



Response to

**Paragraph 2 of the Secretary
of State's consultation letter
of 28 September 2023
(Consultation 4) for the
Examination of the A66 DCO**

Introduction

Transport Action Network (TAN) welcomes the opportunity to respond to Paragraph 2 of the Secretary of State's fourth consultation letter of 28 September 2023. We wish to also submit new and relevant evidence. We request this evidence is put before the Secretary of State and is considered in his decision making. Where we have indicated, we believe the Secretary of State should seek the Applicant's response before making his decision.

The legal position

Section 104 of the Planning Act 2008 ("**the Planning Act**") requires that the Secretary of State must not grant the DCO if doing so "would lead to the United Kingdom being in breach of any of its international obligations" (104 (4)), "would be unlawful by virtue of any enactment" (104 (6)), and "the adverse impact of the proposed development would outweigh its benefits." (104 (7)).

Section 122(3) of the Planning Act 2008 also requires that permission should only be granted and property acquired compulsorily if "there is a compelling case in the public interest for the land to be acquired compulsorily".

Regulation 21 (1) (b) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("**EIA Regs**") require the Secretary of State must "reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary"

Regulation 21 (2) of the EIA Regs require that "The reasoned conclusion referred to in paragraph (1)(b) must be **up to date** at the time that the decision as to whether the order is to be granted is taken, and that conclusion shall be taken to be up to date if in the opinion of the Secretary of State it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application."

NORTH PENNINE MOORS SPECIAL AREA OF CONSERVATION ('SAC')

Paragraph 2 of the Secretary of State's 28 September letter asks Natural England and the Applicant to give details "on what speed restrictions would be necessary to mitigate the

impacts of the scheme on the North Pennine Moors SAC to enable a conclusion of no adverse impact on integrity.”

TAN wishes to make it quite clear that at no stage during the Examination were lower speed limits proposed or properly considered by the Applicant, and Natural England make clear that this suggestion did not originate with them.

TAN also wishes to make clear that lowering the speed limits for the proposed scheme would significantly alter the entire project, the transport model, the Environmental Statement, the economic appraisal and the benefit-cost ratio (BCR) which is vital for the Secretary of State’s decision making in weighing up the planning balance, and whether “the adverse impact of the proposed development would outweigh its benefits” (Section 104 (7) of the Planning Act 2008), whether “there is a compelling case in the public interest for the land to be acquired compulsorily” (Section 122(3) of the Planning Act 2008), and whether or not the Secretary of State can give a reasoned and up to date conclusion of the significant effects of the scheme (Regulation 21 (1) (b) and 21 (2) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017).

The majority of the purported benefits of the scheme are tiny time savings multiplied many times. If the speed limit is reduced, these time savings are significantly eroded, and the claimed economic benefits of the scheme evaporate. It is essential that as well as assessing the impact of speed reduction on air quality within the SAC, the Applicant must also update the transport model, the Transport Economic Efficiency (TEE) tables, the economic appraisal for the scheme including the air quality and safety costs and benefits, the BCR, and the strategic case for the scheme.

The Applicant’s updated modelling will also have to take into consideration the Prime Minister’s shocking announcement on 20 September 2023 to delay the ban on the sale of new fossil fuel powered vehicles by five years. The justification and modelling for this scheme was reliant on this flagship policy. Air quality will be made worse as a result of this significant shift in policy, and the Applicant’s assessments must use the very latest data based on this enormous policy shift. The Emissions Factors Toolkit (EFT) v11 (published November 2021) which was used to assess the impacts of the scheme will now be extremely out of date and not suitable to assess the impacts of this scheme, especially on the SAC.

Any new assessment conducted by the Applicant will need to be publicly available and consulted on as “further information” as we outlined in our response to the Secretary of State’s 15 September letter (Consultation 3).

5 October 2023

Rebecca Lush
Transport Action Network

Transport Action Network provides free support to people and groups pressing for more sustainable transport in their area and opposing cuts to bus and rail services, damaging road schemes and large unsustainable developments

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