

A66 Northern Trans-Pennine Project

TR010062

7.53 Update on land owned by the Public Trustee

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Deadline 9

26 May 2023

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure)
Rules 2010**

A66 Northern Trans-Pennine Project
Development Consent Order 202x

**7.53 UPDATE ON LAND OWNED BY
THE PUBLIC TRUSTEE**

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Author:	A66 Northern Trans-Pennine Project Team, National Highways

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1 Introduction

- 1.1.1 This document has been prepared to provide the Examining Authority with an update on land owned by the Public Trustee, comprised in plot 07-02-45 which forms part of the land required for Scheme 07, Bowes Bypass.
- 1.1.2 This document reports the outcome of recent correspondence with the Public Trustee's solicitor and explains why, at Deadline 9, it is not possible for the Applicant to provide the Examining Authority with Crown authority consent, or with a 'letter of comfort' from the Public Trustee regarding the prospect of success of the Applicant's request for Crown authority consent in respect of the land owned by the Public Trustee.
- 1.1.3 In summary, the Public Trustee has, in the days leading up to Deadline 9, informed the Applicant of its view that the Public Trustee is not a Crown authority for the purposes of the Planning Act 2008 ("**PA 2008**"), and that the land which it owns does not come within the definition of Crown land set out in section 227 of the PA 2008.
- 1.1.4 The Public Trustee has confirmed, in consequence, that it will not grant the Crown authority consent requested by the Applicant, nor will it provide the above-mentioned 'letter of comfort'.
- 1.1.5 The Applicant confirms that references to, and excerpts from, emails received by the Applicant from the Public Trustee's solicitor have been included in this document with his kind permission.

2 The land owned by the Public Trustee

- 2.1.1 The land owned by the Public Trustee is comprised in plot 07-02-45 which is shown on Sheet 2 (of 3) of the Land Plans for Scheme 07 [REP8-063] and on Sheet 1 (of 1) of the Crown Land Plans for Scheme 07 [APP-313]. It is also identified in Part 4 (Crown Interests) of the Book of Reference for Scheme 07 [REP8-046] ("**the PT land**").
- 2.1.2 The Applicant requires the PT land to enable the delivery of Scheme 07.

3 Basis on which the PT land was considered Crown land

3.1.1 In preparing its application for development consent for the A66 Northern Trans-Pennine project (“**the Project**”), the Applicant took the view that Crown authority consent would be necessary in respect of the PT land, having taken a precautionary approach to the interpretation of section 227(3)(b) of the Planning Act 2008, where “*Crown land*” and “*the appropriate Crown authority*” are defined for the purposes of the provisions in section 135 (Orders: Crown land) of the PA 2008.

3.1.2 The definition of Crown land (in section 227(3)(b) of PA 2008) includes “*an interest belonging to a government department*”. The Applicant’s understanding, having carefully perused publicly available information about the Public Trustee, including the information on HM Government’s website (e.g. [Departments, agencies and public bodies - GOV.UK \(www.gov.uk\)](https://www.gov.uk); [Official Solicitor and Public Trustee - GOV.UK \(www.gov.uk\)](https://www.gov.uk)) and the National Archives (e.g. [Official Solicitor and Public Trustee Website | The National Archives](https://www.nationalarchives.gov.uk)) was that:

- the Public Trustee owns land (i.e. plot 07-02-45) which is required for the Project;
- the Public Trustee supports, is funded by, and is closely associated in operational terms, with the Ministry of Justice, which is a government department; and
- that therefore, a precautionary approach would be to apply the definition, in the PA 2008, of “*Crown land*” to the PT land, and to seek Crown authority consent for its inclusion in the application for development consent for the Project, in parallel with seeking to acquire the PT land by agreement.

3.1.3 The precautionary approach outlined above was adopted in light of the fact that Crown land is protected from compulsory acquisition by section 135 of the PA 2008, which provides that,

- “*An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—*
 - *it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and*
 - *the appropriate Crown authority consents to the acquisition.*”

4 Engagement between the Applicant and the Public Trustee

- 4.1.1 As reported in the Applicant's Compulsory Acquisition Hearing 1 (CAH1) Post Hearing Submissions (including written submissions of oral case) [REP1-007] ("**the CAH1 note**"), the Applicant had been engaging with the Public Trustee regarding the proposed acquisition of the PT land and, following a meeting held on 15 August 2022, provisional agreement between the Applicant and the Public Trustee was reached for the acquisition of the PT land, subject to the Public Trustee's confirmation, which was subsequently provided in writing and reported to the Applicant on 25 October 2022. Heads of Terms for the purchase, by the Applicant, of the PT land were agreed and signed on 25 November 2022.
- 4.1.2 A number of further procedural steps were then taken, including the canvassing of the stint holders (being those with grazing rights over the PT land) to secure their approval of the Applicant's proposed purchase, and the subsequent preparation of an application to the Court for an Order permitting the Public Trustee to transfer the PT land to the Applicant.
- 4.1.3 The Applicant was given to understand that the Court Order was required as a matter of compliance with the statutory rules governing the exercise of the Public Trustee's powers as a trustee, and it was agreed between the legal representatives of the Applicant and the Public Trustee that the Court application should also include the request for authorisation which was considered to be necessary to enable the Public Trustee to grant the Crown authority consent requested by the Applicant in respect of the PT land.
- 4.1.4 In connection with this, and given the uncertainty in respect of the timescales associated with applying for and obtaining a Court Order, the Public Trustee confirmed that it would be happy to provide the Applicant with a simple 'letter of comfort', to be submitted to the Examining Authority during the examination of the DCO application, to explain that the parties were engaging amicably, that the Applicant's acquisition of the PT land had been agreed, and that the transaction was being progressed (see pages 38-39 of the CAH1 note).

5 Letter of comfort

- 5.1.1 The Applicant duly prepared a suggested draft letter of comfort for the consideration of the Public Trustee and its legal representative. The draft letter of comfort was developed through exchanges of correspondence between the parties and it was envisaged that it would be signed and submitted to the Examining Authority in advance of the close of the Examination.

6 The Public Trustee's position

- 6.1.1 However, on 24 May 2023, the Applicant was advised by Public Trustee's solicitor that the Public Trustee was not willing to sign either the letter of comfort or the letter confirming Crown authority consent.
- 6.1.2 The Public Trustee's solicitor explained that this was "*because on reflection*

they do not accept that the land is ‘Crown land’ for the purposes of the 2008 Act, nor that they are a ‘Crown authority’ for the purposes of providing comfort and consent – they believe that acting in any way which implies the land is Crown land and/or that they are a Crown authority would be inappropriate for the Public Trustee, when they do not believe either position to be the case.”

7 The Applicant’s position

7.1.1 The Applicant has sought to understand the Public Trustee’s position and, having requested further information from the Public Trustee’s solicitor, notes the following:

- The Public Trustee is a statutory office holder: the Office of the Public Trustee was set up in 1906 by an Act of Parliament – [Public Trustee Act 1906 \(legislation.gov.uk\)](#).
- The Public Trustee is an independent statutory office funded by the Government, but it is not a government department, nor is it part of a government department.
- The Office of the Public Trustee is an “associated office” of the Ministry of Justice.
- The role of the Public Trustee is to act as an administrator of last resort, which the Government funds to ensure the appropriate administration of estates and statutory trusts when there is no other party available to carry out that administrative role.

8 The Applicant’s acquisition of the PT land

8.1.1 Terms for the purchase of the PT land by the Applicant have been agreed between the Applicant and the Public Trustee.

8.1.2 An application for the Court Order (necessary to authorise the sale of the PT land by the Public Trustee) is being prepared and is expected to be submitted to the Court imminently (i.e. in the coming week or two).

8.1.3 It is reasonable to assume, in the circumstances, that the Applicant will be able to acquire the PT land by agreement. In that sense, the acquisition of the PT land is analogous to the situation in which Crown land consent would be necessary in relation to Crown land: it would still be necessary for the Applicant to acquire the PT land by agreement.

9 Conclusion

9.1.1 If the PT land is not Crown land – as its owner, the Public Trustee, asserts – then it would follow that there is no requirement for the Applicant to obtain Crown authority consent.

9.1.2 The question of whether or not the PT land is Crown land turns on whether or not the Office of the Public Trustee is a government department. The Public Trustee has clearly articulated its view that its Office is not a

government department.

- 9.1.3 Whilst the Applicant acknowledges the Public Trustee's view that its Office is not a government department, it observes that section 227 of the PA 2008 does not define a "government department". The question remains as to whether the nature of the "association" between the Office of the Public Trustee and the Ministry of Justice is sufficient to bring the Public Trustee within the ambit of section 227 of the PA 2008. To safeguard the Project from the possibility that it might be, the Applicant, in preparing its application for development consent, applied a precautionary approach and sought Crown authority consent in respect of the PT land.
- 9.1.4 However, the Public Trustee, as the owner of the PT land, does not – for the reasons set out above – consider that Crown authority consent is necessary. On the basis of the reasoning put forward by the Public Trustee, the Applicant is prepared to accept that view.
- 9.1.5 Furthermore, as arrangements for the acquisition of the PT land by the Applicant for the purposes of the Project are proceeding by agreement and neither the Public Trustee nor the Applicant have any reason to consider that the Court Order being applied for will not be granted in due course, and given that there are no known third party non-Crown interests in the PT land which the Applicant would need to acquire compulsorily, the requirement for Crown authority consent becomes academic.