

Nathan Dyer
Transport Infrastructure Planning Unit

Monica Corso Griffiths
A66NTP Head of Design and DCO
National Highways
5th Floor
3 Piccadilly Place
Manchester
M1 3BN

16 January 2024

Sent by email to:
A66Dualling@planninginspectorate.gov.uk

Dear Mr Dyer,

**A66 Northern Trans-Pennine Project TR010062 (the Project)
DCO Application (the DCO Application)**

**Applicant's response to the Secretary of State's eighth Request for Information
dated 5 January 2024 (the RfI)**

I am writing in response to the RfI dated 5 January 2024 issued by the Secretary of State to National Highways (**the Applicant**) and all Interested Parties (**IPs**) in relation to the Development Consent Order (**DCO**) Application for the A66 Northern Trans-Pennine Project (**the Project**).

The RfI invites the Applicant and IPs to provide comments in relation to the matters raised in responses from IPs to the Secretary of State's previous RfI of 7 December 2023. In summary, these matters are as follows:

- North Pennine Moors Special Area of Conservation (**SAC**) blanket bog and degraded habitat – points raised in the submissions of Transport Action Network (**TAN**) dated 12 December 2023, Friends of the Lake District dated 19 December 2023, Natural England dated 20 December 2023; and Dr Mary Clare Martin dated 21 December 2023;
- article 36 of the draft DCO – points raised in the submission of Westmorland & Furness Council (**the Council**) dated 20 December 2023; and
- the proposed replacement site for Brough Hill Fair (**BHF**) – additional point in the submission of Dr Mary Clare Martin dated 21 December 2023.

In this letter, the Applicant provides responses to these matters in turn, using sub-headings for each matter.

The Applicant notes that it has only been invited to make comments on the points raised in the responses from IPs to the Secretary of State's previous Rfl of 7 December 2023, therefore the response focuses on this request.

The Applicant notes that there were a number of later submissions published after the Secretary of State's previous Rfl of 7 December 2023, including the submissions of Cllr Jonathan Davies, Hannah Ferson and Peter Ballingall.

The points raised in the above-noted later submissions have been the subject of detailed submissions by the Applicant throughout the Examination of the DCO application and in subsequent correspondence. The Applicant has therefore chosen not to repeat its previous submissions in this letter, which mirrors the approach taken by the Applicant in its response to previous Rfls. The Applicant refers those who have made these later submissions and the Secretary of State to these previous submissions and correspondence, and the points raised in these later submissions are not to be taken as accepted by the Applicant.

North Pennine Moors Special Area of Conservation ('SAC')

The Applicant notes section 2 of the Secretary of State's previous Rfl dated 7 December 2023 concerning whether the blanket bog habitat of the SAC is priority habitat, as well as the December 2023 responses made by Natural England, Dr Mary Clare Martin, Friends of the Lake District and TAN on this matter.

To assist the Secretary of State, the Applicant notes that the references to its submissions on this matter include: (i) paragraph 2.4.21 of the Applicant's Annex 5 submission dated 27 October 2023; (ii) paragraphs 2.2.16 and 4.2.5 of the Applicant's Annex 6 submission dated 27 October 2023; as well as (iii) paragraphs 2.2.14 – 2.2.15 of that Annex 6 submission; and (iv) section 3 of the Applicant's Appendix A dated 25 August 2023, summarising the Applicant's 2023 walkover surveys.

In response to TAN's submission published on 22 December 2023, the Applicant wishes to correct points of facts and law made by TAN.

Page 3 of TAN's submission comments on the Imperative Reasons of Overriding Public Interest (**IROPI**) section of the Applicant's without prejudice derogation case (Applicant's Annex 6 submission dated 27 October 2023). TAN states, in summary, that the Applicant relies primarily on socio-economic reasons even though the IROPI must relate to human health, public safety or beneficial consequences of primary importance to the environment, citing Regulation 64(1) of the Conservation of Habitats and Regulations 2017 (**the Habitats Regs 2017**).

The Applicant draws the Secretary of State's attention to the full text of Regulation 64 paragraphs (1) and (2) of the Habitats Regs 2017, which state (emphasis added):

64. – Considerations of overriding public interest

*(1) If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest **(which, subject to paragraph (2), may be of a social or economic nature)**, it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).*

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either-

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

*(b) **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.***

Further details of the ‘opinion’ process that is prescribed in Regulation 64(2)(b) are set out in the other paragraphs of Regulation 64, as has been discussed by the Applicant in its without prejudice derogation submission (see the Applicant’s Annex 6 submission dated 27 October 2023). The Applicant also notes that the ‘opinion’ process was utilised in, for instance, the decision by the Secretary of State to grant development consent for the Portishead Branch Line – MetroWest Phase project¹.

Factually, the Applicant notes that the IROPI section of its without prejudice derogation case (Applicant’s Annex 6 submission dated 27 October 2023) is robustly made out, based on imperative reasons concerning public safety, human health (including fatalities, serious accidents and injuries; effects on walkers, cyclists and horse-riders; driver stress; severance and accessibility; noise and vibration²; and access to employment) and benefits of primary importance to the environment, all as evidenced and justified by the Applicant’s environmental statement and other application documents. The Applicant has, in addition to these public safety, human health and primary environmental benefits reasons, set out socio-economic IROPI. The Applicant refers the Secretary of State to the full set of these imperative reasons provided at paragraphs 4.3.1 – 4.3.74, plus conclusion at section 4.4, of the Applicant’s Annex 6 submission dated 27 October 2023.

Article 36 of the draft DCO

The Applicant notes the submission from the Council dated 20 December 2023, in which the Council confirmed to the Secretary of State that, in relation to the Scheme required

¹ See section 7 of the Habitats Regulations Assessment dated 14 November 2022, particularly paragraphs 7.56 – 7.72 and Annex 4, available here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR040011/TR040011-001709-HRA%20Report.pdf>

² The Applicant also notes the comments made by TAN on noise pollution at p. 3 of its 22 December 2023 submission, based on the Combined Modelling and Appraisal Appendix E [APP-241]. The Applicant disagrees with TAN’s summary and draws the Secretary of State’s attention to the full section on noise within this Appendix E, as well as Chapter 12 of the Applicant’s ES [APP-055] Table 12-27, and paragraph 4.3.32 of the Applicant’s Annex 6 dated 27 October 2023.

under article 36 of the draft DCO for the replacement BHF site, it did not wish to assume responsibility for either approving that Scheme or for certifying satisfactory implementation, suitability or availability for use. As the Applicant stated in its response to the Secretary of State's previous RfI dated 7 December 2023, it agrees that the Council is not the appropriate body for this matter. The Applicant reiterates its points made on page 6 of that response and, in particular, highlights again that article 36 of the draft DCO is broader in scope than merely a planning matter and that proper provision is made for the Council to provide input to the Scheme through the consultation between the Applicant and the Council required by article 36(2)(b)(iii) of the draft DCO.

The Applicant notes that the Council provides six bullet points in its submission as reasons for its position described above. Whilst the Applicant is in agreement with points 1, 2, 3 and 6 of these, the Applicant wishes to respond to the other two points as follows:

- Point 4 – the Council states that “the future arrangements for ongoing maintenance and management of the site appear to be unresolved, which could make approval of those arrangements problematic”. The Applicant refers to paragraph 4.3.5 of the Summary Statement on Brough Hill Fair Relocation [**REP7-156**] (**the BHF Statement**), which identifies that the Scheme must set out the intended arrangements for maintenance, and also paragraphs 5.1.2, 5.1.3 and 6.1.10 of the BHF Statement, which clarify that details in relation to ongoing management and maintenance of the proposed new BHF site will be discussed with the Gypsy Community and provided to the Secretary of State as part of the process of securing approval of the Scheme required by article 36 of the draft DCO, so that the Secretary of State can be informed as to how the replacement BHF site will be managed and maintained in the future. Therefore, the ongoing maintenance and management of the site and the consultation on, consideration and approval of these measures are fully provided for in the draft DCO; and
- Point 5 – the Council states that there is no “provision for non-determination”. As stated on page 5 of the Applicant's response to the Secretary of State's previous RfI dated 7 December 2023, the mechanism as drafted would be based on undertaking consultation with the BHF Community Association, leading to the preparation of the Scheme in a manner which the Secretary of State is content to approve. If this is not the case, the Applicant would simply have to re-start the process of preparing the Scheme, in line with the provisions of article 36 of the DCO.

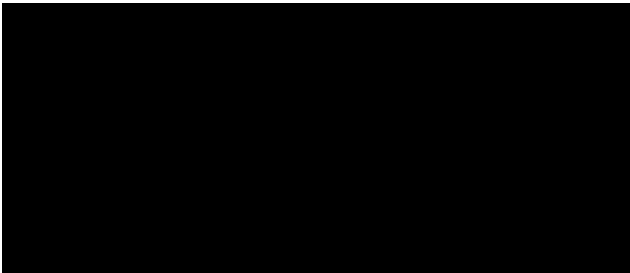
The only other point in the Council's submission which the Applicant wishes to comment on is the final paragraph, in which the Council states that there is a low level of activity at the BHF and that this could increase in the future, which it argues would put a strain on the Council's resources. The Applicant wishes to clarify that, as an existing fair, it is possible that the level of usage of the BHF could be subject to change (increase or decrease) at any time (i.e. regardless of the Project being consented and implemented) and, in such an event, the Council would have responsibilities in that capacity, as it does with the Appleby Horse Fair. Therefore, the grant of the DCO and its provisions in relation to the BHF would not change the current position in this specific regard.

Proposed replacement site for the BHF

Whilst the majority of the contents of Dr Mary Clare Martin's submission dated 21 December 2023 have been responded to above, the Applicant notes that Dr Martin references the BHF Community Association's concerns relating to the proposed replacement site for the BHF. In response to this, the Applicant refers to pages 2-5 of the Applicant's response to the Secretary of State's previous RfI dated 7 December 2023, in which the Applicant provided a detailed response to the latest concerns of the BHF Community Association and included references to the relevant documents previously submitted into the Examination of the Project on this matter.

If you have any further queries or comments, I can be contacted by email at A66NTP@nationalhighways.co.uk.

Yours sincerely



Monica Corso Griffiths
Head of Design and DCO
A66 Northern Trans-Pennine Project