



The Planning Inspectorate

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To:

Monica Corso Griffiths
A66 Head of Design and DCO
National Highways (The Applicant)

Your Ref:

Our Ref: TR010062

Date: 6 January 2023

Dear Monica,

Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9

Application by National Highways for an Order Granting Development Consent for the A66 Trans-Pennine Dualling Project

Notice by Applicant of intention to submit a request to make changes to the application

I refer to your letter of 16 December 2022 in which you informed the Examining Authority (ExA) of your intention to submit a request for proposed changes to the DCO application (the Change Notification letter). This can be found in the Examination Library (EL), under reference [REP1-008]. The Change Notification letter informs the ExA of the following salient points:

- The submission date for the Change Application will be **Deadline 3, Tuesday 24 January 2023**.
- It will contain approximately 40 individual changes; 29 of which you consider to be “non-material” and 11, including changes to the Langrigg Junction contained within Scheme 06 (Appleby to Brough) are deemed “material”. Two such changes, together with a small number of preliminary design variations, involve additional land and as such invoke Regulations 4 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regs).
- Because of the above, the Applicant intends to carry out non-statutory consultation on the proposed changes as if all changes were “material”.
- The consultation period would run from Thursday 26 January 2023 to Friday 3 March 2023.
- The Consultation Statement/Report would be prepared by the Applicant and submitted to the ExA at a date to be confirmed (but no later than Deadline 6, Tuesday 4 April 2023).

At Paragraph 7 of the Change Notification letter, it states:

“...the Applicant’s intention is to commence a period of consultation once the Proposed Changes Application has been submitted. The Applicant would therefore welcome early confirmation from the ExA that this approach is acceptable. Equally, if the ExA has comments on the proposed approach to consultation set out below (in paragraphs 20 to 24) the Applicant would be pleased to receive them. The Applicant will also seek to undertake a programme of pre-consultation engagement with statutory environmental bodies, local authorities and relevant Affected Parties informing them of its proposed approach to changes in advance of the submission of the Proposed Changes Application.”

The ExA responds to express some concerns with the consultation timings as suggest by the Applicant.

The ExA refers the Applicant to the Planning Inspectorate’s Advice Note 16 (AN16) which provides information to applicants about how to request a change to an application after it has been accepted, and before the close of the Examination. Figure 1 of AN16 provides the six steps an applicant should follow when considering a change request. They are as follows:

- **Step 1** Applicant decides to request a material change to an application which has been accepted for examination and informs the ExA in writing.
- **Step 2** ExA provides advice to the Applicant about the procedural implications of the proposed material change and about the need, scale and nature of consultation that the Applicant may need to undertake.
- **Step 3** Applicant carries out non-statutory consultation about the proposed material change. This step may be undertaken earlier if it would save time and inform the Applicant’s approach.
- **Step 4** Applicant makes a written material change request asking the ExA to examine the changed application by providing the information set out in Figure 3.
- **Step 5** ExA makes a Procedural Decision on whether or not to examine the changed application and how it should be examined.
- **Step 6** Where the ExA has decided that the changed application can be examined, the Examination proceeds in consideration of the changed application. Where the ExA has decided that the changed application cannot be examined, the Applicant will need to decide whether to proceed with the Examination on the basis of the submitted application. See paragraph 5.5 for more details.

The ExA accepts that the Change Notification letter of 16 December 2022 constitutes Step 1, and this letter is Step 2 in that the ExA is content with the nature and extent of the consultation proposed. However, Step 3 requires an applicant to carry out non-statutory consultation **before** a written material change request is made. Indeed, Paragraph 7 of the Change Notification letter advises that the proposed changes will be “*subject to the outcome of engagement and appraisal prior to the submission of the Proposed Changes Application at Deadline 3*”.

Step 4 states that the information supplied is set out in Figure 3 of AN16. Point 7 of Figure 3 states that “*Where (proportionate) additional non-statutory consultation has been carried out (either voluntarily or at the direction of the ExA) a Consultation Statement confirming who has been consulted in relation to the proposed change should be submitted. Copies of any consultation responses received by an applicant should also be included with any*

request, as an annex". This logical approach ensures that when a change request is made formally (Step 4), the ExA has all the information it needs, including any consultation responses, to determine whether the changes taken individually and cumulatively are examinable, and if so whether they are examinable within the remaining statutory timescales. It also affords the ExA the opportunity, if required, to ask Interested Parties to provide further information or clarify their comments.

If the ExA were to accept the timescales offered by the Applicant, the ExA would be tasked with having to form a view on the examinability of the changes which would engage the CA Regs by Tuesday 21 February 2023 (Reg 6). This date proceeds by some margin the Applicant's proposed Consultation Statement/Report submission date. This would leave the ExA in a very difficult position of having to decide, with the outcome of ongoing consultation being unknown.

The ExA would advise the Applicant to begin or continue with its non-statutory consultation as soon as possible and submit any formal Change Request after any consultation is concluded. This approach would align with AN16 and would provide a complete package of information for the ExA to make its timely decision. This approach would also allow the Applicant the opportunity to review comments received and make any necessary changes before submission.

Yours sincerely,

Richard Allen

Richard Allen
Lead Panel Member for the Examining Authority

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