



Response to

**Secretary of State's
consultation letter dated 7
December 2023 for the A66
Northern Trans-Pennine
Development Consent Order
(consultation 7)**

Introduction

Transport Action Network (TAN) would like to respond to the Secretary of State's (SoS) post-examination consultation letter 7, dated 7 December 2023.

North Pennine Moors Special Area of Conservation (SAC)

We note that the Secretary of State at paragraph 2 in his consultation letter of 7 December 2023 states that *"As the affected area of blanket bog is degraded, the Secretary of State notes that it is therefore not a priority habitat under regulation 64(2) of the Conservation of Habitats and Species Regulations 2017 (as amended)"*. We note that neither the Secretary of State nor the Applicant has adopted this position during the Examination nor during the six other post-examination consultations.

We note also that the Secretary of State has apparently unilaterally adopted that position based on a National Highways summary account of a "walkover survey" performed by unknown "biodiversity specialists" on 18 and 19 July 2023. The only place where we believe the "walkover survey" is discussed is in Section 3 of the Applicant's HRA Second Supplementary Note – North Pennine Moors SAC/SPA Appendix A (dated 25 August 2023).

In his 7 December letter the Secretary of State asserts that *"the area of bog affected is degraded and not actively forming new peat."* However, we note that Section 3 of the Applicant's HRA Second Supplementary Note – North Pennine Moors SAC/SPA Appendix A does not conclude that the habitat is "degraded" nor does it say that it is "not actively forming new peat". The Applicant's HRA summary note of the walkover survey identifies some issues with the state of the habitat, but does not conclude that it is degraded or that it is not actively forming new peat. It certainly does not conclude that it is not a priority habitat. If the Secretary of State has concluded otherwise, it is not apparent what evidence he has relied on for that conclusion. If that is the Secretary of State's conclusion then we consider it to be unsound and contrary to the legal principles for HRA.

We also respectfully ask that the Secretary of State requests that the Applicant publishes the original, full report of the "biodiversity specialists" who carried out the walkover survey.

IROPI

In our response to the Secretary of State's consultation letter of 8 November 2023 (consultation 6), we argue the Applicant is relying primarily on socio-economic reasons to justify derogation in the Applicant's Annex 6 submission dated 27 October 2023¹. This is despite the Imperative Reasons of Overriding Public Interest ("IROPI") required must relate to human health, public safety or beneficial consequences of primary importance to the environment (Reg 64(1) Habitats Regulations 2017 ("HR 2007")).

Where the Annex 6 does focus on human health it discusses marginal issues such as "driver stress" and "access to employment" yet fails to mention air quality which is what most people would first think of when considering the human health impacts of a road scheme.

The Combined Modelling and Appraisal Appendix E Stage 3 Economic Appraisal [APP-241] shows from 5.7.9 onwards that there will be "net emissions increases of 732 tonnes of NOx and 211 tonnes of PM2.5, over 60 years in the area of focus" and concludes "The project has an overall adverse air quality impact of -£9.739m, comprising NOx damage and abatement cost of -£2.744m, and PM2.5 damage cost of -£6.995m." (5.7.13)

As the scheme would make air quality worse, there is no air quality related human health IROPI justification for derogation.

The picture is similar for noise pollution. The Combined Modelling and Appraisal Appendix E Stage 3 Economic Appraisal [APP-241] concludes (at 5.7.3) that more properties will experience an increase in noise pollution due to the scheme than will benefit from a reduction in noise pollution. There is therefore no noise pollution IROPI justification for derogation.

¹ [TR010062-002294-Annex 6 - HRA - Information submitted without prejudice to support a Derogation case.pdf \(planninginspectorate.gov.uk\)](#)

12 December 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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**Addendum to TAN's response
to Secretary of State's
consultation letter dated 7
December 2023 for the A66
Northern Trans-Pennine
Development Consent Order
(consultation 7)**

Introduction

Transport Action Network (TAN) would like to add an addendum to our response to the Secretary of State's (SoS) post-examination consultation letter 7, dated 7 December 2023, which we submitted on 12 December 2023.

North Pennine Moors Special Area of Conservation (SAC)

In our submission dated 12 December 2023 we question the evidential basis for the Secretary of State to conclude in his 7 December 2023 consultation letter (consultation 7) that *"As the affected area of blanket bog is degraded, the Secretary of State notes that it is therefore not a priority habitat under regulation 64(2) of the Conservation of Habitats and Species Regulations 2017 (as amended)"*.

We noted that neither the Secretary of State nor the Applicant has adopted this position during the Examination nor during the six other post-examination consultations. We noted that the Applicant's summary of a walkover survey was relied upon by the Secretary of State to make this assertion, yet the summary did not refer to the blanket bog as "degraded" nor "inactive", and certainly did not conclude that it was no longer a priority habitat.

We requested that the Secretary of State requires the Applicant to publish the full original walkover survey conducted by the Applicant's biodiversity specialists.

In this addendum we wish to add that in the Applicant's [Habitats Regulations Assessment: Position Statement ANNEX 5](#) (dated 27 Oct 2023) they say at 2.4.21

*"The Applicant has assumed **on a precautionary basis** that the relevant habitat present (blanket bog with acid and marshy grassland) **qualifies as the priority habitat blanket bog**" (our emphasis)*

In the Applicant's [Habitats Regulations Assessment: Information submitted without prejudice to support a Derogation case ANNEX 6](#) (dated 27 October 2023) the Applicant says at 4.2.5

"As part of a robust and precautionary reasonable worst case scenario approach, the Applicant has assumed that the bog habitat relevant to this derogation case is active blanket bog, a priority habitat and designated feature of the SAC (as defined in Section 3.2 and copied as follows: "Blanket bog is a priority habitat when active. Whilst it is considered

*unlikely that all the blanket bog within the Zone of Influence (8.28ha) is active, as a result of the pressures outlined, for the purposes of this assessment and **in line with the precautionary principle, it has been assumed that all blanket bog within the Zone of Influence is active and is therefore considered priority habitat.*** (our emphasis)

We wish to remind the Secretary of State that it is a well-established principle, in cases such as Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (Case C-127/02, Judgment of the Court (Grand Chamber)), that he is also required to take a precautionary approach as the Applicant has done.

15 December 2023

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