locatable on the National Highways consultation website despite including what are described as 'considerable changes to the design' presented in the statutory consultation. No information was provided regarding the environmental impacts of the proposed changes, despite them being described as 'considerable changes to the design'.

- (iii) A further consultation on significant changes to the proposed scheme, including large scale earthworks, new cycling and walking routes and the addition of a large number of extensive compounds. Again, no information provided regarding the environmental impacts of the proposed changes, despite the area being known nationally for its tourist and leisure industry and the earthworks and compounds being within and in such proximity to highly protected landscapes and habitats.
- (iv) A further consultation on the relocation of Brough Hill Fair, which is culturally important to the Gypsy community, may not comply with the requirements of the Public Sector Equality Duty.
- (v) The lack of environmental information available in respect of the proposals for the Scheme as it now stands, to the extent that it is not possible for the consultation bodies to develop an informed view of the likely significant environmental effects of the development and associated development.
- (vi) The fact that concurrent and consecutive consultations have been held on a range of quite complex topics and which the public concerned have been expected to get to grips with and comment on.
- (vii) Overall that the statutory consultation and subsequent consultations have been inadequate to the extent that the Secretary of State cannot be satisfied that the statutory requirements and those set out in the pre-application guidance have been met.

Background

- 4. Route options for the Scheme were consulted on in summer 2019 and a preferred route announcement was made in May 2020. The statutory consultation was held between 24 September 2021 and 6 November 2021.
- 5. Since the statutory consultation closed there have been six further consultations (that our client is aware of), including (in summary):
 - (i) [A66 Trans-Pennine Supplementary Design Consultation: Appleby to Brough](#)

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on what are described as “*considerable changes to the design*” that was presented during the statutory consultation. These changes include:

- Building the additional carriage to the north of the existing A66 rather than the south at Warcop central to reduce the impact on properties and land to the south and to the Roman Camp.
- Building the structure at Warcop central slightly higher to help mitigate environmental issues with the River Eden Special Area of Conservation (SAC).

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. The changes described in the Consultation Brochure are considerable

and the subject matter includes impacts on nationally designated landscapes, habitats and species and are of more than immediate local concern.

(ii) A66 Trans-Pennine Supplementary Design Consultation: M6 Junction 40 to Kemplay Bank

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on changes that would impact community connectivity, environmental and land impacts, including the loss of public open space.

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. The changes described in the Consultation Brochure include impacts on a country park and college playing fields and are of more than immediately local concern.

(iii) A66 Trans-Pennine Supplementary Design Consultation: Bowes Bypass Hullands Quarry

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on changes in respect of access arrangements into and out of Hullands Quarry and provision of an access track to Bowes Cross Farm, both of which would impact road safety.

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. No consultation brochure was published for this consultation and there is no detail provided in respect of the environmental impact of the proposals, but the changes described impact road safety and are of more than immediate local concern.

(iv) A66 Trans-Pennine Supplementary Design Consultation: Temple Sowerby to Appleby

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on what are described as “considerable changes to the design” that was presented during the statutory consultation. These changes include:

- Relocation of the junction north of Kirkby Thore westwards from Main Street to Fell Lane to improve a potentially dangerous stretch of narrow road and redirect heavy goods vehicles to a better, more suitable route and to avoid the Roman Camp Scheduled Monument. Works will include the construction of landscaping bunds.
- Change at Long Marton from overbridge to full-movement junction to the east of the design presented at the statutory consultation to seek to avoid increased heavy goods vehicles on unsuitable roads.

- The addition of a junction at Long Marton to remove the Appleby Junction links to seek to avoid land take from Fair Hill at Appleby which would have impacted the Appleby Fair.

This part of the scheme is in one of the most environmentally sensitive parts of the route, as it crosses Trout Beck, which is part of the River Eden SAC. The lack of information provided makes it impossible to understand what the impacts on the SAC could be.

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. The changes described in the Consultation Brochure are considerable and involve the construction of a new junction, construction of landscaping bunds and loss of hedgerows. The changes also relate to impacts on road safety and an annual event culturally significant to the gypsy, traveller and Roma communities. The considerable changes described are of more than immediate local concern.

(v) A66 Trans-Pennine Supplementary Design Consultation: walking, cycling and horse-riding provision, landform and compounds

This consultation opened on 16 February 2022 and closed on 20 March 2022 and sought views on very considerable changes to the following:

- Extensive changes to walking, cycling and horseriding provision along the length of the Scheme
- Considerable changes to the proposed landform along much of the route, with the construction of multiple large landscape bunds
- Multiple new large compounds along much of the route, of unknown purpose or use

Although this consultation was listed on the National Highways consultation hub, it was not present on the National Highways scheme page, nor advertised on National Highways social media accounts with a publicly available link. Despite the numerous major and complex changes described in the Consultation Brochure, no public events were organised to inform the public and give them the opportunity to view the maps and ask questions. This may be in breach of National Highways' Public Sector Equality Duty, as it deprived those without access to the internet (particularly the elderly) an opportunity to inform themselves of the changes and to respond.

Neither the consultation webpage nor the Consultation Brochure provide any information regarding the environmental impacts of any of these changes, which by their nature can be expected to be considerable due to the extent of the land impacted and the proximity to multiple protected landscapes and habitats.

The new, proposed compounds, while they might be considered temporary, will have a large detrimental impact on the area and should have had their impact assessed as part of the Preliminary Environmental Information Report (PEIR). Even if considered temporary, compounds can end up being permanent features or leave behind permanent impacts, sometimes

leading to further development. Due to these significant changes, the environmental impacts of which have not been explained or made public, the PEIR should be updated and consulted upon again. The principle of public participation, and the requirements of the Statutory Guidance, have not been complied with.

(vi) A66 Trans-Pennine Supplementary Design Consultation: Brough Hill Fair

This consultation opened on 11 March 2022 and closed on 3 April 2022 and sought views on changes to the proposed re-siting of Brough Hill Fair to a smaller site than previously proposed and almost two miles away.

Statutory guidance

6. Under the Planning Act 2008 the Department for Communities and Local Government in March 2015 issued statutory guidance on the pre-application process (“**the Guidance**”). The statutory guidance is an important consideration in the Secretary of State’s decision whether to accept an application for examination.¹ The Guidance throughout makes abundantly clear the importance of proper consultation. In particular:

6. Part 5 of the Planning Act sets out statutory requirements for applicants to engage in pre-application consultation with local communities, local authorities, and those who would be directly affected by the project. The front-loaded emphasis of consultation in the major infrastructure planning regime is designed to ensure a more transparent and efficient examination process.

18. Early involvement of local communities, local authorities and statutory consultees can bring about significant benefits for all parties, by:

- *helping the applicant identify and resolve issues at the earliest stage, which can reduce the overall risk to the project further down the line as it becomes more difficult to make changes once an application has been submitted;*
- *enabling members of the public to influence proposed projects, feedback on potential options, and encouraging the community to help shape the proposal to maximise local benefits and minimise any downsides;*
- *helping local people understand the potential nature and local impact of the proposed project, with the potential to dispel misapprehensions at an early stage;*
- *enabling applicants to obtain important information about the economic, social and environmental impacts of a scheme from consultees, which can help rule out unsuitable options;*
- *enabling potential mitigating measures to be considered and, if appropriate, built into the project before an application is submitted; and*
- *identifying ways in which the project could, without significant costs to promoters, support wider strategic or local objectives.*

19. The pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime. A thorough process can give the Secretary of State confidence that issues that will arise during the six months

¹ Statutory guidance, paragraph 5; Planning Act 2008, sections 55(5A)(b) and 55(4)(c)

examination period have been identified, considered, and – as far as possible – that applicants have sought to reach agreement on those issues. Without adequate consultation, the subsequent application will not be accepted when it is submitted. If the Secretary of State determines that the consultation is inadequate, he or she can recommend that the applicant carries out further consultation activity before the application can be accepted.

53. Local people have a vital role to play at the pre application stage. People should have as much influence as is realistic and possible over decisions which shape their lives and communities. It is therefore critical that they are engaged with project proposals at an early stage. Because they live, work and socialise in the affected area, local people are particularly well placed to comment on what the impact of proposals on their local community might be; or what mitigating measures might be appropriate; or what other opportunities might exist for meeting the project's objectives.

72. The timing and duration of consultation will be likely to vary from project to project, depending on size and complexity, and the range and scale of the impacts. The Planning Act requires a consultation period of a minimum of 28 days from the day after receipt of the consultation documents. It is expected that this may be sufficient for projects which are straightforward and uncontroversial in nature. But many projects, particularly larger or more controversial ones, may require longer consultation periods than this. Applicants should therefore set consultation deadlines that are realistic and proportionate to the proposed project...

73. Applicants are not expected to repeat consultation rounds set out in their Statement of Community Consultation unless the project proposals have changed very substantially. However, where proposals change to such a large degree that what is being taken forward is fundamentally different from what was consulted on, further consultation may well be needed. This may be necessary if, for example, new information arises which renders all previous options unworkable or invalid for some reason. When considering the need for additional consultation, applicants should use the degree of change, the effect on the local community and the level of public interest as guiding factors.

75. If the application only changes to a small degree, or if the change only affects part of the development, then it is not necessary for an applicant to undertake a full re-consultation. Where a proposed application is amended in light of consultation responses then, unless those amendments materially change the application or materially changes its impacts, the amendments themselves should not trigger a need for further consultation. Instead, the applicant should ensure that all affected statutory consultees and local communities are informed of the changes.

76. In circumstances where a particular issue has arisen during the preapplication consultation, or where it is localised in nature, it may be appropriate to hold a non-statutory, targeted consultation. A developer's Statement of Community Consultation should be drafted so that it does not preclude this approach. A more bespoke approach can be adopted, which may allow developers to respond with more agility to the issue at hand. If adopting this approach, the emphasis should be on ensuring that relevant individuals and organisations are included.

77. Consultation should also be fair and reasonable for applicants as well as communities. To ensure that consultation is fair to all parties, applicants should be able to demonstrate that the consultation process is proportionate to the impacts of the project in the area that it affects, takes account of the anticipated level of local interest, and takes account of the views of the relevant local authorities.

88. It is important to stress that pre-application consultation is a statutory duty for applicants, and it should, as this guidance makes clear, be carried out to a certain standard. Issues about the adequacy of consultation should be considered prior to the Inspectorate (on behalf of the Secretary of State) accepting an application for examination. Where any interested party feels that consultation was inadequately carried out, they should approach the applicant in the first instance. If consultees remain unsatisfied, they can complain to the relevant local authority (who can consider this complaint as part of their representation to the Secretary of State on the adequacy of consultation), or the Secretary of State (through the Inspectorate). Any concerns should be raised promptly during or immediately following the consultation, to enable the applicant to address the issues if appropriate. In all cases, the final decision as to whether pre-application consultation was adequately carried out rests with the Secretary of State.

93. For the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information to enable consultees to develop an informed view of the project. The information required may be different for different types and sizes of projects. It may also vary depending on the audience of a particular consultation. The preliminary environmental information is not expected to replicate or be a draft of the environmental statement. However, if the applicant considers this to be appropriate (and more cost-effective), it can be presented in this way. The key issue is that the information presented must provide clarity to all consultees. Applicants should be careful not to assume that non-specialist consultees would not be interested in any technical environmental information. It is therefore advisable to ensure access to such information is provided during all consultations. The applicant's Statement of Community Consultation must include a statement about how the applicant intends to consult on preliminary environmental information.

Statutory consultation

7. Our client's response to the statutory consultation outlined multiple concerns with its adequacy, including that there were fifteen options consulted on, making this a uniquely complex project and consultation, and that it was unclear which options were the preferred options. This could be in breach of paragraph 93 of the Guidance that "information presented must provide clarity to all consultees". Our client also raised concerns about the inadequacy of the 89-page Non-Technical Summary (NTS). The NTS was extremely long and technical, copying over lengthy and technical information from the PEIR, included information on fifteen different options, and could not be described as a layperson's guide to the environmental impacts of the eight schemes. Another area of concern was that the 6-week consultation period was far too short for a scheme of this complexity.

Preliminary Environmental Information

8. The Applicant is under a duty to consult the consultation bodies and local community and must prepare a Statement of Community Consultation ("**Consultation Statement**").² Consultation must be carried out in accordance with the proposals in the Consultation Statement.³
9. The Consultation Statement⁴ must set out how the Applicant intends to publicise and consult on the PEIR,⁴ which must contain the information reasonably required

² Planning Act 2008, section 47(1)

³ Planning Act 2008, section 47(7)

⁴ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, regulation 12(1)(b)

for the consultation bodies to develop an informed view of the likely significant environmental effects of the development and of any associated development.⁵

10. Where the PEIR, which is a public document on which the public should be properly consulted,⁶ does not contain information reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development and of any associated development, it must be updated and be consulted upon again if there are additional or substantively different likely significant effects.

Concerns

11. Although our client asked for confirmation of the consultations' details (such as dates, deadlines, links to any information online etc) on 3 February and chased this up on 10 February, National Highways declined to provide details of the six subsequent consultations or assist our client to respond.
12. As outlined in the emails of 3 and 10 February our client is extremely concerned at the way that National Highways is conducting its consultations. It appears that public participation is being minimised and large, 'considerable' changes appear to be presented as small and not materially impacting on the scheme that was consulted on in the Autumn of 2021. Our client believes that this is wrong and that there appears to be a number of aspects of the changes which materially impact on the scheme. However, because the environmental impacts of those changes have not been set out, it is not possible fully to understand their significance.
13. Without a properly open and public consultation with sufficient information the public will not know if the new changes are substantially different, or will materially impact on the scheme. Despite the changes being described as 'considerable' and, in our client's view, obviously of wider than merely local impact, unless a member of the public received a leaflet through their letter box, they would not be alerted to these consultations. There would be nothing online to tell them what is happening and those who may have commented on those issues in the Statutory Consultation who are not local or did not receive a leaflet would not have had the opportunity to participate in and comment on the change proposed in the consultation.
14. Our client would argue that any changes within or close to an Area of Outstanding Natural Beauty (AONB) are capable of being significant and of national importance. The same principle applies to internationally important habitats and species protected under the Habitats Directive, such as Special Conservation Areas (SACs) and Special Protection Areas (SPAs). The public, including, local, regional and national environmental organisations, should be given the opportunity properly to respond to these changes if the consultation is to be considered adequate. Without their input it is difficult to see how the most appropriate proposals will be advanced, that will have the least impact on this protected area. People and organisations who have already responded to the statutory consultation and expressed an interest in the scheme, such as our client, (with a national interest in transport and the environment), and national, regional and local environmental groups with an interest in the area, should be considered to be "relevant organisations" for the purposes of further consultations, and notified of further

⁵ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, regulation 12(2)(b)

⁶ Consultation Statement, paragraph 3.11

consultations. Our client asked on 10 February to be notified of all consultations, yet was not notified of the six new consultations.

15. This is a huge scheme spanning eight sections over 50 miles and costing over £1 billion. Each one of these sections has the potential to be an NSIP in its own right, so any changes should be consulted upon in an open and transparent way. Consulting on changes in the different areas separately and in a way that prevents people commenting on other areas also undermines any ability to assess the **cumulative** impacts of the changes and whether these combined impacts materially impact on other areas or the entire scheme. The supplementary consultations into the proposed changes should not happen in isolation, but should be considered in combination.

Conclusion

16. Regulation 12 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 requires that the preliminary environmental information should be adequate for consultees to “develop an informed view of the likely significant environmental effects of the development (and of any associated development)”. The Consultation Statement and the Statutory Guidance set out the importance that the public be consulted on the PEIR. The environmental information and the likely significant effects resulting from proposed changes to the scheme which have been consulted on after the Statutory Consultation need to be explained and included in an updated PEIR that fully informs all consultees, including statutory consultees, on the environmental impacts of these substantial changes, and to revisit the issue of cumulative impacts. Any defects in the way that this consultation has been run could render it unlawful. It is in everyone's interests that these consultations are run properly, otherwise they may be legally defective.
17. If the relevant consultation bodies, including local authorities, consider that they have not been provided with sufficient environmental information on the consultation proposals to develop an informed view of the likely significant effect, they would be within their right to make clear in their representations to the Secretary of State that the consultation carried out by the applicant is deficient and that therefore the application ought not be accepted for examination.⁷
18. Our client believes the solution is for National Highways to issue a new Statement of Community Consultation and to re-run the statutory consultation with an updated PEIR, taking on board all previous feedback. The statutory consultation should allow enough time for adequate responses (six weeks was not enough last time for such a huge scheme), be open to all, with information clearly available online and offline, and a clear and simple Non-Technical Summary (NTS).
19. We would like a substantive reply to the points raised in this letter as soon as possible and in any event no later than 14 days from the date of this letter.

Yours faithfully


Richard Buxton Solicitors
Environmental, Planning & Public Law

⁷ See in particular paragraphs 88 and 93 of the Statutory Guidance (above at para.6) and Regulation 12 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Cc.:

- Planning Inspectorate (A66Dualling@planninginspectorate.gov.uk)
- David Haughian, Head of Planning, Cumbria County Council
([\[REDACTED\]@cumbria.gov.uk](mailto:[REDACTED]@cumbria.gov.uk))
- Fergus McMorrow, Assistant Director of Development, Eden District Council
([\[REDACTED\]@eden.gov.uk](mailto:[REDACTED]@eden.gov.uk))
- David Green, consultant to EDC ([\[REDACTED\]@wsp.com](mailto:[REDACTED]@wsp.com))
- Virginia Taylor, Leader of EDC (leader@eden.gov.uk)
- County Durham Unitary Authority (planning@durham.gov.uk)
- Richmondshire District Council (enquiries@richmondshire.gov.uk)
- North Yorkshire County Council (planning@northyorks.gov.uk)
- Huw Merriman, Chair, Transport Select Committee
(transcom@parliament.uk)
- Officer for Rail and Road (highways.monitor@orr.gov.uk)

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Fwd: Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project
Date: 30 June 2022 19:46:35
Attachments: [REDACTED]

Dear Sir / Madam

We write further to the email below from our solicitors, Richard Buxtons. We understand the Development Consent Order (DCO) application has now been submitted to the Planning Inspectorate (PINS) who now have until 19 July to make a decision whether to accept the DCO application or not. We also understand [Section 55\(4\)\(b\)](#) of the Planning Act 2008 and paragraphs 85-89 of the [pre-application guidance](#) makes provision for Eden District Council to submit an adequacy of consultation response to the Planning Inspectorate (to be received within 14 days of PINS inviting your response, so by 4 July).

We have serious concerns about the adequacy and lawfulness of both the statutory and supplementary consultations undertaken by National Highways as outlined in the three attached letters from Richard Buxtons. We are also alarmed at the unusual and secretive approach National Highways has taken with its numerous supplementary consultations that have taken place since the statutory consultation in Autumn 2021.

These supplementary consultations included significant changes to the proposed scheme with considerable environmental impacts in nationally and internationally important landscapes and habitats, yet none of the supplementary consultations were advertised on the scheme website, nor on the dedicated A66 social media channels operated by National Highways. We monitor and participate in many National Highways' consultations and would like to stress that the secretive and discriminatory approach taken by National Highways with the A66 is extremely unusual and we have never seen this before or indeed elsewhere, and we are extremely alarmed by it. It has seriously undermined democracy and participation in the planning process.

For example, in contrast to no posts on the dedicated [REDACTED] or [REDACTED] page about the supplementary consultations with the A66, the recent 5-week supplementary consultation for the Lower Thames Crossing (LTC) scheme attracted 67 tweets on the dedicated [REDACTED] account, and 66 [REDACTED] posts during May-June 2022. Similarly, the recent 4-week supplementary consultation on the A358 Taunton to Southfields scheme resulted in 17 tweets on the [REDACTED] account, and 17 posts on the [REDACTED] page during May-June 2022. This ensured that as many people as possible heard about these consultations and could participate, with links provided to the consultation websites. With both the LTC and A358 supplementary consultations, Statements of Community Consultations (SoCCs) were also produced, to ensure the expertise and participation of local authorities was engaged. In contrast, no SoCCs have been produced for the A66 supplementary consultations.

We hope that you take these concerns on board in your adequacy of consultation response to PINS. Please could you kindly acknowledge receipt of this email. If possible we would also like to see the Eden District Council adequacy of consultation response to PINS.

Kind regards

Rebecca Lush
Roads and Climate Campaigner

Transport Action Network
providing grassroots support

[REDACTED]

T: [REDACTED] | F: [REDACTED] |

----- Forwarded message -----

From: **Lewis Hadler** <[REDACTED]@richardbuxton.co.uk>

Date: Mon, 20 Jun 2022 at 11:38

Subject: RE: Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project

To: A66NTP@nationalhighways.co.uk <A66NTP@nationalhighways.co.uk> ,

[REDACTED]

Dear Sirs

Further to National Highway's response of 9 June 2022, please find attached further correspondence on behalf of our client. Please note that a response is requested by no later than 4pm Friday 24 June 2022.

Yours faithfully

Lewis Hadler

Senior Paralegal

Richard Buxton Solicitors

Environmental Planning and Public Law
Office A, Dale's Brewery, Gwydir Street, Cambridge CB1 2LJ

email: richardbuxton.co.uk
web: [REDACTED]

Authorised and regulated by the Solicitors Regulation Authority

From: Lewis Hadler
Sent: 13 May 2022 18:36
To: 'A66NTP@nationalhighways.co.uk' <A66NTP@nationalhighways.co.uk>;

[REDACTED]

Subject: RE: Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project

Dear Sirs

Further to National Highway's response of 21 April 2022, please find attached further correspondence on behalf of our client in relation to inadequate consultation in respect of the A66 Trans Pennine road scheme.

Please confirm receipt.

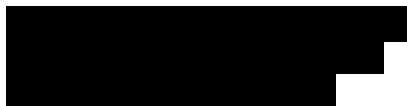
Yours faithfully

Lewis Hadler

Senior Paralegal

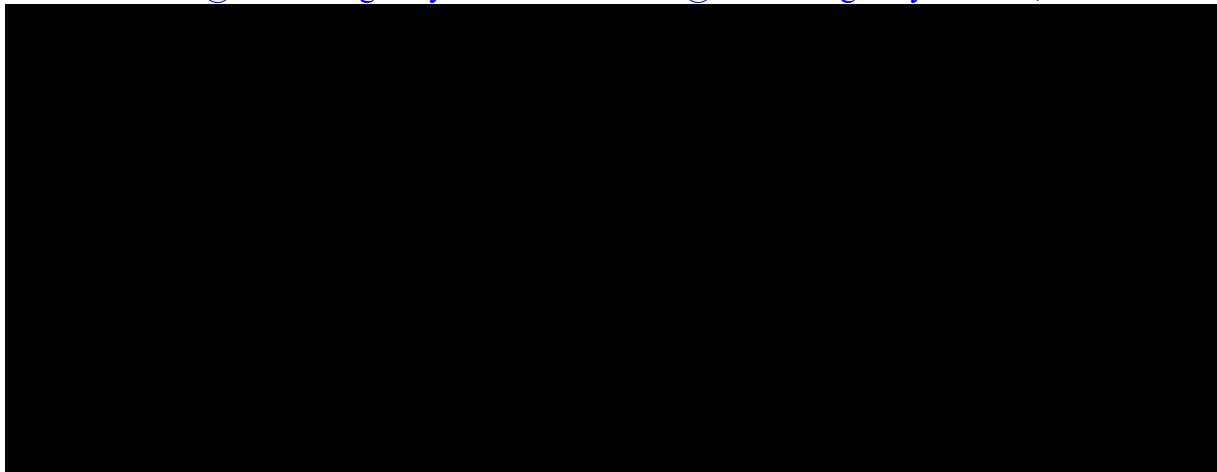
Richard Buxton Solicitors

Environmental Planning and Public Law
Office A, Dale's Brewery, Gwydir Street, Cambridge CB1 2LJ



Authorised and regulated by the Solicitors Regulation Authority

From: Lewis Hadler
Sent: 07 April 2022 15:41
To: 'A66NTP@nationalhighways.co.uk' <A66NTP@nationalhighways.co.uk>;



Subject: Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project

Dear Sirs

We are instructed by Transport Action Network in relation to the A66 Trans Pennine road scheme and attach on their behalf a letter setting out their concerns regarding the inadequacy of consultation on the project.

Please note that we have requested a response to this letter within 14 days, i.e. no later than 21 April 2022.

For their information, this correspondence is copied to a number of parties with an interest in the scheme.

Yours faithfully

Lewis Hadler

Senior Paralegal

Richard Buxton Solicitors

Environmental Planning and Public Law
Office A, Dale's Brewery, Gwydir Street, Cambridge CB1 2LJ



Authorised and regulated by the Solicitors Regulation Authority

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A66 Project Team
National Highways
3 Piccadilly Place
Manchester M1 3BN

Att.: Damian Greenfield, Stakeholder Manager
[REDACTED]@highwaysengland.co.uk

By email only: A66NTP@nationalhighways.co.uk

Our ref: TRA3/1/LJH/MRM
Email: [REDACTED]@richardbuxton.co.uk / [REDACTED]@richardbuxton.co.uk

7 April 2022

Dear Sirs

Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project ("NSIP")

1. We are instructed by Transport Action Network ("**TAN**") in relation to the above NSIP ("**the Scheme**"), which is currently at the pre-application stage of the Development Consent Order ("**DCO**") process. Our client has previously sent emails of 3 and 10 February 2022 regarding concerns over the lawfulness and transparency of the consultations for the Scheme and included concerns about the adequacy of the statutory consultation in their response of 6 November 2021.
2. The Scheme effectively is the combination of eight different NSIP schemes along a fifty-mile stretch of the A66, crossing nationally and internationally protected landscapes and habitats. Our client is extremely concerned that because the Scheme is part of "Project Speed", National Highways is rushing the scheme development, resulting in inadequate and potentially unlawful consultations.
3. In summary, our client's concerns are:
 - (i) The adequacy of the statutory consultation, including its complexity and period it was open for comments
 - (ii) Four consultations described as 'targeted non-statutory consultations' were effectively closed to the public due to them not being publicised, or locatable on the National Highways consultation website despite including what are described as 'considerable changes to the design' presented in the statutory consultation. No information was provided regarding the environmental impacts of the proposed changes, despite them being described as 'considerable changes to the design'.

- (iii) A further consultation on significant changes to the proposed scheme, including large scale earthworks, new cycling and walking routes and the addition of a large number of extensive compounds. Again, no information provided regarding the environmental impacts of the proposed changes, despite the area being known nationally for its tourist and leisure industry and the earthworks and compounds being within and in such proximity to highly protected landscapes and habitats.
- (iv) A further consultation on the relocation of Brough Hill Fair, which is culturally important to the Gypsy community, may not comply with the requirements of the Public Sector Equality Duty.
- (v) The lack of environmental information available in respect of the proposals for the Scheme as it now stands, to the extent that it is not possible for the consultation bodies to develop an informed view of the likely significant environmental effects of the development and associated development.
- (vi) The fact that concurrent and consecutive consultations have been held on a range of quite complex topics and which the public concerned have been expected to get to grips with and comment on.
- (vii) Overall that the statutory consultation and subsequent consultations have been inadequate to the extent that the Secretary of State cannot be satisfied that the statutory requirements and those set out in the pre-application guidance have been met.

Background

- 4. Route options for the Scheme were consulted on in summer 2019 and a preferred route announcement was made in May 2020. The statutory consultation was held between 24 September 2021 and 6 November 2021.
- 5. Since the statutory consultation closed there have been six further consultations (that our client is aware of), including (in summary):
 - (i) [A66 Trans-Pennine Supplementary Design Consultation: Appleby to Brough](#)

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on what are described as “*considerable changes to the design*” that was presented during the statutory consultation. These changes include:

- Building the additional carriage to the north of the existing A66 rather than the south at Warcop central to reduce the impact on properties and land to the south and to the Roman Camp.
- Building the structure at Warcop central slightly higher to help mitigate environmental issues with the River Eden Special Area of Conservation (SAC).

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. The changes described in the Consultation Brochure are considerable

and the subject matter includes impacts on nationally designated landscapes, habitats and species and are of more than immediate local concern.

(ii) A66 Trans-Pennine Supplementary Design Consultation: M6 Junction 40 to Kemplay Bank

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on changes that would impact community connectivity, environmental and land impacts, including the loss of public open space.

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. The changes described in the Consultation Brochure include impacts on a country park and college playing fields and are of more than immediately local concern.

(iii) A66 Trans-Pennine Supplementary Design Consultation: Bowes Bypass Hullands Quarry

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on changes in respect of access arrangements into and out of Hullands Quarry and provision of an access track to Bowes Cross Farm, both of which would impact road safety.

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. No consultation brochure was published for this consultation and there is no detail provided in respect of the environmental impact of the proposals, but the changes described impact road safety and are of more than immediate local concern.

(iv) A66 Trans-Pennine Supplementary Design Consultation: Temple Sowerby to Appleby

This consultation ran between 28 January 2022 and 27 February 2022 and sought views on what are described as “considerable changes to the design” that was presented during the statutory consultation. These changes include:

- Relocation of the junction north of Kirkby Thore westwards from Main Street to Fell Lane to improve a potentially dangerous stretch of narrow road and redirect heavy goods vehicles to a better, more suitable route and to avoid the Roman Camp Scheduled Monument. Works will include the construction of landscaping bunds.
- Change at Long Marton from overbridge to full-movement junction to the east of the design presented at the statutory consultation to seek to avoid increased heavy goods vehicles on unsuitable roads.

- The addition of a junction at Long Marton to remove the Appleby Junction links to seek to avoid land take from Fair Hill at Appleby which would have impacted the Appleby Fair.

This part of the scheme is in one of the most environmentally sensitive parts of the route, as it crosses Trout Beck, which is part of the River Eden SAC. The lack of information provided makes it impossible to understand what the impacts on the SAC could be.

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. The changes described in the Consultation Brochure are considerable and involve the construction of a new junction, construction of landscaping bunds and loss of hedgerows. The changes also relate to impacts on road safety and an annual event culturally significant to the gypsy, traveller and Roma communities. The considerable changes described are of more than immediate local concern.

(v) A66 Trans-Pennine Supplementary Design Consultation: walking, cycling and horse-riding provision, landform and compounds

This consultation opened on 16 February 2022 and closed on 20 March 2022 and sought views on very considerable changes to the following:

- Extensive changes to walking, cycling and horseriding provision along the length of the Scheme
- Considerable changes to the proposed landform along much of the route, with the construction of multiple large landscape bunds
- Multiple new large compounds along much of the route, of unknown purpose or use

Although this consultation was listed on the National Highways consultation hub, it was not present on the National Highways scheme page, nor advertised on National Highways social media accounts with a publicly available link. Despite the numerous major and complex changes described in the Consultation Brochure, no public events were organised to inform the public and give them the opportunity to view the maps and ask questions. This may be in breach of National Highways' Public Sector Equality Duty, as it deprived those without access to the internet (particularly the elderly) an opportunity to inform themselves of the changes and to respond.

Neither the consultation webpage nor the Consultation Brochure provide any information regarding the environmental impacts of any of these changes, which by their nature can be expected to be considerable due to the extent of the land impacted and the proximity to multiple protected landscapes and habitats.

The new, proposed compounds, while they might be considered temporary, will have a large detrimental impact on the area and should have had their impact assessed as part of the Preliminary Environmental Information Report (PEIR). Even if considered temporary, compounds can end up being permanent features or leave behind permanent impacts, sometimes

leading to further development. Due to these significant changes, the environmental impacts of which have not been explained or made public, the PEIR should be updated and consulted upon again. The principle of public participation, and the requirements of the Statutory Guidance, have not been complied with.

(vi) A66 Trans-Pennine Supplementary Design Consultation: Brough Hill Fair

This consultation opened on 11 March 2022 and closed on 3 April 2022 and sought views on changes to the proposed re-siting of Brough Hill Fair to a smaller site than previously proposed and almost two miles away.

Statutory guidance

6. Under the Planning Act 2008 the Department for Communities and Local Government in March 2015 issued statutory guidance on the pre-application process (“**the Guidance**”). The statutory guidance is an important consideration in the Secretary of State’s decision whether to accept an application for examination.¹ The Guidance throughout makes abundantly clear the importance of proper consultation. In particular:

6. Part 5 of the Planning Act sets out statutory requirements for applicants to engage in pre-application consultation with local communities, local authorities, and those who would be directly affected by the project. The front-loaded emphasis of consultation in the major infrastructure planning regime is designed to ensure a more transparent and efficient examination process.

18. Early involvement of local communities, local authorities and statutory consultees can bring about significant benefits for all parties, by:

- *helping the applicant identify and resolve issues at the earliest stage, which can reduce the overall risk to the project further down the line as it becomes more difficult to make changes once an application has been submitted;*
- *enabling members of the public to influence proposed projects, feedback on potential options, and encouraging the community to help shape the proposal to maximise local benefits and minimise any downsides;*
- *helping local people understand the potential nature and local impact of the proposed project, with the potential to dispel misapprehensions at an early stage;*
- *enabling applicants to obtain important information about the economic, social and environmental impacts of a scheme from consultees, which can help rule out unsuitable options;*
- *enabling potential mitigating measures to be considered and, if appropriate, built into the project before an application is submitted; and*
- *identifying ways in which the project could, without significant costs to promoters, support wider strategic or local objectives.*

19. The pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime. A thorough process can give the Secretary of State confidence that issues that will arise during the six months

¹ Statutory guidance, paragraph 5; Planning Act 2008, sections 55(5A)(b) and 55(4)(c)

examination period have been identified, considered, and – as far as possible – that applicants have sought to reach agreement on those issues. Without adequate consultation, the subsequent application will not be accepted when it is submitted. If the Secretary of State determines that the consultation is inadequate, he or she can recommend that the applicant carries out further consultation activity before the application can be accepted.

53. Local people have a vital role to play at the pre application stage. People should have as much influence as is realistic and possible over decisions which shape their lives and communities. It is therefore critical that they are engaged with project proposals at an early stage. Because they live, work and socialise in the affected area, local people are particularly well placed to comment on what the impact of proposals on their local community might be; or what mitigating measures might be appropriate; or what other opportunities might exist for meeting the project's objectives.

72. The timing and duration of consultation will be likely to vary from project to project, depending on size and complexity, and the range and scale of the impacts. The Planning Act requires a consultation period of a minimum of 28 days from the day after receipt of the consultation documents. It is expected that this may be sufficient for projects which are straightforward and uncontroversial in nature. But many projects, particularly larger or more controversial ones, may require longer consultation periods than this. Applicants should therefore set consultation deadlines that are realistic and proportionate to the proposed project...

73. Applicants are not expected to repeat consultation rounds set out in their Statement of Community Consultation unless the project proposals have changed very substantially. However, where proposals change to such a large degree that what is being taken forward is fundamentally different from what was consulted on, further consultation may well be needed. This may be necessary if, for example, new information arises which renders all previous options unworkable or invalid for some reason. When considering the need for additional consultation, applicants should use the degree of change, the effect on the local community and the level of public interest as guiding factors.

75. If the application only changes to a small degree, or if the change only affects part of the development, then it is not necessary for an applicant to undertake a full re-consultation. Where a proposed application is amended in light of consultation responses then, unless those amendments materially change the application or materially changes its impacts, the amendments themselves should not trigger a need for further consultation. Instead, the applicant should ensure that all affected statutory consultees and local communities are informed of the changes.

76. In circumstances where a particular issue has arisen during the preapplication consultation, or where it is localised in nature, it may be appropriate to hold a non-statutory, targeted consultation. A developer's Statement of Community Consultation should be drafted so that it does not preclude this approach. A more bespoke approach can be adopted, which may allow developers to respond with more agility to the issue at hand. If adopting this approach, the emphasis should be on ensuring that relevant individuals and organisations are included.

77. Consultation should also be fair and reasonable for applicants as well as communities. To ensure that consultation is fair to all parties, applicants should be able to demonstrate that the consultation process is proportionate to the impacts of the project in the area that it affects, takes account of the anticipated level of local interest, and takes account of the views of the relevant local authorities.

88. It is important to stress that pre-application consultation is a statutory duty for applicants, and it should, as this guidance makes clear, be carried out to a certain standard. Issues about the adequacy of consultation should be considered prior to the Inspectorate (on behalf of the Secretary of State) accepting an application for examination. Where any interested party feels that consultation was inadequately carried out, they should approach the applicant in the first instance. If consultees remain unsatisfied, they can complain to the relevant local authority (who can consider this complaint as part of their representation to the Secretary of State on the adequacy of consultation), or the Secretary of State (through the Inspectorate). Any concerns should be raised promptly during or immediately following the consultation, to enable the applicant to address the issues if appropriate. In all cases, the final decision as to whether pre-application consultation was adequately carried out rests with the Secretary of State.

93. For the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information to enable consultees to develop an informed view of the project. The information required may be different for different types and sizes of projects. It may also vary depending on the audience of a particular consultation. The preliminary environmental information is not expected to replicate or be a draft of the environmental statement. However, if the applicant considers this to be appropriate (and more cost-effective), it can be presented in this way. The key issue is that the information presented must provide clarity to all consultees. Applicants should be careful not to assume that non-specialist consultees would not be interested in any technical environmental information. It is therefore advisable to ensure access to such information is provided during all consultations. The applicant's Statement of Community Consultation must include a statement about how the applicant intends to consult on preliminary environmental information.

Statutory consultation

7. Our client's response to the statutory consultation outlined multiple concerns with its adequacy, including that there were fifteen options consulted on, making this a uniquely complex project and consultation, and that it was unclear which options were the preferred options. This could be in breach of paragraph 93 of the Guidance that "information presented must provide clarity to all consultees". Our client also raised concerns about the inadequacy of the 89-page Non-Technical Summary (NTS). The NTS was extremely long and technical, copying over lengthy and technical information from the PEIR, included information on fifteen different options, and could not be described as a layperson's guide to the environmental impacts of the eight schemes. Another area of concern was that the 6-week consultation period was far too short for a scheme of this complexity.

Preliminary Environmental Information

8. The Applicant is under a duty to consult the consultation bodies and local community and must prepare a Statement of Community Consultation ("**Consultation Statement**").² Consultation must be carried out in accordance with the proposals in the Consultation Statement.³
9. The Consultation Statement⁴ must set out how the Applicant intends to publicise and consult on the PEIR,⁴ which must contain the information reasonably required

² Planning Act 2008, section 47(1)

³ Planning Act 2008, section 47(7)

⁴ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, regulation 12(1)(b)

for the consultation bodies to develop an informed view of the likely significant environmental effects of the development and of any associated development.⁵

10. Where the PEIR, which is a public document on which the public should be properly consulted,⁶ does not contain information reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development and of any associated development, it must be updated and be consulted upon again if there are additional or substantively different likely significant effects.

Concerns

11. Although our client asked for confirmation of the consultations' details (such as dates, deadlines, links to any information online etc) on 3 February and chased this up on 10 February, National Highways declined to provide details of the six subsequent consultations or assist our client to respond.
12. As outlined in the emails of 3 and 10 February our client is extremely concerned at the way that National Highways is conducting its consultations. It appears that public participation is being minimised and large, 'considerable' changes appear to be presented as small and not materially impacting on the scheme that was consulted on in the Autumn of 2021. Our client believes that this is wrong and that there appears to be a number of aspects of the changes which materially impact on the scheme. However, because the environmental impacts of those changes have not been set out, it is not possible fully to understand their significance.
13. Without a properly open and public consultation with sufficient information the public will not know if the new changes are substantially different, or will materially impact on the scheme. Despite the changes being described as 'considerable' and, in our client's view, obviously of wider than merely local impact, unless a member of the public received a leaflet through their letter box, they would not be alerted to these consultations. There would be nothing online to tell them what is happening and those who may have commented on those issues in the Statutory Consultation who are not local or did not receive a leaflet would not have had the opportunity to participate in and comment on the change proposed in the consultation.
14. Our client would argue that any changes within or close to an Area of Outstanding Natural Beauty (AONB) are capable of being significant and of national importance. The same principle applies to internationally important habitats and species protected under the Habitats Directive, such as Special Conservation Areas (SACs) and Special Protection Areas (SPAs). The public, including, local, regional and national environmental organisations, should be given the opportunity properly to respond to these changes if the consultation is to be considered adequate. Without their input it is difficult to see how the most appropriate proposals will be advanced, that will have the least impact on this protected area. People and organisations who have already responded to the statutory consultation and expressed an interest in the scheme, such as our client, (with a national interest in transport and the environment), and national, regional and local environmental groups with an interest in the area, should be considered to be "relevant organisations" for the purposes of further consultations, and notified of further

⁵ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, regulation 12(2)(b)

⁶ Consultation Statement, paragraph 3.11

consultations. Our client asked on 10 February to be notified of all consultations, yet was not notified of the six new consultations.

15. This is a huge scheme spanning eight sections over 50 miles and costing over £1 billion. Each one of these sections has the potential to be an NSIP in its own right, so any changes should be consulted upon in an open and transparent way. Consulting on changes in the different areas separately and in a way that prevents people commenting on other areas also undermines any ability to assess the **cumulative** impacts of the changes and whether these combined impacts materially impact on other areas or the entire scheme. The supplementary consultations into the proposed changes should not happen in isolation, but should be considered in combination.

Conclusion

16. Regulation 12 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 requires that the preliminary environmental information should be adequate for consultees to “develop an informed view of the likely significant environmental effects of the development (and of any associated development)”. The Consultation Statement and the Statutory Guidance set out the importance that the public be consulted on the PEIR. The environmental information and the likely significant effects resulting from proposed changes to the scheme which have been consulted on after the Statutory Consultation need to be explained and included in an updated PEIR that fully informs all consultees, including statutory consultees, on the environmental impacts of these substantial changes, and to revisit the issue of cumulative impacts. Any defects in the way that this consultation has been run could render it unlawful. It is in everyone's interests that these consultations are run properly, otherwise they may be legally defective.
17. If the relevant consultation bodies, including local authorities, consider that they have not been provided with sufficient environmental information on the consultation proposals to develop an informed view of the likely significant effect, they would be within their right to make clear in their representations to the Secretary of State that the consultation carried out by the applicant is deficient and that therefore the application ought not be accepted for examination.⁷
18. Our client believes the solution is for National Highways to issue a new Statement of Community Consultation and to re-run the statutory consultation with an updated PEIR, taking on board all previous feedback. The statutory consultation should allow enough time for adequate responses (six weeks was not enough last time for such a huge scheme), be open to all, with information clearly available online and offline, and a clear and simple Non-Technical Summary (NTS).
19. We would like a substantive reply to the points raised in this letter as soon as possible and in any event no later than 14 days from the date of this letter.

Yours faithfully


Richard Buxton Solicitors
Environmental, Planning & Public Law

⁷ See in particular paragraphs 88 and 93 of the Statutory Guidance (above at para.6) and Regulation 12 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Cc.:

- Planning Inspectorate (A66Dualling@planninginspectorate.gov.uk)
- David Haughian, Head of Planning, Cumbria County Council
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- Virginia Taylor, Leader of EDC (leader@eden.gov.uk)
- County Durham Unitary Authority (planning@durham.gov.uk)
- Richmondshire District Council (enquiries@richmondshire.gov.uk)
- North Yorkshire County Council (planning@northyorks.gov.uk)
- Huw Merriman, Chair, Transport Select Committee
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13 May 2022

Dear Ms Corso Griffiths

Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project (“NSIP”)

1. We write further to our letter of 7 April regarding our client's concerns about the standard of consultation for the A66 Northern Trans Pennine scheme.
2. The Statement of Community Consultation¹ (“**Consultation Statement**”) detailed the elements of the project that would be consulted on during statutory consultation which ran for six weeks from 24 September 2021 to 6 November 2021.²
3. These elements to be consulted on are listed below (with our emphasis).
 - Route alignment and preliminary design, including route alignment alternatives considered within specific areas

1

- Junction layouts, including junction location alternatives considered within specific areas
 - **Construction compounds and other land potentially required for construction**
 - **Proposed DCO boundary (the area of land needed to carry out the project)**
 - **Proposals for walking, cycling and horse riding including the diversion of routes**
 - Environmental assessments and potential environmental impacts
 - Environmental mitigation measures and associated land requirements
 - Arrangements to mitigate the impact on any communities, farms or businesses
4. National Highways (“NH”) did not conduct their statutory consultation in line with the Consultation Statement as you did not consult on the elements emphasised:
- **Construction compounds and other land potentially required for construction**
 - **Proposed DCO boundary (the area of land needed to carry out the project)**
 - **Proposals for walking, cycling and horse riding including the diversion of routes**
5. In our client’s response to the statutory consultation they commented about the lack of inclusion of a DCO boundary in the consultation documents. They also commented that it would not be possible for National Highways to consult on the DCO boundary as NH were still consulting on route choices and so the DCO boundary could not be settled. They said as there was no settled preferred route, the statutory consultation was premature. There has not been any consultation on the DCO boundary either during or since the statutory consultation.
6. There was also no information in the statutory consultation documents in relation to the other two elements highlighted: compounds and other land potentially required for construction; and the proposals for walking, cycling and horse riding, including the diversion of routes.
7. NH has since conducted a short, “targeted, non-statutory” consultation on these two elements from 16 February 2022 to 20 March 2022, however this was not publicised widely, nor was there any available link to the consultation documents on the scheme website. We outlined the multiple problems with this short and poorly-publicised consultation in our letter of 7 April. It is our view that consultation on these issues was not conducted to the standards set out in the Consultation Statement.

Consultation requirements

8. By section 47(7) of Planning Act 2008 the applicant must carry out consultation in accordance with the proposals set out in the Consultation Statement. This is affirmed in the Pre-application Guidance, which sets out that applicants are required to produce a Statement of Community Consultation in consultation with

the relevant local authorities which describes how the applicant proposes to consult the local community about their project **and then carry out consultation in accordance with that statement.**

9. In your [REDACTED] you claim that "The consultation was carried out in accordance with the Statement of Community Consultation". However, the statutory consultation was missing at least the three elements identified above and therefore was not carried out in accordance with the Statement of Community Consultation. The "targeted, non-statutory" consultation on these topics fails to make up for this omission for the reasons set out in our previous letter; including the scale of the impact of those issues and the limited audience to which the consultation was promoted and open to.
10. Finally, our client is also concerned that material representations made by them in respect of the consultation were not included in the consultation report, including their comments regarding the inadequacies of the statutory consultation, the lack of clarity about which routes were being consulted on, and the lack of information about the proposed DCO boundary.
11. In addition to the issues identified in our previous letter, our client's view is that the failings identified above can only be resolved by further consultation in accordance with the statutory rules. We understand that NH intends to submit the DCO application as early as 16 May 2022; however, until and unless the issues identified in this and our previous letter are resolved, the legal requirements for acceptance of the DCO application remain unfulfilled.

Yours faithfully

[REDACTED]
Richard Buxton Solicitors
Environmental, Planning & Public Law

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Cc.: Huw Merriman, Chair of the Transport Select Committee

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20 June 2022

Dear Ms Corso Griffiths

Inadequate consultation on the A66 Northern Trans Pennine Nationally Significant Infrastructure Project ("NSIP")

1. We write further to our letters of 7 April and 13 May regarding our client's concerns about the standard of consultation for the A66 Northern Trans Pennine scheme.

Natural England's advice

2. Your response of 9 June 2022 enclosed Natural England's advice letter dated 25 February 2022. The advice in that letter is in response to supplementary consultations dated and received by NE on 28 January 2022.¹ **Please provide copies of the material provided to NE (upon which its advice is based), including all accompanying correspondence.**
3. On page 2 of the letter, in relation to Long Marton Land End Junction, NE advised that (our emphasis):

Natural England note that the new road design will be much closer to Troutbeck (River Eden SAC) and that there will be a discharge to the beck. The revised PEIR section should acknowledge this. The Habitats Regulations Assessment

¹ i.e. the four supplementary consultations that ran from 28 January 2022 to 7 February 2022 in relation to Appleby to Brough, M6 Junction 40 to Kemplay Bank, Bowes Bypass Hulands Quarry, and Temple Sowerby to Appleby.

will need to assess the new road design to ensure it avoids adverse impacts to the River Eden SAC.

NE's advice was that the PEIR should be revised in relation to the impact of the new road design being much closer to Troutbeck (River Eden SAC) and that there will be a discharge to the beck. **Please explain why the PEIR has not been revised in accordance with NE's advice.**

4. In relation to Appleby to Brough, NE advised that they *"look forward to receiving more information on how reinstated planting, and potentially additional vegetation screening, can help manage and reduce"* the impacts on the increased visibility of the road within the landscape resulting from changes to the design involving more elevated river crossings. **Please confirm whether NE have been provided with this information and provide their response.**
5. NE also advised that the North Pennines AONB Partnership are consulted on detailed design issues and the effect on the AONB so that the project can benefit from their knowledge of the development site and its wider landscape setting. **Please provide copies of the material provided to the North Pennines AONB Partnership for comment in relation to the supplementary consultations that have taken place, as well as their responses.**
6. We note that NE's advice in that letter does not relate to the supplementary design consultation on walking, cycling and horse-riding, which ran between 16 February 2022 and 20 March 2022 which, among other things, set out what were described as 'considerable' changes, including: extensive changes to walking, cycling and horse-riding provision along the length of the scheme; considerable changes to the proposed landform along much of the route, with the construction of multiple large landscape bunds; multiple new large compounds along much of the route, of unknown purpose or use. **Please provide NE's advice in relation to this supplementary consultation, as well as copies of the material provided to NE, including all accompanying correspondence.**

PEIR review

7. Your letter confirms that, in advance of the supplementary consultations, NH carried out an exercise to review the environmental impacts of all design changes. **Please provide details (i.e. not the 'summary' purported to be included in the supplementary consultation material) of this review and its conclusions. Please also confirm whether advice has been sought from NE in relation to the content and conclusions of this review.**
8. Your letter states that the supplementary consultation material included a summary of the review of the environmental impacts of all design changes. However, we can find no reference, summary or otherwise, to environmental impacts resulting from the design changes arising from the Supplementary Design Consultation on walking, cycling and horse-riding provision, landform and compounds. We have been unable to confirm this in relation to the earlier four supplementary consultations because the consultation material is not published on the National Highways Citizenspace website. **Please confirm where this information is publicly available.**

Walking, cycling and horse riders, and compounds

9. Your letter states that the statutory consultation included proposals in relation to walking, cycling and horse riding, and also compounds. **Please identify the sections and paragraphs of the documents accompanying the statutory consultation upon which this assertion relies.**

10. Finally, we note that the assessment of impacts on Tourism and Recreation, Road safety of Walkers, Cyclists and Horse riders have been scoped into the assessment of the environmental effects of the scheme, to ensure a robust assessment of population and human health effects. **Please provide the Local Highways Authorities' ("LHA") advice in relation to this supplementary consultation, as well as copies of the material provided to the LHAs, including all accompanying correspondence.**

Conclusion

11. We should be grateful if you would provide responses to the above questions no later than 4pm Friday 24 June 2022.



Richard Buxton Solicitors
Environmental, Planning & Public Law





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1ST July 2022

Dear Mr Kenyon, Ms Beverley,

The A66 Northern Trans-Pennine Project

I write to ask your support an application by the council that the Planning Inspectorate should not accept the proposed Development Order application now tendered for this project.

I only refer to the part of the project which goes beside Warcop village, called the Appleby to Brough section. My home there is a 
 of the proposed new road. But my greater concern is about the damage which will done to local amenities and heritage and for those people who live nearer to the proposed route. Simply speaking, the new road should be put further north, beyond the present A66, rather than to the south of it. The objections of Warcop PCC and others to NH present "preferred" proposed route have never received any serious consideration, let alone consultation.

I have made a written submission about the lack of thought and consultation on this dated 26/2/22 (Response ID ANON-66J6-X8ZE-U), so here I will mention only three points:

(1) Destruction of heritage monuments close to the edge of the road.

The line of the present A66 road is that of the Roman road from the south to Hadrian's Wall. This had been built carefully to avoid damage to a neolithic stone circle (which later gave "Warcop" its name) and three bronze age burial barrows standing to the west of where Sandford lane joins the A66 road. The NH proposal is to destroy the largest and most important of these barrows by putting through it a branch road to Sandford. We asked at the meeting on 27th January 2022 why the bronze age barrows were being targeted, when the Roman road builders had so

carefully avoided them. We were told (as appears in their first minutes of the meeting, "V1") that NH were "unaware of them." This was odd because the site had been mentioned by us before, and because the barrows (as "tumuli") are on the OS map. Evidently NH had second thoughts about their answer, so in about March the minutes were altered and resubmitted as "V2" They now contain this: *Recent attempts to locate barrows at Sandford have been unsuccessful. That includes the geophysical survey... and assessment undertaken for the A66 project.*

Alarmed by this I went and looked for the barrows myself and was reassured that they were where they have been for the last three thousand years in the position shown on the OS map. I took a photograph of the largest. Re-reading the *amended* minutes, I suppose what NH means is that their initial road survey had not noticed any archaeological features which were not specifically listed as ancient monuments, and that NH has no intention of looking for them now. The barrows are of course well known in archaeological journals, and it is intolerable that HE simply tries to pretend that they do not exist so that no thought need be given to their preservation.

(2) Cricket field and fair ground.

Also facing unnecessary destruction are the cricket field, the largest level space in the parish, an irreplaceable asset in this hilly country, and also "Brough Hill," the fairground where the travellers and Gypsies meet at the September fair dating from the fourteenth century. Early this year NH informally offered them a boggy field near Brough as a substitute, which as a meeting place for horses and caravans was hopeless. Now that has been abandoned by NH for another impractically smaller site, which the gypsies regard as inadequate. Why was not this brought to proper discussion months or years ago?

(3) Flooding Warcop village

An area around the "Crooks beck" at the centre of Warcop, is flood plain, and about every five to ten years the houses around it are flooded. The last time was 2015. The reason is that two becks (streams) meet there: one, the Low Beck, coming from the direction of Brough, and the other, called the Hayber Beck or the Moor Beck, draining the land from the north. Together they have a catchment area which is surprisingly large

and amounts to about 6 km along the Pennine fellside. Under every variation of the NH “preferred” route, the tarmac on the dual carriageway and its new access roads for the 4 km between Warcop and Brough will run off into these becks and on to the flood plain in Warcop village. This fact is not shown on any of the NH maps, which suggests that they simply have not noticed the problem. The present flow through the village is ordinarily less than about half a metric tonne per second. Our rough calculation is that a 1 cm rainfall on the new additional roadway will produce 800 metric tonnes of extra water. It will overwhelm the Crooks Beck a hundred of times over. And Global warming is increasing the severity of rainstorms.

NH say that the severity of these floods would be reduced by some ponds which they propose around the proposed roads. We say no, these are just settling ponds, designed to take out debris and effluent from the water-flow, which would have little effect on stopping a sudden flood. At the “consultation” on the latest plans on 27 January 2022, we asked to see their expert evidence that Warcop village not be inundated by the additional run-off. They could not answer, saying it was not yet available. The *amended* Minutes of the meeting, produced in March 2022, state *The flow risk assessment is being produced and will be available as part of the D C O application.* In other words we are not being allowed to see the calculations, and they probably do not yet exist.

The cure is of course to move the Preferred Route to a higher level further north, whence the water could flow out westwards to join the Eden below Warcop.

The NH scheme cannot be allowed to go forward before they have allowed sensible discussions of these matters.

Sincerely

Mark Blackett-Ord

A66:Northern Trans-Pennine Project

APPLEBY TO BROUGH

NOTE ON PROCEDURE

1. These are my thoughts on the legal and practical approach to be taken by objectors to this project. It is a result of reading the websites of the various bodies mentioned below and their "Guidance," and having a useful talk with Rebecca Lush, Director at Transport Action Network ("TAN") which is another active opponent of the present scheme.
2. Under the Planning Act 2008, a Nationally Significant Infrastructure Planning application such as this ("NSIP") is not decided by a local planning authority but by the Secretary of State. An NSIPs planning consent is called a Development Consent Order (DCO). The planning consent procedure for NSIPs is designed to ensure that the maximum amount of consultation and reconsideration is put into the project, by the applicant developer, before the DCO application (the term for the planning application) is submitted to the Planning Inspectorate.
3. Appropriate consultation by the developer is mandatory under ss 42-45 of the Act. The then procedure (as far as relevant for our purposes) is then this:
 - (a) The developer (in our case National Highways, once Highways England) submits a DCO application (including full Environmental Statement) to a semi-independent Government executive agency called

the Planning Inspectorate, whose initial job is to ensure that the DCO application is in sufficiently polished form (with sufficient consultation &c). The developer must include a Consultation Report detailing what consultation he has done.

- (b) The Planning Inspectorate then has 28 days to decide whether or not to accept the DCO application. They may at that stage refuse to accept the DCO planning application and require the developer to redraft it, possibly re-consult if the consultation has not been adequate, and resubmit. Meanwhile the whole project is on hold. This is, however, rare.
 - (c) If the Planning Inspectorate accepts the DCO application, then an Examination will be held. The Examination (very similar to a public inquiry) follows a strict process and timetable laid out in the Planning Act 2008. The applicant (National Highways) must submit a full Environmental Statement and the draft Orders. There will be hundreds of documents. There is a short period to register as an Interested Party (IP). If you do not register as an IP you may not participate in the Examination. It is vital to encourage as many people as possible to register as IPs for the Examination.
 - (d) Submissions from IPs (objectors) will be received (called Written Representations), and there is a six month process of evidence giving, rebuttal and hearings, with strict timetables..
 - (e) Within three months of the Examination closing, the Planning Inspectorate then makes a Recommendations Report to the Secretary of State who then has three months to make a decision whether or not to grant DCO development consent.
4. Our position has always been that we do not oppose road improvement in principle but we oppose the present scheme and favour a more northern route.

Our strategy is to object to the scheme so as to force the developers to produce a better route.

5. We object to their present “preferred” southern route for the seven or so reasons that we have constantly repeated. We have expressed ourselves forcefully on this. Our submissions were simply ignored. We have never had the courtesy of a proper response to our complaints, save to be told (in effect) that the developers do not want to inconvenience the Army, and that our scheme encroaches further into an area which is technically AONB than theirs does. We say that neither of these points outweighs the demerits of their scheme.
6. The A66 Northern Trans-Pennine scheme as a whole comprises mainly of existing bits of dual carriageway being joined up in (I think) eight places across a 50 mile route. Ours is between Appleby bypass and Brough bypass. Each is a development on its own with its own questions and problems. To lump them all into one is to make the whole project unwieldy to say the least. Details are spread around attachments to web reports which are difficult to find.
7. The picture was confused when in 2021 the developers produced some alternative routes (blue, green and orange) on a very small-scale plan, but including some details which were improvements. They called their original proposed route, (the “black” route), their “preferred” route but implied that it might be varied. To our public meeting in July 2021 they sent no representative at all. That meeting condemned the proposals unanimously.
8. At a meeting on 5 November 2021, however, at which (characteristically) only a few representatives of our side were invited, National Highways produced unexpectedly two plans marked “Not for Discussion” but which in fact were encouraging to us. For most of the route, they show the new dual carriage north of the A66. We took this as an offer of compromise. They said that they could promise nothing but would look into the matter. We have heard nothing.

9. On 21 and 22 January 2022, again quite unexpectedly, a new brochure was delivered to certain only local homes, announcing that they were “looking to make changes to two parts of the route” on our section, which would be “considerable changes to the design that we presented in the autumn,,”. As I write this, we do not know what they are. We are apparently to learn at 9 am on Friday 28th. Then there will be a period of consultation about them until 10 am on Friday 25 February. That period, we note, amounts to 28 days and one hour. This curious period may have something to do with the fact that under section 45 Planning Act 2008, when a developer is consulting, it must “notify the person of the deadline” for receipt of a response, and that deadline “must not be earlier than the end of a period of 28 days”. Unfortunately for National Highways, they have not noticed that the “period of 28 days” is expressed by section 42(2) of the Act to begin “the day after the day on which the person receives the consultation documents”. So they will inevitably be one day out of time.
10. Where consultation by the developer has been inadequate or non-existent, it is essential that the point is taken, for then the Planning Inspectorate will not accept the whole DCO application until proper consultation has taken place, and this will put back the whole project for many months. There is no advantage to us in this except in one important way: the only chance of getting National Highways to listen to us is by preventing them from bludgeoning ahead with their present ill-thought-out plans.
11. The Department for Communities and Local Government has issued “Guidance” which is not strictly of statutory force but is virtually so because it reflects the practice that the Planning Inspectorate will adopt when considering whether to refuse a project
12. I quote from some of its paragraphs:
 - “19. The pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime.... Without adequate consultation, the subsequent application will not be accepted when it is submitted...”.

- “23. In brief, during the pre-application stage applicants are required to...publicise the proposed application in accordance with Regulations; set a deadline for consultation responses of not less than 28 days from the date after receipt/last publication; have regard to relevant responses to publicity and consultation”.
- “25. Larger, more complex applications are likely to need to go beyond the statutory minimum timescales laid down in the Planning Act to ensure enough time for consultees to understand project proposals and formulate a response...”.
- “72. Applicants should therefore set consultation deadlines that are realistic and proportionate to the proposed project...”.
78. Applicants are required...to produce a consultation report alongside their application, which details how they have complied with the consultation requirements set out in the Act.”
- “85. Before a decision can be made on whether to accept an application for examination, local authorities may make representations to the Secretary of State concerning the adequacy of the consultation...Any representation must be limited to how the applicant has carried out the consultation.”
- “86. Adequacy of consultation representations will normally be required within 14 days of the invitation to submit for Planning Inspectorate in order to meet the acceptance decision deadline. Local authorities should ensure that they have suitable arrangements in place to respond to this request”.
- “88. Issues about the adequacy of consultation should be considered prior to the Inspectorate...accepting an application for an examination. Where any interested party feels that consultation was inadequately carried out, they should approach the applicant in the first instance. If consultees remain unsatisfied, they can complain to the relevant local authority (who can consider this complaint as part of their representation to the Secretary of State on the adequacy of consultation)... Any concerns should be raised promptly during or immediately following the consultation, to enable the applicant to address the issues if appropriate.”
- “89. ...The acceptance decision cannot be re-opened during the examination”.

13. I believe that we have a real complaint about the lack of and adequacy of consultation. At the time that I write this, we do not even know where the proposed route is to go. Until we know that, we cannot begin to consider what will be the particular advantages or disadvantages in terms of its effect on the environment, flood-water, historic buildings and so forth. To suppose that we can formulate a response within 28 (or 27) days is ridiculous.

14. My view therefore is that we should assemble a coherent complaint about the inadequacy of the consultation, containing the instances and examples of non-consultation that I have mentioned above and which we know of. We should then lay the matter before the Planning Department of Eden District Council, with the assistance of sympathetic counsellors, so that they can submit it to the

Planning Institute as a serious complaint about the way that National Highways has been failing to consult. We must submit the same to National Highways at the same time, so that they can have an opportunity to answer it if they can (this is a requirement of the guidance).

15. A few other points need be mentioned:

- (a) When the Planning Inspectorate accepts the DCO application, any person interested who wishes to make representations at the Examination must register as an Interested Party and can then put in submissions to be considered accordingly.
- (b) It is a principle that a development should show a “biodiversity net gain”. Sadly, this is not helpful. It merely means that the developer will buy up adjoining land and plant trees all over it to balance the environment harm that the development is doing.
- (c) The A66 project is apparently the sort of project which Boris Johnson has said will be part of “Project Speed”, which means that the procedure is to be hurried up, but I do not believe that at this stage any procedures have in fact been altered to promote that rather dangerous idea. They have to follow the law in any case.
- (d) It would be helpful if we add some independent professional advice on the way that we are going, but this will have to be paid for. If we had a source of funds, it might be tempting to seek out Dave McGowan, the Chief Planner in the Lake District and National Park Authority, who has just gone part-time at his job until the end of March when he goes “freelance”.

Mark Blackett-Ord
19 July 2022

Kirkby Thore Parish Council

Clerk: Lindsay Nicholson

Tel: [REDACTED]

Email: [REDACTED]@kirkbythore.org.uk

Website: [REDACTED]

Sent By Email

To: Fergus McMorrow Eden District Council and Guy Kenyon Cumbria County Council,

CC: Dr Neil Hudson MP, Cllr David Whipp, Cllr Henry Sawrey-Cookson, Cllr Lorna Baker, Cllr Neill McCall, Rea Psillidou Eden District Council, Richard Fox (Eden District Council) and Beverley Leanne Cumbria County Council.

3rd of July 2022

Dear Mr McMorrow and Mr Kenyon

Adequacy of Consultation

A66 Northern Trans Pennine Project

We understand that Eden District Council is being consulted by the planning inspectorate about the adequacy of the consultation over the A66 dualling around Kirkby Thore. Kirkby Thore Parish Council was consulted during the statutory consultation, however we are concerned that we have not been consulted subsequently when others have.

There was a specific further consultation sent to only a limited number of land owners in relation to further changes to the design relating to recreation provision, land form modelling, and storage areas for spoil.

These were all issues that we had raised concerns about during the statutory consultation. We would have liked to have had the opportunity to consider the revised proposals and offer comments given that we had responded precisely on these issues in relation to the previous design.

Owing to Project Speed the consultation timescales have been very condensed and the information supplied during the statutory consultation was incomplete and insufficient to allow adequately informed comment. The Environmental statement was not complete and as a result there was no way we could assess the real impacts of this proposal on our community.

By not allowing us to engage with this latest consultation we have not been able to consider the changes made to the designs or their impact on our community.

Should you need any further information from Kirkby Thore Parish Council please do not hesitate to get in touch via clerk@kirkbythore.org.uk.

Yours sincerely

[REDACTED]
Lindsay Nicholson

Clerk

Kirkby Thore Parish Council



District Council

Mansion House, Friargate, Penrith, CA11 7YG

Tel: [REDACTED]

Your Project Ref: TR010062
Our Reference: FCM/DEV/A66statcon
Enquiries to:
Direct Dial: [REDACTED]
Email: [REDACTED]@eden.gov.uk
Date: 4 July 2022

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

Dear Mr Bartkowiak,

Planning Act 2008 (as amended) – Section 55
Application by National Highways for an Order Granting Development Consent for the A66
Northern Trans-Pennine Project
Adequacy of consultation request

I write in response to your letter dated 22 June in respect of the above Development Consent Order application that has been submitted by National Highways for the dualling of the A66 (Northern Trans-Pennine Project). I begin by considering whether the legal tests for consultation have been met.

Under section 55 of the Planning Act 2008 relevant local authorities must be consulted on whether the applicant has complied with their duties under sections 42, 45, 47 and 48 of the Act. This letter comprises Eden District Council's ('the Council') Adequacy of Consultation response, and sets out the Council's position in respect of these provisions. It also comments on the pre-application consultation process in general.

The Council confirms it's view that as outlined below, the provisions and formal requirements under the Planning Act 2008 have been satisfied. In general terms the Council accept that the Applicant has complied with Section 42 (the 'Duty to consult'), Section 45 (the 'Timetable for the Duty to Consult under Section 42'), Section 47 (the 'Duty to consult local community') and Section 48 (the 'Duty to publicise') of the Planning Act 2008.

Timetable for consultation under section 42 – Section 45 of Planning Act 2008

This section requires the applicant to notify the consultee of the deadline for receipt of comments in relation to the consultation which must not be earlier than 28 days after the consultation documents are received.

The public consultation on route options was undertaken in summer 2019 and Public Consultation on the preferred route between 24 September 2021 – 6 November 2021, in which the Council provided a S42 response. In addition to this, the Applicant ran additional supplementary targeted consultations during the spring of 2022. The supplementary consultations addressed alterations including walking cycling and horse riding provision, impact on Kemplay open space, junctions, landforms, construction compounds and Brough Horse Fair.

Duty to consult the local community – Section 47 of Planning Act 2008

This section requires the applicant to prepare and publish a statement setting out how it proposes to consult local people about the proposed application (the Statement of Community Consultation). The applicant must consult with the relevant local authority before publishing the statement, and the local authority must reply within 28 days.

The Council did provide comments on the draft Statement of Community Consultation, and considers that the final SoCC did adequately reflect these comments.

In reviewing compliance with section 47, the Councils have considered concerns raised by stakeholders around the gaps in the information provided by the Applicant during the Consultation stages but concluded that the legal requirements were met and in the Consultations were carried out in the manner set out in the Applicant's agreed Statement of Community Consultation.

Duty to publicise Section 48 of Planning Act 2008

This section provides that the applicant must publicise the proposed application in the prescribed manner. The Regulations specify a deadline of not less than 28 days for responses.

The Council accept that the S48 Notices were published as required and that the Applicant has fulfilled their obligations in this regard.

Conclusion on Tests

It is the view of the Council that the Applicant has met the legal tests for Sections 42, 45, 47 and 48 of the Planning Act 2008 and that the consultation has, therefore, been adequate in this respect.

As a general comment the Council has not seen the full Environmental Statement, nor draft copies of some of the more critical documents including for example the Transport Strategy in advance of the DCO submission. In reviewing compliance with section 42, and throughout the pre-application engagement process, the Council did highlight that significant information was not made available as part of the public consultation. Although the Applicant has sought to engage with the Council on the principles and strategic approaches, we would have preferred more detailed pre-application engagement in order to facilitate a fuller and more informed Section 42 response.

Wider Consultation Issues

Whilst acknowledging that the Applicant has been developing its proposals throughout this period, it would have significantly helped the Councils if more information had been available earlier for the Council to be as fully informed as possible. There was an ongoing concern throughout each stage of public consultation that detail and evidence were missing from the consultations. The Council still has many issues outstanding; more detailed evidence and information could have enabled a better understanding of these issues, and potentially resolved some of them. It is clear from the Council's responses at each stage of public consultation that we had requested more detail on a consistent basis. This absence of elements of information has not just created difficulties for the Councils but, we assume, for a wide number of consultees as well.

The Council has consistently sought to receive more information from the Applicant in order to be able to come to more informed judgements about the impacts of the scheme and to allow them to work more effectively on any mitigation proposals.

We are aware that several statutory consultees are also concerned about the level of information that has been made available through the consultation exercises.

Only now at the point of submission will we be able to review the proposal as a whole and make a considered and informed judgement. Such an approach means the Councils have, as a result, been silent on some issues. The lack of a comprehensive set of documents has also compromised the engagement that has taken place because the complex inter-relationship between all the documents means no single document can ever be understood in isolation. As such, the Councils have not been able to complete the engagement on the pre-application work with the Applicant as envisaged in the regime set out by the Planning Act 2008.

The Councils have been keen, at every stage, to progress with all the outstanding elements in a constructive way with all parties but are concerned that, with the substantial and complex work still to be done on the Statements of Common Ground, the s106 legal agreement and agreeing mitigation, there may not be adequate opportunity for the Examining Authority to undertake its work fully within the six months from the Preliminary Meeting. The Councils remain keen and ready to make progress on this matter.

The Councils welcome that to date the Applicant has provided resources to the Councils through agreed Planning Performance Agreements to date to undertake the necessary engagement and joint working. The Councils require an appropriate level of funding to continue to provide them with the required resources to engage fully with the Applicant on these matters.

The Council did highlight a significant number of key issues throughout the pre-application consultation process that we consider still remained unresolved. It is important that the process ahead provides the potential for these issues to be fully considered and that impacts and mitigation is fully understood and addressed prior to the granting of a Development Consent Order.

I set below these unresolved key issues (with more details provided in **Appendix A**): for ease of reference for the applicant and to give the opportunity for an early engagement with the Council, -

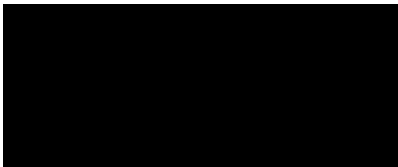
- East/West Link of Non-Motorised Traffic

- Provision of Additional HGV Facilities and Service Provision
- Provision of Biodiversity Net Gain
- Landscape
- Social Economics Impacts
- Workers Accommodations.
- Noise
- Brough Horse Fair
- Zero Carbon Strategy
- Traffic Impacts/Diversion Routes etc

We note that, comments from individual organisations have been presented in Annex N of the consultation report. There appear to be instances where Eden's comments have been misunderstood. Whilst in the timescale available have not been able to review these a spot check revealed some entries do not seem to reflect our position accurately. (**Appendix B** identifies three examples.) On a practical note it is extremely difficult to locate and relocate comments and responses in Annex N as there is no overall numbering system.

Although not specifically endorsing them as part of our Adequacy of Consultation Response we have been asked to draw to your attention a number of representations that have been made to us regarding the consultation process. These have been copied to you as attachments to the covering e mail.

Yours Sincerely,



Fergus McMorrow
Assistant Director Development

Eden District Council

Appendix A. Examples of Key Issues Requiring Engagement

Key Issues

Non-Motorised Traffic, East to West Link.

Throughout the Council's consultation responses, we have clearly stated our need to see the provision of a continuous route for east west non-motorised traffic including for Walking, Cycling and Horse-Riding users and for horse drawn vehicles as an integral part of the A66 DCO Project. The project provides a clear opportunity to address the currently shortfall in connectivity set forth in local planning policy.

The Council's S42 consultation response (November 2021) states that provision of continuous east-west route for non-motorised transport connectivity is an issue of particular significance for the Scheme. NMU provision is critical to supporting inter community connectivity, leisure/tourism and the economy but also the safety of those accesses Appleby and Brough Horse Fair, who's attendees rely heavily on NMU transportation options. The Council's concerned that inadequate provision will lead to fatalities.

The supplementary consultation for NMU provision, compounds and landforms undertaken by National Highways between 16th February and 20th March 2022 was targeted to statutory organisations only and the Council believes this has resulted in the exclusion of important contributors. The Council is most notably aware of the absence to consult SUSTRANS, the UK's leading sustainable transport charity and custodian of the National Cycling Network on design changes directly relating to walking and cycling. In addition to this, the supplementary plans provided denoted proposed WCH routes as consulted on during autumn 2021 in pink. Eden District Council are unable to confirm they received this information, nor were consulted during that period.

Provision of Additional HGV Facilities and Service Provision

A high percentage of traffic on the A66 currently is HGVs (estimated to be between 18 to 29% of traffic on the A66, depending on location and time of day, compared to the national figures of 12%). The Council has noted in the S42 consultation response, that current HGV facilities are considered inadequate. The Applicant's Local Transport Report provide during statutory consultation signifies that the Scheme will result in substantial additional pressure on these facilities with HGVs increasing to 34-39% of all traffic. The Council therefore wants to see improvement of services and facilities for motorised users, including specific HGV services, are included within the scope of the Scheme.

However, to date the Council is yet to receive design information pertaining to the potential inclusion of a HGV service facility or support following determination. The inclusion of HGV services would support the socio-economic development of Eden District providing the opportunity to develop skills, generate employment positions and support regional supply chains. The council would happy to enter into a dialogue on the potential location of such facilities on the route.

Provision of Biodiversity Net Gain

The Council has previously stated in their S42 response to the Environmental Scoping Report that the Project and should seek to achieve a 10% BNG. The Council are yet to received information throughout the consultation period, providing further information on how they will achieve this. The Council appreciates further information on the mitigation for impacts upon designated sites, priority habitats and protected species will be presented in the ES however this limits EDC's ability to input during the consultation period. Until the assessment of impacts upon these ecological receptors is finalised, the adequacy of any mitigation measures cannot be confirmed by EDC.

Landscape and Landforms

As part of the S42 Consultation Response (November 2021), EDC state that the level of information provided is limited but agree the principles of the landscape assessment and the viewpoints outlined in the Preliminary Environmental Impact Report are acceptable. The Council is yet to receive detailed landscape mitigation plans as part of the design and consultation periods. These details are imperative for the Council to ensure the minimisation of impacts of the Scheme on the character and quality of the existing environment. Within the S42 response and during the Technical Workshops held by National Highways, the Council has raised their desire to see particular attention paid to the user experience along the A66. At present it is felt consultation on this matter has been somewhat neglected.

As part of the Supplementary Design Consultation response, National Highways held an additional consultation period between 16th February and 20th March 2022. The Council appreciate the additional National Highways' Supplementary Design Consultation response provided in March 2022. However, the additional consultation period failed to clarify the potential impact on Wetheriggs Country Park as a result of the relocation of the highway boundary adjacent to the southern park boundary, loss of existing treeline and the potential for additional land requirements south of Penrith Cricket Club. In addition to this, similar to previous consultations the availability of information has been limited and no mitigation measures have been proposed.

During the Supplementary Design Consultation period (February - March 2022), EDC acknowledges the efforts made by National Highways to promote the consultation. The Council believes advertisement in Wetheriggs Country Park could have been more numerous and prominently displayed, with contact details provided in non-QR formats to help wider groups engage. The Council appreciates that National Highways altered the dates and times of the in-person events at Penrith Cricket Club at the request of the Council to ensure local committee members could attend.

Workers Accommodation

As part of the Council's S42 consultation response, EDC have requested an Accommodation Strategy, this would play an important role in minimising the social and economic impacts of the A66 NTP and maximising its benefits, consistent with the aims of the NPS NN. The response to S42 consultation, submitted in November 2021, stated the Strategy should be to ensure that additional demand created by non-home-based workers (approx. 1,200) does not place excessive pressure on the local housing market. The Council re-enforced this position in the submission of a Principles for

accommodation strategy, provided to National Highways in January 2022.

The applicant has not provided an Accommodation Strategy to date. The Accommodation Strategy would be consistent with the National Policy Statement for National Networks (NPS NN) in that: 'the Government expects applicants to avoid and mitigate environmental and social impacts', and in line with the ambitions of the Cumbria Local Enterprise Partnership's Local Industrial Strategy.

Socio Economic Impacts

In the S42 consultation response (November 2021), the Council requested that a Skills and Employment Strategy and Business Strategy be prepared; the purpose of these is to upskill and maximise the use of a local workforce and supply chains. The Council again requested the production of these documents in the Accommodation Strategy Working Draft submitted to the applicant in January 2022. It is therefore requested that NH work with the Council to develop and produce a Skills and Employment Strategy and Business Strategy to be included within the DCO.

Noise

The Council were consulted as part of the statutory consultation period between 16th February and 20th March 2022 (Landforms, NMU provision and construction compounds). The Council recognises the engagement but notes that previous comments raised in the S42 response (November 2021) were not addressed and the requested additional detail not provided. Most notably, the Council are concerned that Kirkby Thore will be subject to noise increases of up to 10dB, including multiple residential properties and the Primary School. There is no reference to the use of embedded noise reduction mitigations measures. The Council would want to see their inclusion, particularly an embankment at Kirkby Thore, rather than a noise barrier. The design could also include details of mitigation such as low noise surfacing.

Brough Horse Fair

Due to MoD land requirements as part of the revised A66 design in autumn 2021, the site currently used for the Brough Horse Fair would be lost. As a result, the Applicant proposed the use of an alternate site south of West View Farm Overbridge. The Applicant ran a consultation period for the relocation between March 11th and April 3rd 2021, shortly after the Landforms, NMU and Construction Compound consultation period. The Council believes the applicant failed to properly advertise the Brough Horse Fair consultation period sufficiently. The consultation period provided an insufficient time period for the Council to consult with its specialists and engage members of the public. The site proposed was unsuitable due to size, traffic impacts, land ownership and impact on residential properties. The Applicant has since removed this option following consultation and is yet to confirm a new site in agreement with the Council.

Zero Carbon Strategy

The council have asked for the applicants Strategy to support efforts to achieve Zero Carbon. This has not yet been forthcoming so at this point the approach to be adopted is unclear and needs to be subject to further discussion

Traffic Impacts and Diversion Routes

The Council are keen to make sure it understands the Transport Strategy and the impacts of construction on traffic as well as traffic management and mitigation measures that will be put place to deal with the impacts arising

Appendix B. Consultation Report Annex N Sample Variances

Examples (spot checks) of variances of responses recorded in NH Annex N to consultation report

Comment Ref	NH record in Annex N	Our Responses
139. PEI/Visual Landscape Page N-1 J40 - Kemplay	Cumbria County Council and Eden District Council expressing support for the scheme on the grounds that landscape and visual impacts have been appropriately identified and that the proposed mitigation measures are appropriate.	<p>The generic text about the landscape design and mitigation in our response says.....</p> <p>The Councils' Position</p> <p>How the Project sits and is accommodated within the landscape will depend upon the depth of any excavation and cutting, and height and establishment of any planting designed to screen it. This information isn't yet available and until detail is provided, it is not possible to identify and confirm whether the mitigation measures are appropriate and acceptable.</p> <p>There may be the need for further softening and an increase in the height of the embankment features to reduce visual and acoustic impacts further than they are at present. Highways England should liaise with the Councils with regard to their particular concerns which are dependent upon the route option that is adopted.</p> <p>With regard to the specific M6 to Kemplay section it says....</p>

		<p>'As an overarching comment, Eden District Council is concerned over the nature and scope of the consultation exercise. As host authority we would have preferred to see a wider exercise which involved a range of stakeholders as well as a longer consultation period and a more publicly accessible process that would allow consultees and residents to engage more fully with National Highways. (This is elaborated on six further paragraphs in our covering letter</p> <p>The supplementary consultation undertaken by NH has been targeted to statutory organisations only and EDC believes this has resulted in the exclusion of important contributors. EDC is most notably aware of the absence to consult SUSTRANS, the UK's leading sustainable transport charity and custodian of the National Cycling Network on design changes directly relating to walking and cycling.</p> <p style="text-align: center;">M6 Junction 40 to Kemplay Bank</p> <p>8.3.5. It would be helpful for a figure to be provided that indicates the boundary between the National Character Areas (NCAs) for this, and all other, Schemes. The affected NCAs are appropriately identified with the exception of the Orton Fells NCA, located to the south of the Scheme.</p> <p>8.3.6. The majority of LCUs are appropriately identified, however the reasons for scoping out the remaining LCUs need to be appropriately explained, and an assessment of the effects on impacted LCUs and relevant designations needs to be provided.</p> <p>8.3.7. The selection of viewpoints is appropriate given the information provided to date, however it is considered that additional viewpoints should be considered from:</p> <ul style="list-style-type: none"> ▪ The A66 looking east and approaching junction 40 of the M6, representative of users of the local road network; and ▪ The Eamont Bridge area, which may be impacted particularly during the construction phase. <p>8.3.8. It would be helpful to ensure that the orientation of views is focused on the relevant Scheme or Schemes. For example, proposed Viewpoint 1.1 Clifford Road where the orientation of the view might be more appropriate facing south or south-west rather than west.</p> <p>8.3.9. The proposed viewpoint locations to be provided as a photomontage are considered to be appropriate. All photomontages should be provided in line with Type 4, as outlined in Technical Guidance Note 6/19 published by the Landscape Institute, in order that a representation of the relevant Schemes is understood.</p>
<p>66. Process - Communication/ influence Page N1 – Comments on consultation</p>	<p>Respondents expressing support for the consultation process, in particular the level of communication and ability for respondents to influence the process, including local residents and landowners,</p>	<p>Relevant Eden Response 11/21 Statutory Consultation</p> <p>'The Council is concerned that the information included in the consultation documents does not yet provide a complete picture of what the development will be like or how it will be implemented. Not all assessments are complete, related impacts and the mitigation that will be required are also not always determined. Therefore the acceptability of the proposals cannot be determined at this stage. This will have implications for the programme going forward. We would expect to see that the views collected in the consultation are fully considered and that there is evidence that they are being taken into account in the design of the scheme. As there is more information</p>

	<p>stakeholders, and councils.</p>	<p>needed before the Council's fully considered views can be provided, we have concerns about whether this is achievable within the programme you have set.</p> <p>Eden District Council welcomes the opportunity to engage with Highways England over the A66 DCO Project. We are keen to engage over the mitigation of potential adverse impacts, and ensure that the Scheme represent that best available option for dualling the A66 and delivering benefits for local residents.</p> <p>4/22 Re Brough Hill Consultation Response. 'The relocation of Brough Hill Fair is a substantial issue in the local area that will raise a number of significant environmental and social impacts and will involve special interest groups. The Councils request that a full programme of public engagement is undertaken that allows all interested parties to comment upon and input into the final location.</p> <p>2/2022. Re Consultation in Relation to Scheme Amendments at Kemplay Bank:, Temple Sowerby to Appleby and Appleby to Brough</p> <p>'The Councils elected members feel that they have not had adequate time, or sufficiently detailed information, to effectively consult with their residents on the proposals. This consultation raises a several sensitive environmental issues, including: the loss of existing sports fields and open space (and measure to compensate for their loss); the provision of new junctions; and works in close proximity to a Scheduled Ancient Monument and the North Pennines Area of Outstanding Natural Beauty.</p> <p>In all these cases a genuine local input will be key in ensuring that negative impacts are minimised and that mitigation measures (particularly for the loss of open space) are as comprehensive and appropriate as possible. A longer engagement with local stakeholders and residents would have been beneficial to all parties in ensuring this'</p> <p>Eden District Council is also of the view that the public notices advertising the latest consultation periods are insufficient. Local public advertisement for planning application is a minimum A4 size and include descriptive details of the development and provide contact information to allow for in person or written responses. The posters erected by National Highways are A5 size, contain no description of the development and rely on the use of a QR code, which we feel could exclude some of our local community. Eden District Council would like more consultation notices used in public areas in any future consultation events.</p>
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		<p>Eden District Council is further concerned over the radius and methodology used as part of the leaflet distribution to 300 houses in the Kemplay Bank area. Following conversations with several members and local residents, they have not received the leaflet despite being adjacent to the Scheme area. The nature of the Public Open Space is that users may travel from some distance away, and a wider programme of consultation would have helped capture the views of all users.</p> <p>The Council feels that many of the changes are very significant and the relatively limited consultation that has taken place is insufficient. In addition, in order that the views of stakeholders can be genuinely used to influence the design of the project, to be submitted in Spring, more detailed information on impacts and proposed mitigation needs to be available. Without the latter it is not possible to determine whether the scheme can be supported in its current form. However, we do look forward to working with you to resolve the issues and consider the mitigation proposed to deal with the negative impacts that concern us.'</p> <p>3/22 Re. Response in relation to WCH, Compound locations and Landforms :</p> <p>'The supplementary consultation undertaken by NH has been targeted to statutory organisations only and EDC believes this has resulted in the exclusion of important contributors. EDC is most notably aware of the absence to consult Sustrans, the UK's leading sustainable transport charity and custodian of the National Cycling Network on design changes directly relating to walking and cycling'.</p> <p>'The Council notes that the consultation does not provide sections or elevation drawings that allow the authority to evaluate the impact of such landforms in terms of land removal or height of the landform. In the absence of this information, EDC is unable to comment upon the suitability of scale and location of these features on the visual landscape or as acoustic mitigation bunds. EDC requests Section drawings of these landforms prior to design finalisation.'</p>
<p>183. Construction - Construction documents</p> <p>Page N1 Construction</p>	<p>Eden District Council expressing support for the detail provided in the Construction Method Statement</p>	<p>5.1.1. The Draft Construction Method Statement (Draft CMS) is a useful document to explain, in terms that are understandable to the non-engineering professional, how the Project will be constructed, what measures will be adopted and what tools and methods will be used. However, its value to the Councils is limited in so far that it provides little detail of specific measures that will be adopted during the construction phase of the project whilst similarly clarifying that specific detail is still indicative and subject to change. This technical appraisal of the Draft CMS has therefore been undertaken with due consideration of this limitation.</p>



Mr D Green and Mr F McMorrow
Eden District Council
Town Hall
Corney Square
Penrith
Cumbria
CA11 7QF

5 July 2022

Dear Mr Green and Mr McMorrow

A66 Dualling

Nicholson, Sleastonhow, Kirkby Thore

I am instructed by the Nicholson family who own and occupy the farm known as [REDACTED].

Whilst the Nicholson family is supportive of improvements to and the dualling of the A66 they consider that an online solution (sometimes known as the Southern Bypass) should be preferred for a number of reasons including that it avoids their property, will be markedly less expensive to construct and produce significantly less carbon during construction.

Whilst not supportive of the preferred route the Nicholson family has been keen to understand the impact on their property and open to discussions with National Highways as they prepared their Development Consent Order (DCO).

The DCO process is inquisitorial in nature – that is that the promoter should explain its scheme and undertake a series of consultations to refine the scheme. Sadly and surprisingly National Highways has chosen not to engage meaningfully. The Nicholson family has met with National Highways on a number of occasions but until very shortly before National Highways submitted its DCO had not been provided with a plan showing the impact of the scheme on their property, provided with affected land areas, provided with details of accommodation works which might mitigate the impact of the scheme nor provided with details of the agreements National Highways says it wishes to enter into regarding land not required permanently. It should not be for the affected party to chase this information but the promoter to provide it willingly.

This state of affairs is extraordinary - I am unclear how National Highways considers that it has properly consulted and fully engaged having not provided information essential to allow the Nicholson family to assess the impact on their property until very shortly before the DCO was submitted and after the point where any amendments might be considered. It appears that National Highways has provided only that information which supports its contention as to the benefits of the preferred route.

Yours sincerely

[REDACTED]

Henry Church
Senior Director – Compulsory Purchase and Compensation

From: [REDACTED]
To: [REDACTED]
Subject: Fwd: Emailing: Rk and GF Nicholson
Date: 06 July 2022 13:53:15
Attachments: [REDACTED]

Dear David,

I attach representations I would like you to relay to PINS by either incorporating into your own submissions or attaching. it represents how we have been treated.

To illustrate, we were not told that the DCO would be submitted and as thing stand we are still unclear about how the DCO boundry is drawn on our farm. We are losing a significant amount of land and only two weeks before the DCO submission date did we receive any indication of the extent of land sought.

This cannot be allowed to stand as an acceptable standard of Government consultation and I urge EDC and CCC to properly represent thier constituents on this matter.

Landscape surveys were only completed in late April and this is indicative of the level of care. Each section of this route should be treated individulall and the norms of Planning cannot be trashed to facilitate project speed. The section at Kirkby Thore has entirely differnt considerations to others.

I'd be grateful if you could acknowldege receipt of this email and the summary of inadequacies sent yesterday.

Many thanks ,

Emma N

Your message is ready to be sent with the following file or link attachments:

Rk and GF Nicholson

Note: To protect against computer viruses, email programs may prevent you from sending or receiving certain types of file attachments. Check your email security settings to determine how attachments are handled.

Scanned by MessageLabs for EdenDC

RK & GF Nicholson

Dear Sirs,

We understand the Eden District Council and Cumbria County Council are required to give a response to the Planning Inspectorate as to the Adequacy of Consultation by National Highway (NH) prior to submission of the DCO.

We are Landowners impacted by the A66 project and throughout this process we have had cause to contact our Local MP, EDC and CCC seeking assistance to extract information from NH. It is our understanding that the DCO process requires NH to work constructively with interested parties with the objective of trying to reach agreement on as many issues as possible before submitting their DCO. Identifying what areas are agreed, what areas are not and what can be worked on is a process that requires the provision of detailed information. This is a project that will change the lives of people living near the A66 forever. It will have a detrimental impact on historic landscape, noise and pollution levels along the entire route but particularly in Kirkby Thore.

For us it will irrevocably change our farm and the future of our child/grandchild. That is a loss which should be respected and addressed with a level of sensitivity. Instead, we have from the outset, faced an approach which is dismissive and, on some occasions, disrespectful. However, as the purpose of this letter is to address consultation issues, we will limit our points to those issues.

NH had only one contact with the Farm before the announcement of the Preferred Route in 2020. The purpose of that meeting appeared to be a fact-find mission to establish whether we would be prepared to sell the entirety of the farm. We can only assume that other Landowners were approached but local information suggests that only Landowners on the Northern Route received visits. The decision by another local Landowner to establish a limited Company (Northern Trading Ltd- residential property developer) and advance applications for planning permission in respect of residential housing, close to what later became the Northern route, indicated to many local people his early confidence on the ultimate route choice.

Even before route options were announced for comment in 2019, the local community were being led to believe that a decision had been made as Landowners were making decisions based on purchase of land, they believed was a certainty.

NH are entitled to negotiate but it is suggested the approach they took in seeking to secure land on just the Northern Route influenced their decision-making process and that has filtered through into the Consultation process. All literature and communication from NH has openly preferred the Northern Route.

Whilst this conversation may have been happening with other Landowners no representative of NH met or spoke with Sleastonhow Farm during the option selection process. Indeed, we didn't

even know it was happening as they was no presence in the village and no visible surveys being conducted. Timothy and Emma Nicholson live at Sleastonhow bungalow (adjoining the Farm) but have no recollection of receiving information about the consultation process.

We therefore submitted a last-minute response in writing to the route selection consultation in 2019 but as we had very little information this was quite generic. The response hi-lighted the SAC, the proposed floodplain restoration project, the impact on the farm of severance and the fact that our farm tenants would also be impacted. Nobody from NH replied with queries or a request that we expand on some of the difficulties our response hi-lighted. As well as running the farm Tim is an employee with Natural England. He was also at this point very involved in early-stage discussions about a River restoration project and therefore knowledgeable about the relevance of the SAC and the Troutbeck Floodplain. He was baffled by the complete lack of enquiry.

We heard nothing throughout 2019 and then off course we entered the pandemic and lockdown. The preferred Route Announcement in May 2020 was relayed to us by a neighbour who expected that we would have been informed. There had been no visit from NH before the announcement which seems enormously unprofessional and indeed there was no approach from NH until January 2021. We had instructed an agent by this point, and he too was baffled by the complete lack of engagement. He was instructed by other landowners along the route and considered our position unique. He could not understand why, given his understanding of us as the landowners most impacted by the entire project, NH were not seeking to engage with us.

We received our first visit in January 2021. The project leader, Matt Townsend, attended. He was accompanied by representatives from Arup and Amey who wanted to view the route for the first time. Upon being asked why this was the first time they had attended we were advised that we were wrong and there had already been extensive engagement with us. This meeting unfortunately set a standard for future engagement. The project lead had turned up with no current map (they resorted to drawing a line on a OS map we got from the house), not having read our response to the Route Consultation and completely unaware of the fact that this was the first contact whatsoever by his agency.

The team that attended were also unaware that the Troutbeck was within the SAC. It became apparent that they felt the decision to route the road to the North they would reduce difficulties by avoiding the Eden SAC but had just walked themselves into a large problem that could have been avoided by proper consultation when developing the route.

That this issue had been hi-lighted by Natural England several times seemed to be something of which they were unaware and the design lead in attendance continued to refer to the plans for a causeway. It was already known that the possibility of a Causeway through an SAC floodplain was a non-starter. Representative attending that day were unaware or unable to answer questions on following issues

- Cost Comparison (Answer lots more but agreed to obtain this information– They had not factored in the cost of a bridge at his point)
- Carbon Comparison for route options (not yet completed)
- Extra length of northern route

- Flood levels in the Troutbeck floodplain (we were asked did it flood – yes it does)

We were given an assurance by Matt Townsend, that given the appalling level of consultation to date, he would be our personal point of contact. We never saw or heard from him again.

Matt Townend promises to provide details on how the original routes choices were selected/narrowed have never been fulfilled. NH have actively opposed FOI request on this issue and denied requests from solicitors. Despite several representatives making comments on how much more the Northern Route will be, the official line is that no costing comparison exists. Minutes obtained indicate the Northern Route was being assessed at PCF stage 1 as 80 million more than the southern route. This assessment seems to have been made when costing for a causeway and didn't even include a 800 M single span bridge. It is absurd for NH to continue suggesting there is no analysis of each section when information clearly indicates this is wrong. If true it would be terrifying. It stands as an example of how evasive NH have been in the information they chose to present. This cannot be considered proper consultation.

In March 2021 NH sought a visit to discuss the possibility of developing other routes. However, they used this as an excuse to now refuse the promised provision of information on the original selection process. See below in red for extracts of responses to meeting and emails sent on the subject. In short, they wanted to brush the original selection process under the carpet and create an illusion of starting again. The failure to factor in the Troutbeck SAC floodplain indicates the route selection was fundamentally flawed and it is not acceptable to just bury this without analysis. That is particularly the case as NH had backed themselves into a corner and were determined to proceed with their original route choice so as not to lose time.

You questioned our reason for not looking at 2 options in full detail at early stage as prohibitive for public purse:

- Given the design team is now reviewing other options, it would be more appropriate and comprehensive to share the analysis of this in the round once the new options are considered.

AND AGAIN

From: Rachel Smith [REDACTED]@cjassociates.co.uk>

Sent: 19 March 2021 12:06

To: [REDACTED]westmorlandwoodfuel.co.uk

Cc: [REDACTED]@arup.com; [REDACTED]@hhlandestates.co.uk; A66NTP - Doc Control <A66NTP-DocControl@amey.co.uk>

I have asked Matt about your previous request for the options analysis which led to the routes being brought forward at options consultation. The HE view is that, given the design team is now reviewing other options, it would be more appropriate and comprehensive to share the analysis of this in the round once the new options are considered.

Finally, we have got to the bottom of the email issue. It appears the HE inbox had identified your email as spam and isolated it. Your email has now been added to the contacts and email are coming through fine. Nevertheless, please feel free to contact Aamir and I directly.

The above correspondence demonstrates a lack of openness for a government agency who have an obligation to be transparent. This approach cause mistrust and impacts on your willingness to work with an agency who is being so secretive.

It also hi-lights communication problems. The subcontracting issue means you cannot actually communicate, and that is compounded by the ever-changing PLO's.

It seems that the significant hurdle presented by the realisation that the Troutbeck floodplain was within the SAC and the need to consider new options finally shocked NH into action and suddenly they were trying to compress all the surveys they hadn't undertaken into a matter of weeks. We were already encountering difficulty with unmarked vehicles turning up in our Farmyard, surveyors appearing on private lanes. Attempting to locate anyone to raise this with was time consuming and stressful.

It also became apparent that whilst giving reassurance that all options being considered, would be fully worked up so that an informed decision could be made, the Surveys continued to focus on the Preferred Route. Once again, the bias to the preferred route was evident – See below as extract from email

Tim

Thu, May 13, 2021, 10:14 PM

Nicholson [REDACTED]@westmorlandwoodfuel.co.uk>

to Rachel, me, A66NTP, Anthony, Aamir. Shaikh, Alan. Bowe

Hi Rachel,

With regards to these surveys the only question I have is why none of these surveys (other than the wider habitat surveys) seem to be looking at the area where the second northern route is now proposed?

You seem to be focusing all the survey and exploratory effort on your announced preferred route. How can this give a comparison between the 3 routes you are about to publish? I can only assume that this shortcoming will be addressed prior to the next preferred route selection.

Matt Townsend made a commitment to being transparent about the route selection process so can you please now provide us with the criteria on which the next preferred route will be selected.

Regards,

Tim

We lost confidence in the rigour being applied to the new route selection process at an early stage. The leaflet circulated in May 2021 was inadequate. It did not show the introduction of a new junction to Kirkby Thore for the Southern Route. The promise of a 3D model being located within the village hall to provide a visual representation of the routes in proximity to the village never materialised. The Public Meeting appeared to be more of a tick box exercise staffed by PLO's who had no technical knowledge. It was no

surprise that within weeks we received an email stating that the choice remained the Northern Route.

The visit sought by NH in advance of the announcement on 24th September to discuss the DCO boundary never happened. Instead, they turned up late in the afternoon of 24th September to then discuss the DCO boundary. The extent of land they proposed to take came as a total shock. No explanation could be given other than it was needed for mitigation and ideally, they would like us to enter into land management agreements as they felt confident, we would be good at it. Tim's knowledge as an Ecologist led to questions about how they had calculated the area. They did not know and simply stuck to a mantra of species rich grassland which is entirely inappropriate solution for a floodplain. We were not provided with a map during that visit just told about 100 acres. The following actions were to take place as a matter of urgency

- A meeting with the District Valuer
- A meeting with the Ecologist
- A proposal would be made about land management
- Introduction to other farmers who had entered Land management agreements to manage mitigation
- Disclosure of route option selection to allow response to Stat Con.

None of the above happened either. Below is an example of communication. We chase NH for a response on when the planned meeting with the ecologist or DV may happen (two months after NH say will be arranged urgently) and they fudge it and say they are busy.

When we have tried to progress issues which would appear to be one that NH should be seeking to resolve they blank us and say they are busy, when we are busy and ask for the provision of more information to help us understand when surveys would take place and how this would impact on tenants and livestock movement, we are branded obstructive, and warrants are sought for access.

----- Forwarded message -----

From: Sanders, Bernice [REDACTED]@highwaysengland.co.uk>

Date: Fri, 26 Nov 2021 at 18:09

Subject: RE: FW: Updated Green Book

To: Emma Nicholson <[REDACTED]@gmail.com>

Dear Emma

In respect of the minutes, you requested and the Sleastonhow desktop valuation, these are being dealt with under FOI/2703. You should now have received a separate communication on this FOI request in respect of the response time required.

In respect of your request about application of the Green Book revision on carbon, this is being dealt with under FOI/2702, a response for which you should expect early next week.

In respect of the Lands Cost Estimate, I confirm that our previous response to your MP is correct in that a land cost estimate was undertaken for the whole of the project, which included all potentially affected land parcels and properties between M6 junction 40 and Scotch Corner. **We have confirmed this exercise did not include separate assessments for each individual route.** As this information does not exist, please clarify what information you wish to request under FOI.

Your request about National Policy has been submitted to the FOI team as a request in its own right, I am awaiting a reference number.

I am unsure whether Tim's request for disclosure of the comments by others on the routes made at the Village Hall in July 2021 was a written request. However, as you have now included it in your latest email, we will also deal with this under FOI as a request for data.

I recall when we met at your property on 24 September a conversation around a future meeting with our ecologists. Given the whole team has been extremely busy delivering the Statutory Consultation in the weeks following our meeting, availability of key people has been a challenge. Regardless, I apologise that this has not yet happened and will ensure that this meeting is arranged.

Kind regards

Bernice

Bernice Sanders

Senior Project Manager

From: Emma Nicholson [mailto: [REDACTED]@gmail.com]

Sent: 23 November 2021 12:40

To: Sanders, Bernice < [REDACTED]@highwaysengland.co.uk>; Rachel Smith
 [REDACTED]@cjassociates.co.uk>

Subject: Re: FW: Updated Green Book

Dear Bernice,

I would be grateful if you could provide an update on when I may receive minutes requested in email dated 31st October. Whilst you replied to that email confirming that a FOI request had been made to release the Desktop valuation of Sleastonhow, the balance of the email was not addressed. To assist I have copied the relevant section below

Firstly, could you arrange to forward to me the minutes referred to at section 5.5.46 and 5.5.47 of the route development report- Volume 1. These relate to the meetings March and April 2021.

Please also provide the subsequent minutes of a subsequent "brainstorming meeting" where some of the possible meetings were developed or discounted or any meeting which relate to how these routes were developed or discounted.

With regards to valuation, you have responded both to ourselves and to our MP stating that

I can confirm that a land cost estimate was undertaken for the whole of the project, which included all potentially affected land parcels and properties between M6 junction 40 and Scotch Corner. This exercise did not include separate assessments for each individual route.

I find it extremely difficult to believe that within the process of selecting routes the issue of costs would not be considered as one of the most, if not the most, fundamental considerations when assessing the merits of the different routes. Please can you confirm that no such exercise has been undertaken and again submit a FOI request on this issue

We have received Correspondence from Historic England in response to a query raised by us. This does cast doubt on the assertion that this is a matter of National Policy. Please can you disclose the Correspondence which NH have had with Historic England on the merits of the various routes at Kirkby Thore. Please can you also disclose the Risk Assessment carried out by Guard Archaeology regarding the significant Roadworks undertaken between Kirkby Thore and Low Moore in 2018. I have contacted Guard directly but understand that as it was commissioned by Highways it is not a public document and must be forwarded by you.

Earlier requests made to Rachel:

Tim had requested disclosure of the village's comments to the routes made at the Village Hall in July. These have not been provided.

I have also raised a question as to how the increase in the valuation of Carbon made in the recent revision to the Green Book is being addressed given that the blue route is so much longer and structure intensive. This is attached and again I have not received a response

I look forward to hearing from you on the above given the amount of time that has passed.

As for visits we have not heard anything regarding the DV attending but assume this is simply down to coordinating diaries.

Nor have you come back with details of other Farmers with whom you have, on a voluntary basis reached an agreement as to management of habitat issues. It was agreed you would investigate this so that we could consider the experiences of others with whom NH has a similar arrangement.

Kind Regards,

Emma Nicholson

Despite the reassurances that Bernice Sanders would arrange the suggested meetings again nothing happened. We were left facing the prospect of our farm being cut in two, losing 1/3 of our acreage (the DCO line took 100 acres) and with no response from NH. This behavior paralyses a business and has a debilitating effect on the people impacted. Being left in the dark with assurances is the equivalent of gaslighting by a Statutory body. NH fail to communicate or are evasive in their answers, but then try to shift blame when they come back to the table and suddenly need to get everything done in a hurry. There is a constant failure to share information between teams. Their offer to provide a single point of contact never materialized and this is the utilized by NH to its advantage when it adopts an approach which in the words of its project lead lee Hillyard amounts to sorry for the rubbish consultation but “we are where we are.”

We had constant communication about surveys but nothing about landtake. NH did not contact us directly to advise that there was a boundary change to the DCO land, and they would need to take more land. Instead, this information was dropped on us by the latest PLO late on Friday 28th January in a telephone call scheduled to discuss trench digging. The latest PLO did not know how much land or where on the farm but said a letter would be on its way with a map. The letter did arrive but said absolutely nothing and the plan attached shed no light on the situation. Instead, what was received appeared to be regarding a further consultation on Compounds and Landform. We tried to access this consultation but were unable to find details on NH home page, latest news page or What Next page. We spoke with the Parish Council who were unaware of any further consultation being planned.

Enquires were made via our agent on 31st January and treated as a FOI. **See below.** The response took more than a month. It transpired that the information given by the PLO was incorrect and no further land was required but the communication was used to advise of design changes. We had never been

provided with a plan of the original design so could not compare what had been intended with what may have changed.

The FOI response on 4th march gave no indication that the DCO line had changed or reduced and no indication of when a meeting with the DV, Ecologist or farmer with land management agreement may take place. The attached plan provided no insight into what land NH wanted to take either permanently or temporarily. We remained in the dark

----- Forwarded message -----

From: "foi@highwaysengland.co.uk" <foi@highwaysengland.co.uk>

To: "[REDACTED] London HH" [REDACTED] <[\[REDACTED\]@cbre.com](mailto:[REDACTED]@cbre.com)>

Cc:

Bcc:

Date: Fri, 4 Mar 2022 15:37:57 +0000

Subject: [FOI/3173] A66 change of plans

External

Dear Mr Church,

A66 Northern Trans-Pennine project

Thank you for your information request dated 31 January 2022 regarding A66 Northern Trans-Pennine project. We have dealt with your request under the provisions of the *Environmental Information Regulations 2004*.

This is because the information requested concerns measures and activities affecting or likely to affect elements of the environment or affect factors such as noise, pollution discharges and other releases into the environment.

You asked:

I understand that NH is of the view that it'll require a greater area from Nicholson than previously identified.

a. What has caused this late change? Why is the extra land required?

- b. Please provide a plan and detailed drawings (incl elevations)*
- c. Will this extra of land be subject to surveys?*
- d. Will there be a consultation on the latest revision?*
- e. What plans/proposals does the project have for mitigating the effects of the scheme incl access to the severed land?*

Information provided

a. What has caused this late change? Why is the extra land required?

Since the autumn 2021 statutory consultation, we have been reviewing feedback, working further on developing the design and completing surveys to help us gain a better understanding of areas including environment, ecology, heritage and drainage.

In January and February 2022, we held a targeted supplementary consultation on the Temple Sowerby to Appleby section where we had made changes to the design to three key junctions – to the north of Kirkby Thore, at the Long Marton Lane End junction and the junctions to the west of Appleby. As your client’s land is in close proximity to the change at Long Marton Lane End junction a letter was sent to the landowner, Felicity Margaret Ruth Nicholson on 28 January, stating that the designs in the nearby area had changed. The letter explained that this might have an impact on the land we needed to acquire from your client, either on a permanent or temporary basis, should the project receive planning permission. I can confirm that none of these changes have a direct impact on your client’s land.

b. Please provide a plan and detailed drawings (incl elevations)

Not associated with the design changes mentioned above, there are a number of changes where the design of the scheme has changed on your client’s land:

- Realignment of Sleastonhow Lane, which now avoids the veteran tree
- Relocation of a pond
- Farm tracks, which were not shown at the autumn 2021 statutory consultation
- Changes to the level of the dual carriageway, which affects earthworks
- Compounds, including temporary lay down areas have been reviewed

A drawing showing the changes in design affecting your client’s land is attached.

c. Will this extra of land be subject to surveys?

As the design updates on your client's land are relatively minor, additional surveys to those already identified by Ardent and communicated to your client are unlikely.

d. Will there be a consultation on the latest revision?

Due to the minor status of the design changes on your client's land there is no requirement to hold a public consultation. We will however arrange a meeting with your clients, a member of the A66 Northern Trans-Pennine project team and our designers to discuss the design changes on your client's land.

e. What plans/proposals does the project have for mitigating the effects of the scheme incl access to the severed land?

We acknowledge that there is severance on your client's land. The mitigation measures put in place are shown on the attached drawing. Please note that the attached drawing does not include environmental mitigation, which is currently being finalised.

If you are not satisfied with your response, you may ask for an internal review within 40 working days of receiving the response, by replying to this email. You can learn more about the internal review process [here](#).

No explanation was offered as to the minor change which turned out to be far from minor. This email was responded to with a request that we be provided with an accurate plan, a timeframe for meeting the District Valuer and details of what they wanted. NH was evasive

A meeting with Lee Hillyard was sought by us and this took place on 30 March. It is ridiculous that 6 weeks out from the DCO deadline, we are the party seeking a meeting. We had not seen anyone since 24th September except for people conducting surveys. Again, apologies were offered for the total absence of consultation and an assurance given Lee Hillyard (like Matt Townsend before him) that he would become our point of contact and would prioritise the still outstanding meeting with Ecologists, D.V. and Farmers managing land for biodiversity. No explanation was given that less land was being sought. We were show a map of the route not DCO. We remained entirely in the dark

Running alongside this was pressure created by an email received separately from NH indicating that those who agreed to sell within 12 months would receive a 20% uplift and the clock was

started by that letter. This as much as anything summaries the level of incompetence. This letter was sent without the knowledge of the DV, who did not have the necessary information from NH, to enable him to make offers. The D.V had to concede he did not know what land NH sought. NH started the clock on a 12 month period without knowing what land they sought. Emails to the sender went unanswered. The sender had gone on a planned sabbatical. Time is ticking and nobody has clarity on what NH want

A meeting did take place on 29th April. Lee Hillyard who had committed to attending the meeting did not. Richard Sowerby the D.V. attended but had to concede that he had no detail on what was being sought by NH and no plans. Until that point he hadn't been unaware of our efforts over the past 7months to arrange a meeting or that land management proposals had been made to us.

All that was conveyed at this meeting was that NH had now reduced the DCO line and reduced the amount of land they sought to take significantly. The acreage impacted by revised DCO line would be approx. 30 acres. They could not say how much they wanted permanently or temporarily. We were now 2 weeks away from the DCO deadline. We were presented with an entirely different boundary on which we have had no input/discussion and no detail. The overriding impression was that NH were arranging meeting to create the impression of consultation but without the necessary detail to allow proper consultation.

We have not been consulted on landform or siting of compounds on our farm. It does not appear the Environment Agency or Natural England have been consulted on these issues.

- We were not consulted on the Walking, Cycling and horse-riding options even though we would have been incredibly open to this issue and have sensible suggestions and alternatives
- Requests that Friends of the Lake District be consulted on landscape issues have been consistently ignored to the extent that offering to forward the number of Dr Kate Wilshaw was declined by the Design Lead during our meeting on 29th April.
- Responses have included shrugging of shoulders as to why even on 29th April, two weeks out form their self-imposed DCO submission, NH were attending with the D.V not knowing what land they sought to take.

The approach is farcical and in direct contravention of guidance given to NH by the Planning Inspectorate on the need to avoid ever-changing DCO boundaries and only submit its application when ready.

This standard of consultation and treatment of stakeholders cannot be allowed to become the norm and this farm is just one example. It is being brought to the attention of EDE, CCC and the Planning Inspectorate simply because we have the energy to respond and enough personal experience to know this is unusual.

NH have tried to bulldoze stakeholders into submission, and when they can't, have evaded anyone felt to be troublesome. Troublesome appears to be defined as asking awkward questions. The standard answers given to difficult questions are;

- Put it in an email and we will get back to you- then respond with a FOI declined notice
- Project speed justifies our innovative approach to consultation
- The issues identified within this section are outweighed by the overall gain to the entire project.
- Our project mandate is too dual
- We are where we are.

The distinct lack of reaction to this project from the public should ring the necessary alarm bells. There is a limited reaction because the public have not been provided with standard information normally made available. This is not typical of other consultation models, and it should not be allowed to stand as a precedent. The future consequence of allowing a government agency to consider this standard of consultation as the norm would be terrifying.

One example of detrimental impact is the damage done to the working relationship between Sleastonhow farm and Eden Rivers Trust. NH attempt to re-brand a flood restoration project devised by us, due to our genuine concerns about the impact of flooding in Cumbria, as environmental mitigation. There was no consultation which has caused irrevocable damage to that relationship. This is tardy and does illustrate why so many agencies are strangely silent. They are being offered money to fund biodiversity mitigation. That these projects were already in the pipeline is being overlooked. This should not become the norm in a world facing a climate crisis.

We therefore urge the Planning Commission to reject this application.

Yours Faithfully,

Tim and F Nicholson

Formal complaint about the adequacy of the consultation about the Appleby-Brough section of the A66 proposed dual carriageway, in relation to [REDACTED]

This [REDACTED], my parents, have lived in this property for over 20 years, and our family has lived in it since the 1950s. They will be badly affected by the current proposals. Their case illustrates the impact of the National Highways proposals on individuals, as well as the general inadequacy of the consultation which has impacted on many other local residents and businesses. The conduct of the consultation directly breaches the Planning Act of 2008.

Our parents are not computer literate and communication about the road has been done at long distance by phone, or by costly and tiring time-limited journeys in response to the numerous badly-advertised short-notice consultations. We (their children), have incurred considerable personal costs in terms of time as well as expense fitting this in with our paid work.

Despite frequent preferences expressed by local residents for the new dual carriageway to go north of the current A66, National Highways are continuing with their plans for it to go south.

The consultation was completely inadequate and, to be compliant with the Planning Act of 2008, should be run again with full consideration given to the alternative routes preferred by local people, fully informing the public about all the consultations in place, and ensuring all the relevant issues are included. Residents without internet access should be supplied with relevant paper copies.

Context

The current proposals place a dual carriageway and an access road between the current A66 and Joy Thompson's [REDACTED]. The speed limit will be raised so they will have heavy traffic going close to their house at 60 or 70 mph, a much faster speed than at present (50 mph), much closer to the house (nearest road, projected 40 metres). There will be sink ponds (the nearest, projected 14 metres) occupying most of the nearby field, and a concrete access road to the back of the house. In addition, what is currently a beautiful view on all sides and a field will be destroyed for posterity. The local environment includes a field where rare birds such as curlews and peewits nest. The Thompsons will be subject to intolerable noise from construction works in the immediate vicinity of the cottage for a period of about two years. The value of their property will diminish, with no possible compensation until a year after the road is completed. National Highways will not guarantee there will not be work at night.

The current proposals are now worse than they were in 2019 and 2020, when, although a dual carriageway immediately to the south of the existing road was proposed, no access road was included.

Complaints regarding the adequacy of the consultations

The inadequacy of the consultation puts National Highways in breach of the Planning Act 2008:

Section 42-Duty to consult

Section 48-Duty to publicise

Section 47 Duty to consult the local community

And Regulation 12 of the Infrastructure Planning (Environmental Impact Assessment) regulations 2017-sufficient information

The short notice of many of the face-to-face non-statutory consultations and the inadequate length of time of the statutory consultation means they were less likely to be attended by members of the public. They have also caused considerable expense and personal inconvenience to family members.

Complaints about the timetable and conduct of consultations

The legislative context (Planning Act 2008, Part 5) states:

--- 53. Local people have a vital role to play at the pre application stage. People should have as much influence as is realistic and possible over decisions which shape their lives and communities. It is therefore critical that they are engaged with project proposals at an early stage. Because they live, work and socialise in the affected area, local people are particularly well placed to comment on what the impact of proposals on their local community might be; or what mitigating measures might be appropriate; or what other opportunities might exist for meeting the project's objectives.-----

Sequence of events

-August 2019 Exhibitions in Appleby. My parents felt there was little engagement by the Highways England team with the public nor acknowledgement that they might have something valuable to offer.

Route: dual carriageway to be constructed immediately south of the current A66. No choice of routes was offered for Appleby to Brough.

-May 2020 Route announcement (no choice given) Proposed dual carriageway to be constructed immediately south of the current A66. No choice of routes was offered from Appleby to Brough.

-March 2021

In March 2021 our parents received an unsolicited visit from about 5-6 people from National Highways. They were telephoned about a week in advance, but the purpose of the visit was not explained. My father has described how the visit (held out of doors as COVID-19 lockdown regulations still applied), was very awkward, with several people sitting round not knowing what to say, and how the officers seemed wholly incompetent. Our parents were given very unclear maps at the end of the visit with no clear explanation. It was very inconsiderate to keep two old people sitting outside without explaining the purpose of the visit in advance and with insufficient time for discussion.

The Community Liaison Officer Emily Kitching later claimed the visit was in response to queries, but as the Thompsons did not have the address or phone number of National Highways (formerly Highways England), they could not have made contact. There was no consideration of the possible shock to two old people of being presented with plans which involved building unnecessary new roads all the way round their house. When other local people, such as the chair of Warcop Parish Council, saw these maps and heard about these plans, which had not been publicised, they were shocked.

Failure to explain the proposals properly has caused a great deal of work for other family members, especially as our parents are not computer literate. March 2021 was the only time they were offered a personal visit during the consultation process, despite my father being very frail and unable to attend consultations. The short notice of so many consultations has made it difficult to plan ahead and request a face to face appointment on other occasions.

-May 5th 2021

A Teams meeting was held between the 4 siblings with Emily Kitching, Oliver Garland (from National Highways) and Richard Sowerby, about compensation, (though he had not been invited by us). Various possible variations of the route were discussed, including suggestions from my parents.

NB In a letter written by NH (formerly Highways England), in response to Mrs Thompsons' letter to Neil Hudson, the MP, dated 16 July 2021, it was claimed that:

“During both of these meetings, the team (which included a member of the design team) explained the proposed plans to Mrs Thompson and her family and the rationale behind why we have proposed the road network. It is very important to us that we discuss these plans comprehensively and as clearly as possible”.

Mrs Thompson was not present at the meeting on May 5th as she had no internet access or working computer. Nor was the route explained clearly at the meeting in March, as both my parents have noted.

--June 2021

A detailed letter was sent to Dr Neil Hudson, the local MP, from the Thompsons. It was passed on to Baroness Vere, the roads minister and to the then Highways England. The main response (from Dr Hudson, Baroness Vere and National Highways, received in August 2021), was to advise us to communicate with National Highways and that route amendments were being considered (Ref NH 8181).

--July 23rd 2021

A public meeting was organised by Warcop and Musgrave parish councils at Warcop Parish Hall and attended by about 70 local people. National Highways were invited but they chose not to attend, and instead organised their own drop in events in the daytime, at very short notice (about 2 weeks' notification). This has been a feature of many of the consultations, incurring considerable time and expense for participants and making them less accessible to the public. Given the short notice of the event, it seemed that it was purely a response to the holding of the public meeting.

--Teams meeting held on 20th September requested by NH to explain new route options.

Subsequently, a suggestion of my mother's for an alternative route via Flitholme was proposed by myself on her behalf by e-mail, but I was simply told to include it in the consultation (see below). It was not recorded in the consultation outcomes, so has not been given any consideration. My mother is [REDACTED] and found understanding the explanations in crowded rooms in public consultations very difficult. Again, the limited time of the consultation has made it very difficult for the views of [REDACTED] people to be heard and thus excluded [REDACTED] members of the community.

(e-mail 27 September from EK, Liaison Officer)

“Thank you for sharing your mother’s suggestion of utilising the track west of Flitholme. I have shared this idea with Oliver. May I suggest that you include this idea within a response to the consultation, which has now opened. This would allow the idea to be considered as part of the consultation in addition to your correspondence. You can view more information about the consultation here:”

--Statutory consultation-24th September -6th November 2021

Six weeks is too short for a consultation of this complexity and size. The consultation for the North West Coast Connections NSIP in 2016/17 was 14 weeks, for example.

Consultations for Nationally Significant Infrastructure Projects (NSIPs) should take place over a minimum of 12 weeks according to the Government’s Code of Conduct¹ which also states that “if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation”.

The six weeks given was not long enough to consult properly on a single road scheme let alone such a complicated project. To put it in context, it involves eight different sections along a 50 mile stretch of road which passes through 5 Local Authority areas, through an AONB and the setting of a national park, affecting numerous local communities.

Different family members attended the consultations in July and October, and were informed that the noise levels were definitely predicted to rise, but that we could ask for noise reducing measures in the consultation written feedback. Although we did this, there is no evidence that this has been listened to or that these will be provided. No references to bunds were made in the most recent maps and consultations.

Throughout the consultations, we have made it clear that we preferred the northern route, as have many local residents, yet this has never been seriously considered. Indeed, while some local residents have produced high-quality

plans at their own expense, National Highways, funded by the taxpayer, has never conducted a proper survey of the area north of the A66 for its suitability.

The consultation did present a slightly better option, the Black-Blue-Black route, than the March 2021 plans, which involved building several unnecessary roads round the cottage. The extent to which these choices were understood by to other members of the public who had not spent considerable time studying the plans is

National Highways failed to address the issues in the Statement of Community Consultation.

“5.4 The consultation will run for six weeks from 24 September until 6 November 2021. During the consultation period, in addition to the project generally, we will be consulting on the following particular elements of the project:

- Route alignment and preliminary design, including route alignment alternatives considered within specific areas
- Junction layouts, including junction location alternatives considered within specific areas
- Construction compounds and other land potentially required for construction
- Proposed DCO boundary (the area of land needed to carry out the project)
- Proposals for walking, cycling and horse riding including the diversion of routes
- Environmental assessments and potential environmental impacts
- Environmental mitigation measures and associated land requirements
- Arrangements to mitigate the impact on any communities, farms or businesses “

Some of these items, such as compounds and walking, cycling and horse-riding were not addressed in this consultation, necessitating subsequent consultations which were not open to most of the public.

This reinforces our argument that the consultation was too short to address all the major issues, which has then led to a series of short non-statutory consultations, not open to the public.

--Jan-March 2022. Series of non-statutory consultations, arranged at short notice, with no alerting of the general public, only specific landowners, often with very little information provided. (I have listed those which directly affected our family, but there were several others along the route.)

████████████████████. 28 January to 27 February 2022

A consultation was held, again at very short notice, with face to face meetings on February 8th and 9th 2022. We only discovered this on 21st January, via the parish councils, and CLG consultation group. Route information was not provided in advance.

No information was made available to my parents about this meeting. I had to write on 27th January and ask for hard copies to be posted. If they were not entitled to information, why was this provided later?

8th Feb Consultation at Warcop Parish Hall: Mrs Thompson and myself spent a great deal of time at this meeting with the overall designer discussing the possibility of moving the location of the access road at the Langrigg Junction, or getting rid of the junction. This was on the suggestion of the Chair of the Warcop Parish Council, David Keetley, and would have returned to the status quo in May 2020. Yet on March 30th, when I asked for an appointment, I was told that the design had been fixed in its previous form and no change was possible before the DCO.

This is despite the issue of the Langrigg Junction being raised at Community Liaison Groups and other meetings between the parish councils and National Highways including with the MP.

This consultation sought views on what are described as “considerable changes to the design” that were presented during the statutory consultation. These changes include: • Building the additional carriage to the north of the existing A66 rather than the south at Warcop central to reduce the impact on properties and land to the south and to the Roman Camp. • Building the structure at Warcop central slightly higher to help mitigate environmental issues with the River Eden Special Area of Conservation (SAC).

The consultation was not advertised publicly on the National Highways scheme page nor on National Highways social media, it did not appear on the National Highways consultation hub and could not (and still cannot) be located by searching that page and is not accessible via a publicly locatable link. The changes described in the Consultation Brochure are considerable and the subject matter includes impacts on nationally designated landscapes, habitats and species and are of more than immediate local concern.

---Walking, cycling and horse-riding provision, landform and compounds

16 February 2022-20 March 2022

On 14 February I received a phone call from the new Community Liaison Officer when I was working to a deadline. (I had not given my phone number to the new officer, nor had I given permission for it to be passed on to anyone except Emilly Kitching.) This call was to inform me that brochures were being sent to my parents about a new consultation.

At no point have the public been informed of the overall impact of a large number of new compounds (which are like mini-cities, where concrete is

batched, and site offices, worker amenities and vehicles stored), along the route. This is equivalent to a major consultation and should have been treated as such, and included in the statutory consultation. Letters were only sent to selected people. Even the parish councils did not know about it. There was no information to the public to assess the impact of the compounds. When I wrote to ask I was only told it would not be near my parents' house, though it would be visible further along the road and would impact on other residents.

As in other examples, there was nothing on National Highways' A66 social media, and no public events were held to inspect maps or ask questions. The compounds should have been included in the statutory consultation, not consulted on separately.

This consultation opened on 16 February 2022 and closed on 20 March 2022 and sought views on very considerable changes to the following:

- Extensive changes to walking, cycling and horseriding provision along the length of the Scheme
- Considerable changes to the proposed landform along much of the route, with the construction of multiple large landscape bunds
- Multiple new large compounds along much of the route, of unknown purpose or use.

Although this consultation was listed on the National Highways consultation hub, it was not present on the National Highways scheme page, nor advertised on National Highways social media accounts with a publicly available link. Despite the numerous major and complex changes described in the Consultation Brochure, no public events were organised to inform the public and give them the opportunity to view the maps and ask questions. This may be in breach of National Highways' Public Sector Equality Duty, as it deprived those without access to the internet (particularly the elderly) an opportunity to inform themselves of the changes and to respond. Neither the consultation webpage nor the Consultation Brochure provide any information regarding the environmental impacts of any of these changes, which by their nature can be expected to be considerable due to the extent of the land impacted and the proximity to multiple protected landscapes and habitats. The new, proposed compounds, while they might be considered temporary, will have a large detrimental impact on the area and should have had their impact assessed as part of the Preliminary Environmental Information Report (PEIR). Even if considered temporary, compounds can end up being permanent features or leave behind permanent impacts, sometimes leading to further development. Due to these significant changes, the environmental impacts of which have not been explained or made public, the PEIR should be updated and consulted upon again.

- The consultation has been wholly inadequate and extremely poorly advertised

- A new Statement of Community Consultation should have been issued, detailing how National Highways would have consulted openly and fully about these changes
- An updated Preliminary Environmental Impact Report (PEIR) should have been produced, to reflect the impact of the new changes and to show the ecological impact

Consultation about bunds, landform, were not properly explained. Impact on the landscape was likely to be considerable. Insufficient information was provided about their impact.

I asked for a meeting on 3rd March, and again on 9th March, receiving a response on 10th March. I was told we could meet at the Brough Hill Fair face to face consultation. The maps at this meeting, which was very well attended, were all for a different consultation and therefore not very helpful.

This breaches Regulation 12 of the Infrastructure Planning (Environmental Impact Assessment) regulations 2017-sufficient information.

--Brough Hill Fair consultation. 11th March to April 3rd 2022

The subject of this was moving the site of Brough Hill Fair . The face to face consultation (16th/17th March) was not advertised except to specific people. Information was only sent to the Community Liasion Group on 9th March. The gipsies clearly do not want either site and also want the road to go north, yet National Highways has pressed forward only offering two inferior sites. This is profoundly discriminatory to a group of about a million people.

--April 6th and 7th, 2022-private appointments with landowners

When we learnt that National Highways had booked Warcop Parish Hall on 6th and 7th April, I requested a meeting to give my parents the opportunity for a discussion about the route.

On making my request (March 30th), I was told the meetings were for landowners by appointment and that I was unlikely to get one. On April 5th I received a missed call on my mobile phone and on returning it, was told that I had an appointment at 1 p.m. There was no written follow up and I understood it was the next day, which was when I was available.

In the morning, of April 6th , the caretaker waited for National Highways to come from about 7.30 a.m-9 a.m. and when nobody came, he telephoned, to be told they had forgotten and had a meeting in Manchester. The hall was being charged for (on taxpayers' money). Apparently organisers of local events had

been asked to cancel these as it was in the interests of the village that the meeting be held on these dates.

(In my request for a meeting made on 30th March, I had made an error, asking for Wednesday April 7th, but since there was no follow up and I had been told an appointment was unlikely, I did not correct it.)

On contacting NH, having learnt they had cancelled the hall on 6th, I was then telephoned, asked to respond and then texted and told the appointment had been made for April 7th. This was the first time I had received this information. I was unavailable on 7th and therefore agreed for NH to visit my parents in their home as the only option.

On April 7th there was a visit to my parents . In fact, three people came when they were expecting one. My father raised the preference for the northern route, but was told there was no negotiation about the route. He would have preferred me to be present, given that I have more information, but this was made impossible by the rushed nature of the arrangement. My mother asked why the discussions about amending the Langrigg junction had not progressed but was told the design was fixed.

“IB opened the meeting by apologising for the apparent misunderstanding with the meeting intended with Mary-Clare. It seems Mary-Clare had thought the meeting was on Wednesday 6 April when it had been arranged for Thursday 7 April”. (Minutes, 7/4/22, NH)

Thus, late and incomplete communication made it impossible for me to help my parents for this important meeting.

I was sent the minutes of the meeting by e-mail on 12th April when I was abroad on family business, but no hard copies were sent to my parents, although my out of office message clearly stated I would not be available until 22nd April. Since their memories are failing, neither can now recall what was said. Why were hard copies not sent?

There was also a basic inaccuracy stating that “Mr Thompson” is a landowner, which is not the case. Mrs Joy Thompson is the sole landowner.

So, there has never been an opportunity for a face to face meeting with my elderly parents and National Highways to have a full discussion about the route as opposed to being told what National Highways have decided.

Yet, I now find that National Highways were in the area on the afternoon of Wednesday April 6th, the day I wanted a meeting, as a member of the public met the Community Liaison officer, Mr Ian Balmer, in the car park on the afternoon of April 6th.

Complaint regarding the road proposal

Despite enduring about two years of construction works, my parents' access to the A66 will be far worse than the present situation. They will only be able to drive out west (left) and will then have to go round in a semi-circle to turn east, under the tunnel at Flithome, to get back east to Brough (currently a 5-10 minute drive) or Kirkby Stephen. So far nothing has been said about improved access to public transport for non-car drivers, despite the government's National Bus Strategy. Indeed, apparently there is no new money for Cumbria (as reported in *CWH*, 21st April 2022). Indeed, because of the nature of the dual carriageway, access to the A66 for public transport purposes is likely to be worse than in my grandmother's final years in the 1970s, when she used to catch a weekly bus to Appleby to do her shopping.

A compound (not in the initial statutory consultation) has also been proposed further along the road to the east. These again will be an eyesore and increase the noise and pollution burden on residents.

Other residents will also be badly affected. At Dyke Nook, near Sandford, in which the residents had invested all their resources, two residents had planned a community farm and work with disabled people, work in which the MP has been very interested. According to the current proposals, the road will come much closer to their house, and make this impossible. Further along, at Kirkby Thore, the road will go right through a farm.

Warcop residents have expressed grave concerns about flooding from Lowgill Beck, which flows down from Helbeck. In 2015, 6 houses in the village were flooded. Has any specialist expertise been sought to assess the risks involved?

Complaints about the lack of alternative routes offered, despite strong presentation of local preferences.

Local people have never been offered the northern route or any alternative route, apart from some minor modifications, so no real choices were offered.

On enquiry with National Highways staff, we understood that a route north was a possible option at the beginning of the process, but was not considered because of the positioning of an AONB to the north of the current A66. This blanket judgment fails to acknowledge the local realities of the landscape. The boundary of the AONB appears to have been purely arbitrary, due to the location of the A66. The nearby parts of the AONB consist of scrubland used for firing by the army for decades. They are not nearly as beautiful as the land south which will be destroyed, with a consequent industrialising of the landscape. Currently the AONB is not even visible to the public as trees planted by the army obscure the view. Although this land was open to the public on

non-firing days in the past, this was stopped in the 1980s, again restricting opportunities for local people to walk and enjoy the landscape without needing a car. Since the AONB was established at a time when extending the A66 was a possibility, one wonders if this was effected by the army to protect their land. Yet the current NH proposals now include infringing on parts of the AONB, near Warcop for example. Moreover, there are other precedents for building on small portions of national parks and AONBs, as in the case of the Okehampton bypass of 1985.

The building of the dual carriageway south of the current A66 also necessitates more complicated junctions and additional access roads because it is near residential properties and businesses.

The local survey conducted by parish councils in Nov 2020 was more effective in gauging the views of local people than the NH consultations. 94% (200 out of 300 questionnaires), stated that they wished to have a route going north of the current A66.

905 people have now signed the petition for the dual carriageway to go north of the current A66, which is far more than the number expressing support for dualling in the statutory consultation (645) [conducted Sept-Nov 2021, released March 2022].

The persistence with the plan for the road to go south, is despite the support of the MP for the northern route, the asking of a question in Parliament (Oct 2021) about whether the views of local people would be considered in consultation with the Ministries of Defence, Transport, and Defra, and being assured by the Prime Minister that they would.

Other issues

Representations by local organisations

Throughout the consultation period, Warcop and Musgrave Parish Councils have promoted the northern route, and engaged in meetings with National Highways, supported by the MP, Dr Neil Hudson, and local councillors.

We have had strong support from the local press (the *Cumberland and Westmorland Herald*), which has featured the Thompsons' situation.

Eden District Council has also put in a complaint about the consultation process. Despite all this local support, and 905 people having signed the petition for a northern route, National Highways has simply continued with its preferred route.

This contravenes the Planning Act of 2008 n. 53 about the importance of involving local people in consultation.

Value for money

Billed as “Project Speed”, a £1 billion project, there has never been any discussion as to whether dualling the A66 is the most cost-effective or environmentally friendly way of managing local transport, or meeting the needs of local people, some of whom cannot afford to run a car, or whose health may not permit this. As such, it is a profoundly elitist and exclusionary project which does not meet the needs of many of the local population, young as well as old. Indeed, for people without car access, just attending the consultations is a challenge.

As Warcop Parish Council website indicates, William Sewell conducted a cost analysis of the northern route. There has never been a comparative account from National Highways of the costs of the different routes. This is taxpayers’ money in a time of financial crisis for many, and should be more carefully stewarded.

Breaching of confidentiality

I am also very concerned about National Highways’ attitude towards privacy and data protection. I was called on my personal number during the working day by National Highways, when I only gave my number to a specific person.

Remarks were made about other people’s private affairs during the consultation process, which were clearly infringing GDPR.

Root and branch problems

The underlying problem is not the road (described as no longer fit for purpose by National Highways) but the increasing amount of traffic, and particularly heavy lorries, as well as some dangerous drivers. Speed cameras, more speed traffic controls, and more controls on such drivers are needed immediately. The dual carriageway may end up with more accidents as traffic can drive faster.

Carbon emissions from this project

Carbon emissions are predicted to rise making this the third most carbon-emitting location in the country. Again, this demonstrates how a unique and beautiful rural haven is being reduced to the level of an urban industrial

landscape. This is particularly inappropriate at this time, given the measures taken by local authorities in urban areas to reduce traffic, enhance community use of green spaces and improve air quality.

Re-running the consultation

The consultation was completely inadequate, and in fairness to local people who will have to live with the consequences of the work for decades, perhaps the rest of their lives, it should be re-run, in accordance with the Planning Act 2008, with full consideration of the local knowledge of local people and their preferences.

Conclusion

██████████ gg has been in our family since the 1950s, and is ideal for very old people, as it is mainly a bungalow, has a productive but manageable garden and a beautiful location for ██████████. The proposals will have an unquestionably deleterious effect on their quality of life, and also destroy the landscape for miles around for future generations. (It will go into a trust when one of them dies and will be inherited in the first instance by the four siblings.)

The house has also been used by many local people for garden days, church study groups and other events and again, this will be affected.

The project is billed as levelling up, yet nothing is being done to improve transport for some of the most vulnerable members of the community. Indeed, it will almost certainly be worse than several decades ago. The rationale for not building on the AONB is hollow, when the public have been systematically excluded from walking on that land since the 1980s.

Mary Clare Martin

with Mrs Joy Thompson, landowner,

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██████████

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