



Response to

**Secretary of State's
consultation letter dated 5
January 2024 for the A66
Northern Trans-Pennine
Development Consent Order
(consultation 8)**

Introduction

Transport Action Network (TAN) would like to respond to the Secretary of State's (SoS) post-examination consultation letter 8, dated 5 January 2024. This letter asks Interested Parties to respond to the submissions in response to consultation 7, which were published on 22 December 2023.

We have structured our response on the themes outlined in the Secretary of State's seventh consultation letter, dated 7 December 2023.

1. Brough Hill Fair

TAN supports the representations made by Abbie North and MH Planning on behalf of the Brough Hill Fair Community Association. The fair dates back many centuries, is permitted by Royal decree, and is of obvious cultural importance. The alternative site proposed for the horse fair is clearly unsafe and inadequate. We share MH Planning's concerns about the inadequacy of the Applicant's consultation, as do many IPs. We have outlined our concerns to the Planning Inspectorate about the Applicant's secretive, underhand, and inadequate consultations that were rushed through prior to the submission of the DCO application. Our concerns, and the concerns of other IPs, about the rushed, un-advertised and sub-standard consultations are outlined in the 'Submissions Received During Pre-Application/Acceptance Period' document on the Planning Inspectorate website ¹

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

We welcome the response from Natural England dated 20 December 2023, which disagrees with the Secretary of State's assertion on 7 December 2023 that *"the area of bog affected is degraded and not actively forming new peat"* and is therefore *"not a priority habitat under regulation 64(2) of the Conservation of Habitats and Species Regulations 2017 (as amended)."*

Natural England have concluded that the bog is active and is therefore a priority habitat: *"NE considers that the affected section of blanket bog habitat is a mosaic of both active and nonactive forms of blanket bog, some of which is actively forming through peat forming species and some areas that may be degraded. **The active sections of the bog can be identified as priority habitat due to the peat forming species present there.** The sections of*

¹ ['Submissions Received During Pre-Application/Acceptance Period'](#), 19 July 2022,

*blanket bog that are active have the ability to be returned to favourable condition, **the ability to restore and enhance these sections of the bog indicates that they meet the requirements to be described as priority habitat.***”

In our response (dated 29 November 2023) to the sixth consultation letter and our response to the seventh consultation letter (dated 12 December 2023) we thoroughly outlined our concerns and fundamental disagreement with the Applicant’s Annex 6 Habitats Regulations Assessment: Information submitted without prejudice to support a Derogation case, dated 27 October 2023. We will not rehearse the same arguments here, but wish to restate that the case has not been made that there are Imperative Reasons of Overriding Public Interest. The Applicant relies on socio-economic reasons rather than the human health, public safety or beneficial consequences of primary importance to the environment reasons required under Reg 64(1) of the Habitats Regulations 2017. The human health reasons are poorly made, the scheme would have an adverse air quality and noise impact, and full alternatives have not been considered. The scheme remains poor value for money, as discussed below.

3. Article 36 (relocation of Brough Hill Fair)

We agree with the Applicant and Westmorland and Furness Council that the Secretary of State should be responsible for the approval of the replacement scheme. We share the council’s concerns that the “future arrangements for ongoing maintenance and management of the site appear to be unresolved” and that they do not have the resources, expertise and experience to manage and maintain the alternative site, ensuring all the Charter rights are met.

4. Induced HGV traffic

We agree with the submission made by Dr Andrew Boswell of CEPP that the induced HGV traffic has been underestimated (and so therefore the carbon emissions have also been underestimated), and that DfT’s TAG guidance has not been followed correctly as the Applicant has not included the four major employment sites in its modelling.

5. The Levelling Up and Regeneration Act 2023

TAN supports the submissions made by Anne Robinson and Friends of the Lake District. We also support the call for Natural England to be requested to comment on the Applicant’s interpretation of its new statutory duties under the Levelling Up and Regeneration Act 2023 ‘to seek to further’ the statutory purposes of the North Pennines AONB and the Lake District National Park.

Outstanding Issues

5.1 Failure to update the costings and scheme appraisal

The DCO application shows the scheme is extremely poor value for money with an adjusted BCR (taking into account wider economic impacts) of just 0.9. We note the economic assessment in the DCO application is very out of date, and does not reflect cost increases, or a realistic rate of inflation. It is highly likely the BCR has sunk even further.

We have previously commented on the urgent need for the Secretary of State to require the Applicant to update the economic case for the scheme. The need to update the economic appraisal is because Section 104(7) of the Planning Act 2008 requires that the SoS should not approve a scheme where it would “result in adverse impacts of the development outweighing its benefits” whilst Section 122(3) also requires that “there is a compelling case in the public interest for the land to be acquired compulsorily”. The case for updating the economic case for the scheme is particularly compelling as the scheme is already rated as “Poor” in the DfT’s Value for Money Framework² without even factoring in cost increases and underestimation of inflation.

We made the case for updating the scheme appraisal very strongly in our response to the Secretary of State’s second consultation (dated 8 September 2022) when contractors for the A66 served National Highways with early warning notifications that construction costs for the scheme would increase due to the departure of Costain from the project, and again in our sixth consultation response (dated 29 November 2023).

We note that the Secretary of State has not engaged with these repeated requests (from ourselves or other IPs) and has not required the Applicant to update the economic case for the scheme, to demonstrate that its benefits outweigh its considerable harms, and that there is a “compelling case in the public interest” for private property to be acquired compulsorily. It would be potentially unlawful for the Secretary of State to simply ignore these issues, failing to engage. The Secretary of State leaves himself open to legal challenge if the DCO is granted without the Secretary of State being assured that the economic case is up to date and satisfies the tests set out in the Planning Act 2008.

We note also that the High Court has recently granted permission for a legal challenge to the DCO approval for the A38 Derby Junctions scheme on the grounds that the Secretary of State had approved the DCO with an outdated economic assessment.

² [Value for Money Framework](#), Department for Transport, 2015

The ComMA report³ submitted to the A66 DCO examination included sensitivity testing which showed that if the scheme costs increased to their maximum level, the adjusted BCR reduces to just 0.65 (Table 7-12), and in the low growth scenario the adjusted BCR dropped to just 0.78 (Table 7-9). As far as we are aware, the modelling for the scheme has not been updated in light of the new National Road Traffic Projections (NRTP), published in December 2022, which forecast reduced traffic growth from the previous 2018 Road Traffic Forecasts. As the scheme represents such poor value for money, it is important that analysis of the scheme is up to date, of high quality and does not artificially inflate the BCR. With an adjusted BCR of just 0.9, it could not be more important that the scheme appraisal is up to date for the A66 before such important (and irreversible) legal decisions are made.

We note that there is a precedent for the Applicant supplying updated appraisal before a DCO decision is made. The Applicant supplied an updated “Economic Sensitivity Test” for the A428 Black Cat to Caxton Gibbet DCO examination⁴. The original economic appraisal included in the DCO application for the A428 scheme showed a BCR of 1.9, yet when the appraisal was updated the BCR dropped to 1.52, a 20 per cent reduction. The same could happen for the A66, potentially even more dramatically.

The Secretary of State cannot ignore this issue any longer, and must require - at a minimum - that the Applicant must update the scheme appraisal using the latest National Road Traffic Projections and the most up to date version of TAG, and using the latest cost estimate based on realistic inflation rates. Only then can the Secretary of State make an up to date and reasoned decision whether the scheme satisfies the tests set out in the Planning Act 2008 and associated legislation.

5.2 Lack of arboricultural assessment

We note that despite several IPs raising the issue of the lack of an arboricultural assessment both during the examination and during the post-examination consultations, the Secretary of State has failed to engage on this issue. It is extraordinary that the Applicant has failed to produce such an important assessment for a scheme of this scale and impact. The Secretary of State must require the Applicant to produce an arboricultural assessment as soon as possible and consult on it, as further information.

5.3 Decision on *Boswell* case at the Court of Appeal

We think it would be prudent for the Secretary of State to wait for the decision on the *Boswell* case at the Court of Appeal to be published before making a decision on the DCO for the A66 scheme.

³ [A66 Combined Modelling and Appraisal Report](#), National Highways, October 2022

⁴ [A428 Economic Sensitivity Test](#) (November 2021 TAG Update), Table 7-1, National Highways, January 2022

19 January 2024

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