



Please reply to:

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Date: 23 June 2017
Our Ref: ELM/NWJ/A358
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Highways England
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Dear Sirs,

A358 TAUNTON TO SOUTHFIELDS DUALLING SCHEME: NON-STATUTORY CONSULTATION

We act for the Campaign to Protect Rural England Somerset Branch ('CPRE Somerset').

Our client is very concerned about the current consultation process being undertaken by Highways England ('HE'), which our client considers to be unlawful for the reasons set out below.

Entirely without prejudice to our client's latter contention, CPRE Somerset will be writing to you separately with its' consultation response, the submission of which is not to be taken as any acknowledgment by CPRE Somerset of the lawfulness of HE's consultation process. Our present letter only concerns the legal aspects of the HE consultation.

We have seen the detailed consultation responses and critiques of HE's current consultation that have been made or drafted by two statutory consultees, Taunton Deane Borough Council (TDBC') and Somerset County Council ('SCC'). In this connection we refer you to the attached documents, namely:

1. The TDBC report by Andrew Goodchild, Assistant Director Place and Energy Infrastructure entitled *Response to Highways' England A358 Taunton to Southfields Dualling Scheme Public Consultation* submitted to TDBC's Community Scrutiny Committee meeting on of 16 May 2017;
2. The draft minutes of TDBC's Community Scrutiny Committee meeting on 16 May 2017;
3. SCC's *A358 Taunton to Southfields Non-Statutory Public Consultation Response on Route Option* dated 22 June 2017 prepared by Mike O'Dowd-Jones, Strategic Commissioning Manager Highways and Transport (as now authorised (also on 22 June last) by SCC's Cabinet Member for Resources and Economic Development, subject to any 3 day call in);
4. The draft minutes from SCC's Scrutiny for Policies and Place Committee meeting held on the 13 June 2017, together with the statements made during the Public Question Time part of the meeting.

We adopt for present purpose what is said by both TDBC and SCC in the above documents about (a) the deficiencies in the nature and scope of your non-statutory Statement of Community Consultation ('SoCC'); and (b) the absence of supporting information/data (as specifically identified in the TDBC and SCC documentation) in your updated Technical Appraisal Report ('TAR') of 3 April 2017, which information/data pertains to certain statements and conclusions made and/or reached by HE. We also note the concerns that have been raised by numerous members of the public and by local parish councils.

It is quite clear from case law that HE has legal obligations to follow when it embarks on a consultation exercise or process, including (as in this case) voluntary, non-statutory consultation in advance of the formal, statutory consultation required by the Planning Act 2008: see *R v North & East Devon Health Authority ex parte Coughlan [2001] QBD* at paragraph 108, *R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts [2012] Civ 472* at paragraph 11.

These obligations include (inter alia) providing to all consultees a sufficient level of detail and information to enable proper and meaningful consideration of HE's documents and the statements/conclusions made therein, so as to inform and assist consultees in drafting any consultation response and/or representations that they choose to make (as said in *Coughlan* "to allow those consulted to give intelligent consideration and an intelligent response").

HE has not done this. Both TDBC and SCC have said (in terms) that they do not have sufficient information and/or there is an absence of information/data on which to meaningfully comment on various issues (as identified by TDBC and SCC). These latter deficiencies also apply generally to the public at large, and to interested NGOs such as CPRE Somerset.

This is all indicative of a flawed consultation process that is seriously prejudicial and unfair to all consultees and therefore unlawful. In short, when viewed objectively as it affects individual, specific consultees or consultees in aggregate (*Royal Brompton* at paragraph 12), HE's non-statutory consultation is "clearly and radically" wrong: *R (Greenpeace) v Secretary of State for Trade and Industry [2007] EWHC 311 (Admin)* at paragraph 63.

CPRE Somerset considers that the current consultation should now be held in abeyance until such time as HE has carried out the additional work necessary and/or provided the required information/data to remedy the identified deficiencies in the HE documents so far provided.

We await your urgent response.

Yours faithfully

Elm Law

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