

By email: A66Dualling@planninginspectorate.gov.uk

13th January 2024

Dear Secretary of State

**TR010062: A66 Northern Trans-Pennine Project
Registration identification number - 20031841**

The Secretary of State's (SoS) letter of 24th January invited the applicant to provide comments in relation to the latest submission from Natural England (19 January 2024). This provided Natural England's statutory advice to the Secretary of State on the duty imposed on them by the Levelling-Up and Regeneration Act (LURA) 2023 - to seek to further the statutory purposes of National Parks and AONBs.

In summary, in my view, the applicant has failed to show it has proactively sought to further National Park and AONB statutory purposes. The scheme was developed under the less onerous s.62 duty 'to have regard to' those purposes. Hence, the applicant's attempts to meet the more onerous new duty are retrospective and not proactive. This creates a problem for the decision maker. More evidence is required before the SoS can demonstrate that they themselves have sought to further the purposes of nationally designated landscapes.

1. Natural England's statutory advice

Natural England's statutory advice included:

The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose.

*'The proposed measures to further the statutory purposes of a protected landscape, should explore what is possible in addition to avoiding and mitigating the effects of the development, and should be appropriate, proportionate to the type and scale of the development and its implications for the area and effectively secured. **Natural England's view is that the proposed measures should align with and help to deliver the aims and objectives of the designated landscape's statutory management plan. The relevant protected landscape team/body should be consulted.'** (emphasis added by Natural England)*

More recently (31st January) Campaign for National Parks submitted a legal opinion from Alex Shattock at Landmark Chambers. This helpfully interpreted the relevant clauses in the LURA Act. As the clauses strengthened the duty on the statutory purposes they impose a more onerous requirement than existed previously. The duty is now pro-active, not an afterthought, and comparable in nature to the public sector equality duty in s.149 of the Equality Act 2010. It is not enough to not conflict with those purposes. The decision maker must seek to further the statutory purposes through an outcome based approach.

2. The applicant's response

(a) LURA Duty and Lake District National Park

With respect to the LURA Duty and National Parks the applicant claims, *'With respect to the first purpose ES Chapter 10 [APP-053] does not identify any adverse impacts of the Project in landscape or visual terms upon the natural beauty, wildlife and cultural heritage of any National Park'*. With respect to the second purpose the applicant claims access to the Lake District would be enhanced by the dualling. As that enhanced access would be by car, there would be more car journeys on the A66. More car journeys leads to an outcome of increased adverse traffic impacts on landscape, visual amenity and tranquillity. This is harmful to the first statutory purpose of National Parks and does not seek to further that purpose in the Lake District National Park.

(b) LURA Duty and North Pennines AONB

The applicant limits the area to which the duty applies by only referring to the Order Limits of the scheme. However the scheme would increase the already profound adverse impacts on the AONB purpose, by increasing traffic flows on the A66 by up to 30% along its length within the AONB and its setting. This outcome would further harm landscape and visual amenity, tranquillity and night skies. The applicant refers to the experience of the North Pennines being *'diluted by the significant presence of traffic'* but does not consider measures that would reduce that significant presence and therefore has not sought to further the AONB purpose.

The applicant claims its assessment *'has paid careful regard to the special qualities of the North Pennines AONB ... and identified no impact upon those qualities.'* ES Chapter 10 Table 10.10 identifies *'no change'* in any of these qualities. No change maintains current conditions. There is no evidence that the applicant has sought outcomes within its remit to enhance these special qualities – specifically scenic beauty, tranquillity and species rich grassland - and thereby further the purpose in any form.

Taking a landscape scale approach which has sought to minimise or avoid adverse effects on the AONB and where possible sought to identify opportunities, where possible, for enhancement does not fulfil the new LURA duty. The benefits are limited to the establishment of a woodland belt and rationalisation of Ministry of Defence paraphernalia at Warcop. A barrier to prevent headlight glare would be an intrusive feature in the landscape. These outcomes for the AONB purposes are negated by the huge increase in traffic. They are also minimal compared with those that could be achieved by demand management of traffic speed reduction and modal shift of people and freight, instead of dualling.

Furthermore these measures - the Project Design Principles - are postponed to be addressed through detailed design and therefore not available to the SoS when making a decision. Instead these claimed benefits must be demonstrated now, before the SoS makes a decision, if the SoS is to meet the LURA duty.

In summary, the applicant was not working towards meeting the new LURA duty when developing the scheme and has dismissed the need to do anything different as a result of it. All its claims are an afterthought in an attempt to address the new duty retrospectively. The new duty requires a fundamentally different approach which must (a) be embedded from the outset when developing a scheme that would impact on a nationally designated

landscape and its setting; and (b) based on outcomes that seek to further the statutory purposes of that designated landscape. Therefore, contrary to what the applicant says the new duty does have an impact on the decision-making for this Development Consent Order. The SoS cannot rely on the applicant's evidence in order to demonstrate they have met the LURA duty.

3. Consultation of relevant protected landscape team/body

Natural England's letter advises that the relevant protected landscape team/body should be consulted, in this case the North Pennines National Landscape Partnership (NPNLP). It is essential that this consultation is undertaken. Before the LURA duty was enacted, and under the weaker s.62 duty 'to have regard to' the purpose of the AONB, the Partnership stated *'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'* (REP8-019 the Statement of Common Ground between National Highways and the North Pennines AONB Partnership).

Although the applicant's position on the NPNLP position is agreed with the NPNLP, that agreement depends on *'the Project Development Overview Report (Document Reference 4.1, APP-244) ...which sets out the extensive route options assessment process which has been undertaken to develop the scheme.'* As I showed in my previous letter the report sets out only route options for road building and does not address the position of the NPNLP seeking alternative measures to dualling. Therefore, if the SoS as decision maker is to demonstrate they have sought to further the AONB purpose, they must (a) consult the NPNLP as advised by Natural England and (b) explore and scope out the alternative measures mentioned above.

4. Conclusion

As I said in my response of 29th November 2023 the SoS cannot rely on evidence submitted by the applicant before the stronger LURA duty was enacted – that makes the duty into an afterthought which it cannot be. Fulfilment of the LURA duty must be demonstrated through outcomes which are embedded in the development process for a scheme. In this case the SoS, if they are to demonstrate that they have sought to further the purposes of the AONB and the LDNP, must fully explore measures that would enhance both landscape designations and explain their rejection before a decision is made. This includes alternatives to dualling, such as reducing traffic on the A66 through demand management measures and investing in modal shift for people and freight, and reducing speed limits to improve road safety. The NPNLP must also be consulted to show how both the dualling and the NPNLP's proposed measures align with and help to deliver the aims and objectives of the AONB statutory management plan. The comparative merits of these measures and their value for money should then inform the decision on the A66 dualling.

Yours sincerely
Anne Robinson