

Issue Specific Hearing 2

Thursday 1 December 2022

Supplementary Agenda

1.0 Introduction

This Supplementary Agenda is published further to that in Annex F within the Rule 6 Letter [PD-006]. It provides further details of the matters the ExA wishes to explore. Within each item, the ExA sets out those plans and drawings that may be required to be displayed electronically to aid the discussion. The ExA has also issued questions which do not necessarily require oral discussion. These are set out in the Supplementary Agenda Additional Questions which accompanies this agenda.

2.0 Environmental Management Plan (EMP) [APP-019]

2.1 Justification of Approach

The ExA firstly wishes to understand whether the EMP should be secured by way of an Article having regard to s120 of the Planning Act 2008.

The ExA wishes to better understand why the Applicant considers the EMP approach contained within a singular document is justified as opposed to the conventional way of securing matters by individual Requirements.

The ExA also wishes to better understand why, in the context of the following DCOs, the approval role of the Secretary of State (SoS), in terms of the scrutiny and regulation of actions carried out under the EMP, has been taken out of the end of the consultation processes between the undertaker and statutory environmental and other bodies. These other DCOs are:

- the A47 Blofield to North Burlingham made DCO;
- the M25 Junction 28 made DCO; and
- the A12 Chelmsford to A120 Widening Scheme which is in the Pre-examination stage.

The above made Orders and draft Order include separate Requirements related to protected species, surface water drainage, landscaping, trees, contaminated land and groundwater, archaeological remains and traffic management. The ExA wishes know whether the Applicant is aware of any delays to projects that have resulted from any previous DCO mechanisms through the use of separate Requirements.

2.2 The Approvals Process

The ExA wishes to better understand the approvals process of the EMP. The ExA will ask the Applicant to take us through step by step how each part of the EMP will be approved. The ExA will wish to examine how subsequent changes to the EMP are to be made, and how these have the potential to affect the need and conclusions of the HRA and the Appropriate Assessment having regard, for example, to EMP Commitment MW-BD-15. Questions are likely to follow.

The ExA may also wish to examine the quantum of annex plans supporting the EMP and in particular the absence of a Code of Construction Practice plan.

The ExA will seek the views of Interested Parties in particular the Environment Agency, Historic England and Natural England having regard to the respective PADSS submissions [AS-004, AS-005 and AS-006].

3.0 Environmental Matters

3.1 Design and Landscaping

The ExA will discuss the Applicant's design approach, with specific regard to the viaduct structures at:

- Trout Beck (Scheme 0405)
- Cringle Beck (Scheme 06)
- Moor Beck (Scheme 06)

The ExA wishes to examine the approach and selections of viewpoints and photomontages. It would assist if the Applicant could make available for display the ZTV 3km document [APP-105]; the General Arrangement Plans for Schemes 0405 [APP-013] and Scheme 06 [APP-014]; and Sheet 4 of the Engineering Section Drawing Plan for Scheme 0405 [APP-328] and Sheets 3 and 4 for Scheme 06 [APP-329]. The ExA may recommend additional viewpoints and photomontages specifically at the above structures, but also at Cross Lanes (Scheme 08).

The ExA will also wish to discuss the Applicant's design approach to the structures and their architectural appearance and will seek additional supporting information including examples of designed structures used elsewhere. The ExA will explore the project-wise design principles on landscape integration as set out in the Project Design Principles [APP-302]. The ExA will also invite discussion on the cited effect of the proposed development on the AONB.

The ExA may wish to discuss Article 54 (detailed design) of the draft DCO and the powers sought by the Article in particular to changes to the approved designs. We will also seek clarification on why the Project Design Report [APP-009] is not a certified document in Schedule 10.

3.2 Traffic and Access

The ExA wishes to understand the proposed access arrangements to the Countess Pillar, which appear to reduce its accessibility. While listed as an agenda item here, there is overlap with heritage issues on this matter. Reference will be made to General Arrangement Plan Sheet 1 [APP-012].

3.3 Flooding and Drainage

The ExA wishes to understand:

- The current status of agreement with the Environment Agency, with particular reference to Flood Risk Assessment baseline conditions [AS-004, Annex 1]
- The current status of any discussions and agreement with local authorities and any Lead Local Flood Authorities.

3.4 Climate Effects

The ExA wishes to understand:

- How the significance thresholds for the calculated greenhouse gas (GHG) emissions arising from the project compared against the relevant carbon budgets have been used to inform the conclusion that *'the project's GHG emissions, in isolation, will not have a significant effect on climate or a material impact on the ability of the Government to meet its carbon reduction plan targets and Carbon Budgets'* [ES Chapter 7, APP-050, para 7.5.19 and 7.11.24].
- What, in the context of the change from 100% to 8%, has informed the *'updated assumption for ES'* that *'the quantity of additional lime required for stabilisation is 8% of the proportion of excavation material identified as requiring stabilisation'* [ES Chapter 7, APP-050, para 7.11.10]. Why is this said to be a *'conservative estimate'*?
- The current status and future development, in terms of its scope and timescales, of the project Carbon Strategy which is identified in the application [Statement of Reasons (SoR), APP-299, para 2.4.2].
- Why some of the mitigation schedule source references to climate matters [Mitigation Schedule, APP-042, table 2] refer to ES Section 7.10 [APP-050, Chapter 7] and not ES Section 7.9.

3.5 Trees

The ExA notes that the Applicant has not provided an Arboricultural Impact Assessment with the application. EMP REAC reference D-LV-01 states one would be provided at the detailed stage. REAC reference D-LV-04 states *"Tree removal must be kept to a minimum as far as reasonably practicable...[and]...two trees will be planted to one lost"*. The ExA wishes to discuss the practicality of this Commitment and will be seeking the submission of the AIA within the Examination period to identify the

areas of tree removal noting each tree to be removed, the maximum number of trees that would be removed, and the approximate location for replacement trees.

3.6 Air Quality

The SoCG with Natural England indicates that discussions are taking place between the parties about the robustness of the air quality assessment undertaken using the methodology outlined in DMRB LA105. The ExA would like to understand how such discussions are progressing and the implications for the Examination.

3.7 Cultural Heritage

The ExA wishes to understand:

- What sensitivity testing, if any, has been undertaken regarding the ZTV modelling, considering the Limits of Deviation (LoD). For context, Paragraph 8.5.5 of [APP-051] states “The [ZTV] modelling does not however allow impacts which might be introduced through design changes within the limits of deviation to be assessed. Preliminary sensitivity assessment has indicated that changes within the limits of deviation will not introduce elevated effects.”
On the above basis, can the Applicant explain how the assessments presented in the ES (based on / informed by the ZTV) have presented a worst-case approach in assessment terms?
- Whether the production of a Heritage Impact Assessment has been considered, with reference to the western portion of the route, given proximity to the Lake District WHS.

4.0 The draft Development Consent Order

This section will discuss matters concerning the draft DCO where they largely do not concern compulsory acquisition and/or temporary possession. Those matters will be discussed at the CAH1.

Article 2 (and elsewhere): The phrase “*materially new or materially **worse***”

Article 3 (disapplication of legislation) and specifically subparagraph (1)(a)

Article 15 (authority to survey land...): The ExA wishes to better understand the powers sought by subparagraph (1)(b) in respect to any land which is adjacent to, but outside the Order limits. In particular:

- The ExA wishes to better understand specifically which land this would refer to, having regard to the term “adjacent to”.
- Explanatory Memorandum paragraph 7.42 final sentence in relation to this Article states “*This is particularly relevant with respect to ecological receptors that are liable to move into and out of the Order limits*”. The ExA requests the Applicant to explain whether the power in the Article goes much further than the Explanatory Memorandum explanation and should be restricted to areas where there is known ecological sensitivity or linked to an assessment in the ES.

- The Applicant is required to explain why this article is different to Article 23(1) in the A47 Blofield to North Burlingham DCO in respect of *'land shown within the Order limits or which may be affected by the authorised development'*. This should be explained in the context of the Explanatory Memorandum [APP-286, para 7.42] *'surveys can be conducted to assess the effects of the Project, or on the Project'* and *'ecological receptors that are liable to move'*.
- The Applicant will also be invited to comment on the possible use of:
 - *'for the purposes of this Order'* in draft DCO Article 15(1); and
 - *where reasonably necessary, any land which is adjacent to, but outside the Order limits which may be affected by or have an effect on the authorised development'* in draft DCO Article 15(1)(b).

5.0 Brough Hill Fair

The ExA wishes to better understand the following:

- The issues around the selection of the replacement Brough Hill Fair site. This will include confirmation from the Applicant as to which site is proposed to be the replacement site and the specific site concerns of both alternatives from the gypsies and travellers' representative.
- The powers contained within Article 36 of the draft DCO. The ExA has a number of questions in respect to the wording of this Article and its intended purpose, and to better understand the stated "Brough Hill Fair Rights" including whether any local legislation exists relating to Brough Hill Fair.
- The intended mechanism and land ownership aspects of the transfer, the nature and impact of temporary suspension and the relationship of what is proposed with the Public Sector Equality Duty.
- Why the land on which the Brough Hill Fair is currently held has not been identified by the applicant as special category land [SoR, APP-299, para 7.3.1]. The Applicant should also add this explanation to the Explanatory Memorandum.

6.0 Applicant's Response (if any) to Supplementary Agenda Additional Questions

7.0 Any Other Business

CLOSE OF HEARING