

From: [REDACTED]
To: [A66Dually](#)
Subject: Representation by IP 20032016 in response to letter from the Secretary of State for Transport dated 8th November 2023 (by email)
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Response from Friends of the Lake District (IP 20032016) to letter from the Secretary of State for Transport dated 8th November 2023 (by email)

List of issues we raise in this letter:

1. Levelling Up and Regeneration Act 2023 Strengthened Duties to protected landscapes
2. North Pennine Moors SAC IROPI issue
3. Impact on the Lake District National Park/English Lake District World Heritage Site
4. Lack of Arboricultural Impact Assessment

1. Levelling Up and Regeneration Act 2023 Strengthened S62 and S85 Duties

From 26 December 2023, in accordance with section 245 of the Levelling-up and Regeneration Act 2023 Section 62 of the Environment Act 1995 and Section 85 of the Countryside and Rights of Way Act 2000 will include new subsections (A1) requiring:

“In exercising or performing any functions in relation to, or so as to affect, land in any National Park or Area of Outstanding Natural Beauty in England, a relevant authority [including the Secretary of State] other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the National Park or Area of Outstanding Natural Beauty.”

This Duty applies to any action that may impact on designated landscapes which for the A66 includes increases in traffic noise and visual impact, incursion of infrastructure into the AONB and its setting which will harm the special qualities of the North Pennines AONB, damage views and directly harm the tranquillity of the area.

The primary purpose of the North Pennines AONB designation is to ‘conserve and enhance the natural beauty of the area’. Consideration must therefore be given by the Secretary of State as to whether granting development consent would further the purpose of conserving and enhancing the natural beauty of the North Pennines AONB. We therefore request that the Secretary of State demonstrates that the A66 would further those purposes in the North Pennines AONB.

The special qualities of the North Pennines AONB include scenic beauty, a strong sense of relative wildness, remoteness and tranquillity, wide-open moorlands, species-rich grasslands (especially upland hay meadows), truly dark night skies, world-class mining and geological heritage and a wealth of breeding wading birds. All these qualities are amplified throughout this plan and in combination they produce a unique sense of place.

The AONB Management Plan 2019-2024 plan provides a framework for action for the conservation and enhancement of wildlife, landscape and aspects of cultural heritage between 2019 and 2024.

The Management Plan includes a series of outcomes under three main themes:

- Looking after natural and cultural heritage
- Valuing and sharing what’s special
- Nurturing a natural economy

It identifies a series of actions that should be taken to help reverse the decline in biodiversity, conserve landscape character, protect heritage and help people enjoy and understand the area better.

The North Pennines AONB Partnership raised the following concerns in the “Statement of Common Ground” document (REP5-004)

“The A66 Northern Trans-Pennine Project having an impact on the designated landscape of the NP AONB is inevitable. It will therefore be necessary for the developer to evidence the compelling reasons for the enhanced capacity against alternative measures, such as improved safety of junctions, reducing speed limits etc. We expect the developer to have fully explored and scoped out those alternative measures that would be less damaging, before pressing ahead with dualling – it should not be a fait accompli.”

We would like the Secretary of State to review National Highways response to these concerns about damage to the AONB in light of the strengthening of the S85 Duty for relevant authorities to “Further” the purposes of the North Pennines AONB.

2. North Pennine Moors Special Area of Conservation (SAC)

The North Pennines AONB Partnership raised understandable concerns about biodiversity loss in the Statement of Common Ground:

“In the face of a recognised global biodiversity crisis, there is necessity to ensure that the route chosen here does the least possible harm to nature conservation interests”

As can be seen in the correspondence between the Secretary of State and Natural England regarding impact on the blanket bog habitat of the North Pennines Moors SAC, damage to the SAC has not yet been ruled out. As this is the case we consider that the derogation process should be followed before the project can be consented as National Highways have failed to demonstrate that adverse effects on the SAC including the blanket bog, a Priority Habitat, can be ruled out.

If damage is to be caused to the SAC, then National Highways appear to be pushing for Imperative Reasons of Overriding Public Interest (IROPI). However, we consider that the IROPI tests have not been satisfied because:

- insufficient information has been provided to justify any assertion that the IROPI tests have been met;
- there has been no assessment of viable alternative solutions that do not entail adverse effect on integrity of the SAC;
- there has been an incomplete assessment of what reasons would amount to IROPI and why.

The argument is about whether the damage can legally be compensated using habitat outside of the SAC which can only happen if the A66 scheme is considered to have IROPI. **However, as blanket bog is a Priority Habitat, economic reasons do not suffice under the Habitats Regulations 2017 legislation.** IROPI are therefore required to relate to “human health, public safety or beneficial consequences of primary importance to the environment; or any other reasons which the competent authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest (Reg 64(1) Habitats Regulations 2017)”.

As set out by the Department for Transport in the Road Investment Strategy 2: 2020-2025 ^[1], the purpose of dualling the A66 is to “support growth” (p.22) and “underpin a wider economic transformation” (p.74). Similarly, National Highways own Environmental Statement states in its reasons for the development “If the existing A66 route is not improved, it will constrain national and regional connectivity and may threaten the transformational growth envisaged by the Northern Powerhouse initiative (Transport for the North, 2019) and the achievement of the Government levelling up agenda.”

The Environmental Statement also sets out the scheme objectives, starting with economic objectives. Economic reasons alone cannot be IROPI without compliance with Regulation 64(4). Public safety and human health are marginal benefits of the A66 scheme according to the documents submitted by the applicant; the main purpose of the A66 upgrade is economic. These marginal benefits to public safety and human health cannot be said to be “imperative” and, furthermore, the assessment of alternatives carried out by the applicant fails to demonstrate that the purported public safety and human health benefits cannot be achieved by alternative schemes.

Indeed, Friends of the Lake District has stated in our [Relevant Representation](#), [Written Representation](#) and in pre-application consultations with National Highways that there are many other ways that safety and public health could be addressed along the route. For example, this is taken from our Written Representation:

“Friends of the Lake District is still of the opinion that the road could be made significantly safer without having to spend so much money, cause so much landscape damage and emit so much carbon. 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.”

As a result of National Highway’s conclusions on adverse effects and derogation, no opinion has yet been sought from the Secretary of State, despite NE’s conclusion of an adverse effect on integrity of the SAC and despite the habitat in question being a Priority Habitat. There is therefore a substantial gap in the information that has been placed before the Secretary of State. A significant amount of further consultation is therefore required in order to be able to rely on any conclusions made by the Applicant with regards to IROPI. The Secretary of State should urgently carry out the statutory consultations required in order to reach a conclusion on IROPI.

3. Impact on the Lake District National Park/English Lake District World Heritage Site

There are two legal issues that come into play for the A66’s impact on the Lake District National Park and English Lake District World Heritage Site.

First is the negative impact of increased visitor traffic from the road upgrade on the Special Qualities of the Lake District National Park and in conflict with the Sandford Principle which is found enacted in the Environment Act 1995. It states:

Where there is a conflict between the statutory purposes of national parks, any relevant authority shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area

comprised in the National Park

As raised above in section 1, it is also hard to see how the A66 proposal is in line with a duty to seek to **Further** the purposes

The second is the impact of the increased traffic from the A66 on the World Heritage Site Status of the Lake District (The English Lake District as designated by UNESCO).

The Lake District National Park Authority (the managing body for the English Lake District World Heritage Site) submitted two responses to the Examination in 2022 raising concerns about the impact of increased traffic on the World Heritage Site and the fact that National Highways had not carried out a Heritage Impact Assessment. See below.

Text from Lake District National Park Authority's responses to the Examination

Lake District National Park Relevant Representation RR-055 24/8/2022

Lake District National Park Authority would like to register as an interested party in the A66 Northern Trans-Pennine Project Examination for the following reasons: a) The need for improved sustainable transport, particularly active travel connections along the route into the Lake District, and possible severance of routes from Penrith into the Lake District. b) Generation of increased traffic as a result of the scheme impacting on the Lake District, where there are already visitor traffic and parking issues, and leading to further development pressure within the National Park and World Heritage Site. In view of the development being within the setting of the Lake District World Heritage Site consideration could be made of whether a Heritage Impact Assessment for the infrastructure at the Western end of the route should be produced.

Lake District National Park Written Response 21/12/2023 Document Rep1-028

Whilst not within the Lake District National Park boundary, the impacts of this development will be felt within the national park and aspects of this proposal are contrary to the strategies and action in the statutory Management Plan.

The Lake District National Park's management plan, The Partnership Plan sets out our strategies, plans and outcomes for transport. The overarching aim is to reach net zero GHG emissions by 2037 and this runs through the whole Plan. The full plan can be found here:

<https://www.lakedistrict.gov.uk/caringfor/lake-district-national-park-partnership>

Strategy 22 sets out our desire for "An effective and integrated transport infrastructure supporting low carbon travel options" and states "Support development and delivery of infrastructure and services that decarbonises travel and enables low carbon and active travel (including cycling and walking infrastructure, electric vehicles, electric bikes and other modes of transport), and more people to reach the Lake District by rail and integrated onward travel."

The key transformative actions are all focused on promoting sustainable transport and reducing car dependency, including active travel, rail and bus improvements, integrated ticketing and traffic management. We have clearly set out that we will reduce carbon emissions and transport within, and to, the Lake District as currently transport contributes to almost one half of our carbon budget. Carbon emitted from visitors travelling to the Lake District will clearly be increased through the A66 development, undermining our progress towards net zero.

Excessive traffic at peak times in the Lake District is already damaging the environment and the visitor experience. The modelling around the A66 shows that it will generate additional traffic. A significant proportion of that traffic will be destined for the Lake District, further increasing pressure on already overstretched infrastructure. We believe the figure quoted in the response to our representation of 350 cars per day to be underestimated and we ask that this be factually verified, as such a nominal increase would appear to contradict the figures that claim the project will lead to economic growth in the tourism sector.

Our desire is to encourage more overnight stays to benefit the economy and reduce carbon. We fear faster journey times from northeast England to the Lake District may only further the attractiveness of daytrips which, whilst we understand may be desirable for aspects of economic performance, are not as beneficial as overnight stay spends. We trust the above highlights some of the issues that the Lake District National Park Authority would like you to consider in terms of the aims of the management plan and best practice within a World Heritage Site

At the request of Historic England, National Highways provided an appendix wherein they scoped out the Lake District World Heritage Site. <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-002300-Annex%201%20-%20Lake%20District%20WHS%20Technical%20Note.pdf>

However National Highways' assessment assumed a continuing increase in traffic to the Lake District National Park via all major

trunk roads. This is despite the fact that the aim of the Lake District National Park Management Plan is to significantly reduce traffic into the National Park on the basis that continually increasing vehicle numbers will have a significant major negative impact on the National Park and World Heritage Site. The increase of 350 private vehicles a day is a significant number that will have a damaging impact on the Special Qualities of the Lake District National Park and on the Outstanding Universal Values of the World Heritage Site.

These concerns have increased with the publication of the latest English Lake District World Heritage Site report (WHC/23/45.COM/7B <https://whc.unesco.org/archive/2023/whc23-45com-7B-en.pdf> see Section 63) to the UNESCO World Heritage Committee where the Decisions of the Committee “**Recommends to the State Party to address the issue of excessive private vehicular traffic** by enhancing the public transportation system within the property and discouraging access to the property by non-resident private vehicles;”

In their Technical Note Appendix 1 National Highways state:

Changes to traffic flows within the World Heritage Site can be seen in the Strategic Transport Model. The degree of change represented by the presence of the A66 project is negligible **when compared to the predicted increases from other causes**. The negligible changes to flow attributable to the Project would take place in the context of an existing road network and have no potential to impact on attributes of the OUV of the World Heritage Site

This demonstrates that National Highway’s insistence on the triviality of the numbers of vehicles into the Lake District compared to overall traffic increases (see page 8 of Appendix) is contrary what UNESCO sets out as needing to be done to protect the World Heritage Site status of the English Lake District. In order to retain the World Heritage Site status, vehicular travel to and within the Lake District must be reduced. This means that National Highways assumptions around continued traffic growth in the Lake District are fundamentally incorrect and misleading, as vehicle numbers have to be reduce as traffic volume cannot continue to grow in the Lake District without impacting on both the status of the National Park (under UK Law) and also the World Heritage Site designation.

We therefore recommend that the Secretary of State should consult both the Lake District National Park Authority and the ICOMOS representative [REDACTED] [@icomos-uk.org](mailto:[REDACTED]@icomos-uk.org) ICOMOS UK being the International Council on Monuments and Sites UK which advises on World Heritage Site Status on behalf of UNESCO (<https://icomos-uk.org>) who sits on the World Heritage Site Management Group for their views on this issue on the basis that it does not appear that the World Heritage Site Impact Assessment for the Lake District National Park adequately assesses the true impact of the A66 upgrade on the English Lake District World Heritage Site.

National Highways have not addressed the disconnect between their figures and the needs of the Lake District. National Highways figures apparently show a year-on-year increase in traffic into the Lake District rendering the 350 extra vehicles arriving via the A66 as “negligible”, whilst the actual need of the Lake District National Park Authority and UNESCO World Heritage Site is to see a reduction in private vehicles in order to meet their designation criteria and the 2037 climate emissions targets. This is what the Lake District National Park Authority and ICOMOS are working to via the Lake District National Park Management Plan.

The Secretary of State needs to determine which of these scenarios takes precedence: the low carbon, sustainable transport Lake District model as set out in the National Park Management Plan, or National Highways assumptions of ever-increasing traffic in spite of the climate crisis and the clearly stated aim of the National Park Partnership Management Plan for traffic reduction and net zero carbon by 2037.

4. Arboricultural Impact Assessment (AIA)

Submission of an Arboricultural Impact Assessment (AIA) should be a requirement before development consent can be determined. Delaying its submission until after the determination of the Development Consent Order will undermine its purpose, as there is no opportunity for scrutiny of the extent of trees to be lost. It is crucial to thoroughly examine the impact of the proposed works on trees as part of the overall planning assessment before deciding whether or not to approve the DCO. Failing to conduct the AIA before determining the DCO will hinder the Examining Authority from reaching a reasonable conclusion regarding the project’s impact. Therefore, the AIA cannot be a subsequent requirement of the DCO.

The environmental, social and economic benefits to retaining good quality trees, and mitigating tree loss, in order to reduce the potential negative impacts of construction, are clear. Regrettably, a project of this scale in protected landscapes will inevitably have a negative impact on the existing tree stock. An AIA is required to understand the existing tree stock, the site-specific effects of the planned development and what mitigation measures might be required. An AIA is also necessary to determine that the proposed work remains within the law for example in relation to any Tree Preservation Orders that exist, and in terms of harm to statutory protected sites. TAN notes that for other road-related DCOs, an AIA has been carried out by the Applicant as part of its Environmental Statement (for example A303 Amesbury to Berwick Down). There is no reason for a different approach to be taken for this DCO and the Applicant’s approach unfortunately reinforces Friends of the Lake District’s

concerns about the rushed nature of this Examination to date.

Recognizing the environmental, social, and economic benefits of preserving good quality trees and minimizing tree loss to reduce construction-related negative impacts is essential. Unfortunately, a project of this magnitude in and close to the North Pennines AONB is highly likely to adversely affect the existing tree population. An AIA is necessary to understand the current tree stock, evaluate the specific effects of the planned development, and identify required mitigation measures before development consent is granted. Additionally, the AIA is crucial for ensuring compliance with laws, such as Tree Preservation Orders and protection of statutory sites. It is worth noting that other road-related Development Consent Orders, like the A303 Amesbury to Berwick Down, have included an AIA in their Environmental Statement. There is no justification for a different approach in this case, and the Applicant's current stance raises concerns about the rushed nature of the ongoing Examination, as previously noted by Friends of the Lake District.

Yours sincerely

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Policy Officer



The only membership organisation dedicated to protecting and enhancing Lake District and Cumbrian landscapes

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