

**TR010064: Application by National Highways for an Order Granting Development Consent for the M60/M62/M66 Simister Island Interchange Project**

Deadline 4 (10/12/2024)

Action Points arising from Issue Specific Hearing 2 (ISH2) on environmental matters held on Wednesday 27 and Thursday 28 November 2024

Bury MBC response

Action	Description
8	BMBC to provide further evidence to support response to ExQ1 question DES1.1. to explain why it is satisfied with the design in general. BMBC and Applicant to provide further details on the advice provided by BMBC on the design during pre-application stage and how the design incorporated their comments.
BMBC response	<p>Bury Metropolitan Borough Council (BMBC) confirmed in their response to the first round of the Examining Authority’s questions [REP3-031] ref DES.1.1 that BMBC has been in regular discussions with the Applicant from March 2021. This regular engagement is recorded in section 2 of the Statement of Common Ground (SoCG) with National Highways [REP2-006]. Following ISH2, the Applicant has discussed prior engagement relating to design with BMBC. In summary, the consideration of design has been limited to landscaping, local highway interfaces, diverted Public Rights of Way and drainage features. Prior to the application being made, the Applicant and BMBC considered if there were any relevant local design codes or principles relevant to the Scheme. None were identified and therefore nothing has been reported in the SoCG. The Applicant notes BMBC’s confirmation of this point in their response to the first round of Examining Authority’s questions [REP3-031] ref DES.1.2.</p> <p>Design matters of importance to BMBC, specifically detailed landscape and drainage proposals, will be subject to further consultation, as secured by Requirements 5 and 8 in schedule 2 of the draft Development Consent Order [REP3-006].</p> <p>See also the response to Action 53 below.</p>
20	Provide further detail to your response to ExQ1 question TTA.1.1 to include comment regarding the predicted increase in traffic on the A576 as detailed in paragraph 4.2.11 of ES Chapter 4 [APP-149].
BMBC response	<p>Only a short length of the A576 Middleton Rd is the responsibility of Bury MBC as Highway Authority. Sections to the east are the responsibility of Rochdale MBC whilst to the west, responsibility lies with Manchester City Council.</p> <p>Traffic increases as a consequence of the Simister Island project on the A576 within Bury would be relatively minor and would not significantly affect</p>

	<p>the appearance and use of the highway. Bury’s preference is for traffic to use main classified roads in preference to smaller less suitable routes.</p> <p>We also note that improvements to the length of road within Bury are also proposed in relation to Places for Everyone (PfE) Policy JP Allocation 1.2: Simister and Bowlee (Northern Gateway). These would widen the carriageway and roundabout at junction 19 and the A576 on approach from Heywood Old Road to improve its capacity.</p>
24	<p>Provide further detail on the need for future monitoring of air quality. Detail what measures would be required for air quality monitoring during the operational period and how this could be secured in the dDCO.</p>
BMBC response	<p>At ExQ1 (REP3-031) BMBC has previously requested that:</p> <ul style="list-style-type: none"> <li>• A programme of air quality monitoring (for NO2) should be undertaken once the scheme is operational.</li> </ul> <p>This would involve a programme of air quality monitoring using diffusion tubes.</p> <p>The reasons for this are:</p> <ul style="list-style-type: none"> <li>• Demonstrate that scheme has not impacted the UK’s ability to meet the NO2 Limit Values within the shortest possible time (National Highways already has a legal duty to support the delivery of the Government’s national air quality plan and to improve air quality).</li> <li>• The monitoring data would benefit both National Highways and Bury Council in demonstrating that the Limit Values and Air Quality Objectives are being met.</li> <li>• Provide evidence that the predicted improvements in air quality have been achieved and that the predicted impacts of the scheme were accurate. National Highways is the ‘agent of change’ in the area, as the main source of nitrogen dioxide pollution is the motorway.</li> <li>• Reassure concerned local residents that local air quality has not been significantly impacted, especially at receptors where air quality is predicted to slightly worsen.</li> </ul> <p>As National Highways presently carries out air quality monitoring along the Strategic Road Network, BMBC does not consider that extending this diffusion tube monitoring network would be an onerous requirement.</p> <p>Operational air quality monitoring could be secured in the dDCO at Schedule 2, Part 1, 4 (7)(b).</p>
26	<p>Identify what policies could be relied upon to support the request to consider local carbon budgets as well as the national budgets.</p>

BMBC response	BMBC cannot identify any policies that would support such a request.
27	Provide written submissions on the comments raised by BMBC in respect of the Boswell judgements.
BMBC response	<p>The Applicant and BMBC have agreed the following note which summarises the factual position of the Boswell judgements.</p> <p>The Boswell judgements comprise:</p> <ol style="list-style-type: none"> <li>1. High Court – R (on the application of Andrew Boswell v The Secretary of State for Transport and National Highways [2023] EWHC 1710, which dismissed Dr Boswell's challenge;</li> <li>2. Court of Appeal – R (on the application of Andrew Boswell v The Secretary of State for Transport and national Highways 2024 EXCA Civ 145, which upheld the decision of Thornton J in the High Court; and</li> <li>3. Supreme Court – R (on the application of Boswell v The Secretary of State for Transport and another UKSC 2024/0046, which refused permission for Dr Boswell to appeal the decision of the Court of Appeal.</li> </ol> <p>This note identifies the key elements of the Court of Appeal (CoA) judgement which summarised and endorsed the decision of Thornton J in the High Court. The Supreme Court decision served only to confirm that Boswell did not have an arguable point of law and permission to appeal further to the Supreme Court was refused.</p> <p>Paragraph 26 of the CoA judgement records the reasoning offered by the Secretary of State (SoS) for endorsing the use of national targets to assess the environmental impacts of carbon emissions. Specifically, the SoS noted that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the only statutory budgets are those at a national level. As a result, the SoS was satisfied that an assessment against national budgets was consistent with the National Policy Statement for National Networks (NPSNN) 2015 being the same NPSNN against which the M60 Scheme is being assessed.</p> <p>Paragraph 27 of the CoA judgement cites the Institute of Environmental management and Assessment 2022 guidance for assessing green house gas (GHG) emissions and their significance (IEMA Guidance), in support of the SoS' position, confirming that "there is no defined boundary for assessing the impact of carbon emissions" and GHG emissions are global, not local in their impact.</p> <p>Paragraph 38 of the CoA judgment endorses and quotes from the High Court judgement, affirming that the UK Carbon Budgets are science based targets for the reduction of GHG emissions based on global carbon budgets, are required to achieve the goals of the Paris Agreement (enshrined in UK law in the Climate Change Act 2008) and that the Government has not set national</p>

targets on a sector-by-sector basis, such that there is no sectoral target for transport.

Paragraph 43 of the CoA judgement directly quotes paragraph 83 of the High Court judgement:

"The IEMA guidance may be said to suggest that Dr Boswell's approach is arbitrary, from a scientific perspective at least. This is because it seeks to assess the significance of carbon emissions, which have no geographical limit to their impact, against a national target which has no sectoral limit, by reference to a collection of local, sector based, development (characterised on behalf of Dr Boswell as 'proximal' development). There is no scientific rationale for the selection of a particular collection of local schemes for comparison against a national target. As Counsel for the Secretary of State put it pithily, it does not matter whether the emissions are from a road in Norfolk or in Oxford because their impact is the same and the target against which they are being assessed is a national, not local, target."

Paragraph 44 of the CoA judgement refers to paragraph 84 of the High Court judgement which explained that no part of the legislative framework deals with "the acceptability of an effect identified by environmental information. That is a matter of judgement for the decision-maker, not a hard-edged point of law". The CoA also cite the decision of Holgate J in R (GOESA Ltd) v Eastleigh Borough Council [2022] EWHC 1221 (Admin) and paragraph 123 which expressly confirmed "on the basis of current policy and law it is permissible for a planning authority to look at the scale of the GHG emissions relative to a national target and to reach a judgement, which may inevitably be of a generalised nature, about the likelihood of the proposal harming the achievement of that target".

Paragraph 48 of the CoA judgment it was noted that "nor is there any challenge to the choice of the national carbon budgets as the appropriate comparator" and therefore the CoA were not expressly considering the appropriateness of the use of national over local comparators.

Paragraph 50 of the CoA judgement confirms that "Dr Boswell [did] not challenge the scientific fact, reflected in the IEMA Guidance, that carbon emissions have no geographical boundary, with the consequence that their impact is not confined to the local area but is felt uniformly across the globe". It was therefore the "special character of carbon emissions which led the SoS to conclude that the only meaningful comparator for the cumulative effects of carbon emission from the proposed Scheme was the national carbon budgets".

Paragraph 53 of the CoA judgment confirms that "In accordance with the well-known authorities reviewed by the Judge, these were all issues of fact and evaluation for the decision maker, and (as such) they are subject only to the supervisory oversight of the court. In common with the Judge, and like

	Holgate J in GOESA, I find myself unable to identify any hard- edged provision in the relevant legislation, or any relevant principle of law, which was breached by the Secretary of State in coming to these conclusions.”
53	Consider whether reference to ‘hard landscaping’ should be included in Requirement 5(3).
BMBC response	Yes. This has been discussed directly with National Highways and it is BMBC’s understanding that the Applicant will submit an amended dDCO at Deadline 5 that will include reference to ‘hard landscaping’ at Requirement 5(3).