



## **SUBMISSION AS THE LOCAL PLANNING AUTHORITY**

### **1. Introduction**

**1.1.** The following information is submitted in response to the examinations taken place between 3<sup>rd</sup> December 2024 and 5<sup>th</sup> December (ISH1 – 5) and the information submitted at Deadline 3 by the Applicant (National Highways) for the A46 Newark Bypass for an Order granting Development Consent. Our comments follow the Council’s Local Impact Report (REP1-035), Written Representations (REP2-051), response to ExQ1 (REP2-050) and comments on Deadline 2 submission documents (REP3-046), namely the Historic Environment and Visual Impact Assessment (REP2-020).

**1.2.** The comments made for Deadline 4 are made by Newark and Sherwood District Council in their statutory role as the Local Planning Authority (LPA) and not as landowner. Where comments are made as the landowner these are clearly defined in a separate section for the ExA to see.

**1.3.** This submission is made to provide the ExA a written summary of the representations made by the Council in their role as Local Planning Authority during the examinations which took place between 3<sup>rd</sup> December and 5<sup>th</sup> December 2024.

### **2. Summaries of the Council’s Oral Submissions from ISH 1 – 5.**

*ISH1 dDCO Tuesday 3<sup>rd</sup> December 2024 (PM)*

**2.1. Article 2** Our position on this matter is that we would wish this matter to be more clearly defined given the differing functions between the definition of the Local Planning Authority. The specific LPA in any given requirement should either be defined or the ‘relevant planning authority’ definition tightened up.

**2.2. Article 10** There is no scheme and/or work specific justification provided in the Explanatory Memorandum or otherwise for the proposed limits of deviation (particularly vertical deviations). The proposed limits of deviation are also out of step with such limits consented on other DCO road schemes, including, for example, the Wisley (M25 junction 10/A3 interchange) DCO which has a deviation of 0.5m upwards. Article 10(2), as drafted, provides for consultation with the local planning



authority, this should include the local highway authority as well. Moreover, Article(2) should include requiring the Secretary of State to provide a certification. The limits of generous deviation would be acutely relevant at the Cattlemarket roundabout where our concerns on the heritage impact are more acute. We consider that the justification of these limits should be minimal. If the limits can be reduced then this should be explored through the detailed design.

**2.3. Requirement 3** – Generally this is vaguely worded at the moment and needs tightening up. The pre commencement works plan - it is noted that the current scope and methods labelled on the plan states it is indicative whereas the applicant states it is finalised and to be approved in the DCO. Reg 3 (1) states ‘substantially in accordance with’ whereas we consider this is too loose and should just be ‘in accordance with’. Reg 3(2) states ‘must reflect mitigation measures’ whereas a better wording would be ‘must accord with mitigation measures’. In addition there’s no mention of construction site artificial lighting and we would encourage this to be on the list of management plans and method statements for the Second Iteration EMP in Reg(3)(2).

**2.4. Requirement 5** – 5(1) Our concern is that the start time is too early given the location of works to existing receptors. 5(2) The list of essential activities carried on outside of general times, these are broadly drafted and could enable the applicant to continue works which could give rise to noise. NSDC would wish to be notified of the occasions when these would be carried on. The construction hours are adhered to in other schemes in the District notably the Southern Link Road and prior consent is gained from NSDC where works are due to take place outside of the approved hours. It was suggested by the ExA that where there are areas which are less sensitive, these could have differing start times, however this may prove an issue for NSDC in managing this when the site is operational. NSDC will engage with the applicant through the SoCG on an appropriate resolution to this. 5(3) NSDC would wish to be consulted and have prior written consent of such activities to assess the impact of noise to key receptors. 5(4) There are no time limits stated as to when consent would be gained for those activities outside of approved hours. Our suggestion is 28 days but is flexible.



- 2.5. Requirement 6** – A piecemeal method and approach to considering and discharging the landscaping requirement would make it difficult for NSDC (as consultee) to take a holistic view on the landscaping proposals. 6(2), as drafted, the Scheme would not have to accord with any plans, and consideration should be given here to requiring accordance with scheme layout plan. 6(5) the term ‘reasonable’ is loose and is subject to disagreement and should be more particularly defined maybe in accordance with a relevant British Standard.
- 2.6. Requirement 8** – This seems incomplete as drafted. It relates to unknown contamination but does provide for or regulate known contamination. This should be expressed in the next iteration of the dDCO and reflect the contaminated land risk assessment. Requirements (which may be individually discharged by NH) should be clear on their face and if overlapping with or cross referencing to other requirements and/or approved documents then this should be express and clear. Moreover, as to the unknown contamination drafting, NSDC would also require suitable provision being included to require- in terms- a verification report to be included for any unknown contamination.
- 2.7. Requirement 10** – This requirement should be bolstered to include that a final pre-construction survey should be undertaken. There is provision for a written scheme but no mention of who to submit it to for consent and should be in consultation with Natural England. It currently reads as if NH are marking its own homework. Moreover, there is no express provision regulating the recommencement of works.
- 2.8. Requirement 13(2)** – consultation with the LLFA and Drainage Boards should be provided for in the terms of the DCO. This is the case for Requirement 15 too.
- 2.9. Other Issues** (a) NSDC requested (in its response to Q6.2.20 on EXQ1) further details and amendments to be made to the pre commencement works plan which NH are to be update; (b) Generally, the wording of requirement 17 needs to be fleshed out; (c) there is no current requirement in the dDCO as currently drafted providing for the restoration and/or landscaping of any land used temporarily for construction purposes (d) as with other DCO road schemes, provision should be included in the DCO for a management plan/method statement relating to construction site artificial



lighting (e) Art.46 provides very wide ranging powers to lop and fell trees and sub-para (5) seeks to provide for deemed approval. These excessively wide and applicant friendly set of provisions are not supported by NSDC and go well beyond other DCO road schemes (e.g. Art.40 of the MS Junction 9 DCO).

*ISH2 Transport Wednesday 4th December 2024 (AM)*

- 2.10.** Item 3 a ii) NSDC is in receipt of the forecast year VISSEM model for the Cattle Market and it is NSDC’s opinion that the junction would still operate satisfactorily. Lorry Park – The works to the Lorry Park would result in a 30% reduction in capacity which is being explored separately with the applicant for adequate compensation. The whole of the lorry park is being replanned as a result of the A46 works to ensure adequate provision and it is our opinion that a solution to the loss of land can be achieved.
- 2.11. Planning Policy – Item 3 bi)** The Allocations and Development Management DPD is currently being examined by the Inspectorate and the hearing sessions have been completed. Other matters are being dealt with via written exchange, which includes Transport. NSDC assumes Spring for the conclusion of those matters with expected adoption by NSDC in Summer 2025. The Plan period finishes in 2033. NSDC is committed to doing a new plan as soon as possible. The allocations document reviews all existing housing and employment allocations and some have planning permission or are no longer deliverable. Some sites are no longer deliverable such as Old Stable Yard as this was assessed as having noise implications, so as such was recommended not to be carried forward. NSDC has no concerns on the modelling of the Scheme in regard to the Allocations DPD.
- 2.12. Item 3 bii)** NUA MU1 (Lindum) The requirement in the current plan is too onerous so in the proposed amendments to the DPD this has been changed to state the following *“Until appropriate improvements have been made to the A1/A46/A17 Junction, any proposed development will need to demonstrate that it will not generate significant a.m. and p.m. peak traffic as part of any planning application.”* This is a matter to be explored through the Development Management process.



- 2.13. Item 3 biv)** Employment site 3 is the former Nottinghamshire County Council depot building is being used by the Scheme as a temporary land use, however this would not prejudice the bringing forward or deliverability of that land as part of the Allocations DPD.
- 2.14. Item 3 bv)** Lindum site, Phase 1 of the development (23/01283/OUTM) is being heard by Members of the Planning Committee on 05 December 2024 with Phase 2 (23/02281/OUTM) behind this.
- 2.15. Item 3 ei)** NSDC would defer to NCC on the matter of LTN 1/20 however we would wish for those standards to be included where reasonably possible.
- 2.16. Air Quality Item 4 a)** NSDC confirms that it doesn't matter about the subdivision of the categories on receptors.
- 2.17. 4 b)** Further information is required on the combined effects associated on the combined effects – It was felt that within the Environmental chapter within the ES, that the applicant had assessed individual matters but not cohesive. It was acknowledged that the applicant has responded to NSDC's LIR and we are satisfied with this response that the combined effects have been looked at. The Dust Management plan has been briefly reviewed and the mitigation measures proposed are satisfactory and there needs to be more information on what monitoring is proposed. There are lots of references to visual inspections and then doing more quantitative monitoring but the reference to 'as required' 'as necessary' is not acceptable and we would expect more certainty and commitment within the Management plan. In the higher risk areas to dust impacts, there should be more quantitative monitoring undertaken so we'd look for a dust management plan to be submitted with locations identified. There is a reporting requirement and this should state that the Council's will be told when a complaint is made and the measures taken to resolve those complaints.
- 2.18. 4 c)** On further review of the air quality scheme and that as a result of the Scheme the effects are not significant then the damage costs are not required and nor would the additional monitoring stations.



*ISH3 Water Environment Wednesday 4th December 2024 (PM)*

- 2.19. Item 3a)** NSDC would wish to be involved in the flooding discussions and how those matters are being addressed (maybe not on the technical matters). This maybe in terms of summary of the impacts and the progression of the Scheme as our main concern is the impact of surface water flooding from the Scheme. If there are any substantial changes to the Scheme in terms of flood alleviation, then we would wish to be told of that even in an observational role.
- 2.20. Item 3b)** NSDC are concerned if, as a result of the Scheme, that existing roads in the area are at greater risk from flood risk. An update on the Kelham solar farm development (NSDC ref: 23/01837/FULM) is that an amended plan has been received from the applicant (Peridot Solar) which removes panels from land within the FCA, this will be reconsulted on by the Council with all parties including the Environment Agency and we will inform the ExA of its progression.
- 2.21. Item 3e)** NSDC sought clarification on the timing of the FCA delivery and why the FCA areas were chosen and do they offer optimum compensation in these locations for flood compensation for the development in the flood plain as they are not directly adjacent to the flood plain areas. Also the applicant stated 29 sites were considered for FCA and these are the most deliverable. Where is this information and why were the other sites discounted?
- 2.22. Item 3f) Tolney Lane** – The Council provided an update on the Tolney Lane Flood Alleviation Scheme which is referenced in the Council’s LIR (REP1-035). This is currently being taken forward as part of the Amended Allocations and Development Management DPD. No design for this has yet been finalised and this has not been applied for planning permission as yet. It is estimated that this process would be 9months for design and 4 months for planning consent. This alleviation is vital for the delivery of the Council’s Gypsy and Traveller requirement as part of the DPD. The Council is just seeking assurances that the applicants Scheme for flood compensation would not have an impact on the deliverability of the Tolney Lane Alleviation and this is a matter which can be explored through the SoCG.



*ISH4 Environmental Matters Thursday 5th December 2024 (AM)*

- 2.23. Item 3a)** Great North Road LWS – After the desk study had been done (within the Environmental Statement) the boundary of the site had become contracted and the potential loss of this site is reduced. The Council has no concerns on the impact to LWS.
- 2.24. Item 3b)** BNG – BNG should not be slavishly followed whereby other opportunities and more creative approaches for habitat creation and enhancement could be explored. BNG has in somewhat taken away that approach generally but as it is not yet mandatory for NSIP schemes, it should not be the only approach to follow here. The applicant has attempted to maximise their credits here where there are constraints. The creation of wetland areas, especially around the Cattle Market area will have a impact on the character of this area, whereby the approach to this roundabout from the Sugar Beet Factory is mainly enclosed by highway/boundary trees. This wetland creation could be to boost BNG credits where it is not wholly necessary, at the expense of landscape enhancements. The Council considers there is more of a review required on the landscaping areas of Sandhills Park and the Cattle Market where the enhanced quality provided may not be necessary and landscaping provision should be made of what is necessary for mitigation to existing occupiers of properties and the landscape character.
- 2.25. Item 3d) Veteran trees** - The Council is concerned on how the construction around veteran trees will be monitored during the construction phase specifically and if there are any impacts to their longevity or if the trees show signs of deterioration, are there measured in place for dealing with replacements? In addition have all possible avoidance measures been explored to avoid the RPA of the veteran trees or can changes be made at the detailed design stage to encompass this. The Council would wish to be included in any provisions to discuss any mitigation measures if necessary.
- 2.26. Item 4a) Cattle Market junction** – The Council reiterates that the landscaping around this junction is insufficient to respond to the character or to provide sufficient mitigation to the impact of the flyover. At present the landscape is dominating with the infrastructure low lying in most places (especially on this roundabout section). To





create an elevated flyover would see the landscape dominated by it without sufficient landscape mitigation as a result. (REP2-020) VP25 currently has a framed view towards the junction with vegetation on either side. At Year 1 (VP25) the vegetation has been removed and at year 15 there is not a lot of difference. With reference to BNG and the direct reference to NCA46 (National Landscape Character) and Section 4.2 which makes direct reference to boundary features within this landscape area and in particular wet willow boundary features. The existing baseline shows the framing of the approach and the character of moving along the A616 is fairly consistent in that there is a mature boundary treatment for some distance on a straight road with long distant views. However where there has been a loss of that vegetation the Council would like to see some confidence that that vegetation can reestablish again overtime and we feel that looking at that baseline position it seems a rational position.

REP3-046 which is the Councils response to visuals (REP2-020), asks for explanation of why this design is the only design before us and why a lighter structure would not be more acceptable.

**2.27. Item 4b) Viewpoint 24 Sandhills Park (REP2-020)** – The Council does not consider that the visual representation is sufficient to represent how those residents of Sandhills Park would experience the levels change from the Cattle Market flyover. Given the intervening buildings on the plan it was suggested that a view from the A617 could show the full extent of the impact for those residents, without having to enter residents gardens or properties if this was not possible. Comments on this have been submitted by the Council as REP3-046.

**2.28. Item 4c) Lighting** The Council is satisfied that there would be no lighting columns on the raised sections of the A46.

**2.29. Item 5a) Winthorpe Conservation Area** – The flyover over the A1 is a concern as it results in the infrastructure being closer to the conservation area and listed buildings contained within the village. We were concerned with regards to the visual, however the latest submission does demonstrate that it is highly green and landscaped so does address some of those concerns. The experience of the conservation area would still be impacted upon by increased noise and that would be partially mitigated by the





noise barriers but again these would themselves have an impact. The Council does not request any further information on this matter.

- 2.30. Item 7 Old Stable Yard (adjacent to Bridge House Farm).** The Council made the ExA aware of the recent planning developments to the site whereby Members approved the site for 6 Gypsy and Traveller pitches under 24/00548/FUL. This was against officer recommendation which was to refuse based on noise concerns. The ExA will also be aware that the Council recommend this site to be deallocated based on a noise assessment taking place for the plan which required substantial noise mitigation to make the site deliverable. The Council will forward the committee report, committee minutes and objection letters to the ExA for consideration.

*ISH5 Other ES Topics Thursday 5th December 2024 (PM)*

- 2.31. Item 3d)** The Council considers that the Carbon Management Plan in draft form would be acceptable and is outlined in our response the EXQ1 at REP2-050 Q4.0.19.
- 2.32. Item 4a) Contaminated Land Strategy** The updated Strategy has been updated following the guidance changes from 2012. No massive changes to the guidance other than those updates following the guidance change. This updated Strategy will be going to Cabinet on 10<sup>th</sup> December 2024. Updates will be provided following this adoption.
- 2.33. Item 4c) Contaminated Land Risk Assessment** The Council does not envisage changes to the baseline data providing the safeguards are met as stated by the Applicant. The Council is satisfied with the way that any unexpected contamination is dealt with however the Council would wish to ensure that a verification report is carried out and submitted to the Council for acknowledgement and review and this process should be captured in the Environmental Management Plan.
- 2.34. Item 6a) Agricultural Holdings** The Council acknowledges that the compensation to famers/land owners is outside of the DCO process however it is stated that the amount of land used for the development is substantial and would be keen to ensure those affected are appropriately compensated. It is understood those discussions are ongoing. The Council does not wish to raise any other matters on this but will review



the updated documents submitted at Deadline 3 related to the ES Chapter of Population and Human Health and respond by Deadline 4 if required.

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## **SUBMISSION AS THE LAND OWNER**

### **A46 Newark Bypass DCO Examination**

#### **Newark and Sherwood District Council – Summary following CAH2**

##### **1. Introduction**

- 1.1 Newark and Sherwood District Council (the “**Council**”) support National Highways’ (the “**Applicant**”) proposed A46 Newark Bypass Scheme (the “**Scheme**”).
- 1.2 This Council attended Compulsory Acquisition Hearing 1 on 9 October 2024 and submitted relevant representations to the Examination dated 22 October 2024, summarising their position.
- 1.3 This note summarises the current position in relation to the Council’s representations as set out at Compulsory Acquisition Hearing 2 on 3 December 2024.

##### **2. Council’s Position**

- 2.1 The Council’s concerns as landowner remain the same as those set out in their relevant representations dated 22 October 2024, save to confirm that the Applicant is now positively engaging with the Council and discussions are moving forward.
- 2.2 The affected land remains the same as that described within the Council’s relevant representations dated 22 October 2024.
- 2.3 The impact of the Proposed Order remains the same as that described within the Council’s relevant representations dated 22 October 2024, but discussions are on-going between the Council and the Applicant to determine how the parties can work together to facilitate appropriate reconfiguration of the lorry park sequentially with the proposed works coming forward.
- 2.4 Similarly, the extent of land subject to temporary possession and compulsory acquisition is subject to on-going discussion between the Applicant and the Council and whilst the Council’s previous relevant representations still stand, some positive



progress is being made in this regard with discussions taking place between parties on 11 November 2024.

- 2.5 The Council confirmed in their relevant representations dated 22 October 2024 that it is well established that an authority seeking compulsory acquisition powers should seek to acquire the land required for its scheme by agreement where possible. Furthermore, the Council outlined that it would be to the benefit of both parties if an agreement were reached between the Applicant and the Council which would allow for the voluntary transfer/leasing of land to the Applicant and for the Council to be consulted on detailed design of the proposed facility and allow for the reconfiguration of the lorry park in advance of the exercise of powers. As part of this agreement the Council also needs to ensure continued unimpeded access to their main Council offices at Castle House which is subject to temporary possession.
- 2.6 As noted in earlier relevant representations the Council took the initiative to send an outline agreement to the Applicant on 27 September, in advance of the first Open Floor Hearing and CAH1 taking place. In brief the proposed agreement includes the following provisions:
- The Applicant to provide the Council with its draft detailed design of works that affect the Council's land before finalising that design and to have reasonable regard to the Council's comments.
  - The Applicant not to serve any temporary possession or compulsory acquisition notices for a period of time (to be agreed) after finalisation of the detailed design to allow for the lorry park to be reconfigured
  - Arrangement for the costs of the lorry park reconfiguration to be reimbursed
- 2.7 A positive meeting was held between the Applicant and the Council on 11 November 2024 in which the basis of the agreement was agreed. The Applicant said that they would provide a draft agreement for the Council's consideration before CAH2. A draft letter of undertaking dealing with the first of the above bullet points (detailed design of the Applicant's works) was provided on 2 December 2024. We are disappointed to note that a draft agreement dealing with the other points has not yet been received despite a month having passed since the heads of terms were broadly agreed.
- 2.8 Although the Council is pleased that a positive dialogue has been established, it is concerned that the Applicant is not dealing with the proposals quickly enough to allow for an agreement to be reached before the end of the examination.



**3. ExA's Action 1**

3.1 The Examining Authority has asked:

*“Aside from seeking to reach agreement with the Applicant on CA and TP, how would the ExA deal with any reduction in capacity of the lorry park and associated impacts (e.g. as noted at paragraph 5.3 of NDSC’s RR [RR-048]) if reconfiguration studies are not undertaken until after the Examination has closed.”*

3.2 The Council agrees that since it is not possible to design the reconfiguration of the lorry park until the Applicant’s detailed design has been finalised, the Examining Authority will not be able to ascertain how many spaces will be lost. The proposed agreement is not aimed at removing all negative impacts to the lorry park but at mitigating those effects. Since the Council has no control over the timing of the Applicant’s detailed design, it is submitted that the Examining Authority must balance the benefits of the Scheme as established by the Applicant with the disbenefits that might arise from the loss of lorry parking spaces assuming that an agreement is in place to mitigate those disbenefits.