

Application for Development Consent to complete the Heysham to M6 Link Road

Reference TR010008

Unique reference no: 10015136

Additional information on Thames Water Inquiry, August 2012

I submitted evidence on the conclusions of an inquiry in 2009 into the Thames Water Draft Water Resources Management Plan (TW), in an email on 19 July with the Inspector's Report (IR) attached. The relevant issue in TW is whether it was acceptable to reject options which, had they been taken forward, would have needed appropriate assessment (AA) in relation to sites of conservation interest. This is highly relevant to my case that a western route for a Heysham-M6 Link was wrongly rejected from 2004 onwards (having previously been the preferred option), on grounds of possible but unproven impacts on the Morecambe Bay SAC. LCC has argued that the western route could be discarded, in advance of an AA of its impacts, given that there was an alternative where no impacts on the SAC were likely.

This supplementary submission pulls out the relevant parts of the TW Inspector's Report.

1: Section 1 sets out the inquiry issues: 1 IR 1.5.3 covers the question of AA and alternatives:

Thames Water has carried out a screening assessment of the potential impacts of schemes that were included in the preferred programme for London...and concluded that they were not likely to have a significant effect on any Natura 2000 sites. The HRA screening process was updated to include all feasible supply side options in the rdWRMP including those which arose from representations received on the draft WRMP37. Those schemes which were identified as likely to have a significant environmental effect and which therefore required an appropriate assessment before they could be implemented were not taken forward in the programme appraisal. This was a matter of dispute at the Inquiry which I consider in my conclusions.

2. Section 2 presents the case for Thames Water. IR 2.5.52 sets out reasons why a Severn-Thames transfer (STT) option is inappropriate for the preferred programme:

The reasons why it is inappropriate to include a STT option in the revised plan's preferred programme or as a contingency option broadly relate to the following matters:

i) The outstanding requirement for an appropriate assessment...

2.5.53 and 54 explain why an AA would be needed for STT options, in standard HRA terms, and confirms that no party disputes that AA would be needed. Then, in IR 2.5.55, TW go on to argue that

... in the absence of an AA demonstrating no adverse impact on the Severn Estuary EMS, any inclusion of a STT scheme in the revised plan's preferred programme or as a contingency provision

that could give effect to that option would be in breach of these regulations. Therefore, GARD's (objectors organisation) submission that there is nothing in the Habitats Regulations that requires exclusion of schemes from a plan simply because an appropriate assessment was required, is wrong

IR 2.5.56 reports NE's support for this view (the following is a direct quote from NE:

Considerations of impacts on European Sites should be integral to the options screening process in the first instance... this should prevent options being advanced to the preferred options stage which present a significant risk... This should ensure that no options have made it through the screening process to the final plan for which it is not possible to conclude no likely significant effect.

3. IR section 3 covers the Environment Agency's case; 3.4 is on options appraisal, and 3.4.18 sets out the EA's overarching concerns:

The Environment Agency's concerns remain that certain supply-side options have not been considered at all, that options have been rejected without sufficient evidence for doing so and that other options require further work to ascertain their feasibility and ought not to have been rejected at this stage of the planning process

3.4.21-26 relate specifically to the STT options with reference to the Severn Estuary SAC and the need for AA. IR 3.4.25 and 26 come to the heart of the matter:

3.4.25 ...all of the regional transfer options from the River Severn to the River Thames were excluded. The argument presented is that given the likely significant effects on the Severn Estuary SAC, those options could not be implemented until an AA had been completed and the options approved. The exclusion by Dr Lambert was therefore based upon the fact that the options could not be currently promoted

3.4.26 ... the Guideline is clear: companies should not use the fact that a scheme has been identified as requiring an AA as a restriction or a filter between the unconstrained and feasible lists. Moreover, it is inappropriate for feasible schemes to be excluded from an updated programme appraisal on the same basis. An option should be given the opportunity to be included in the preferred programme in line with an inclusive approach to options appraisal, rather than one which seeks to exclude options which may require further investigation.

4. IR section 5 is the case for GARD (Group Against Reservoir Development). In 5.7.12b GARD reiterates the point made by the EA, in language which echoes my criticism of the ADAS report:

There is nothing in the Habitats Regulations that requires the exclusion of schemes from a Plan simply because an appropriate assessment would be required in due course. Thames Water relies on the precautionary approach, which in their view would exclude any scheme which has not already been subject to an appropriate assessment.

5. IR Section 7 covers the case made by the Cotswold Canal Trust, which also has direct resonance with my case against ADAS (and, by extension, NE's position), in IR 7.9b

'Raw water transfer from the River Severn is shown to have unacceptably high environmental impacts on a European Union designated Special Area of Conservation (SAC)'. CCT indicates that Thames Water's definition of "shown" is simply that Natural England has advised that an appropriate assessment is needed. It is clear that one should have been carried out and still needs to be.

6. Inspector's conclusions, section 13: the relevant paragraphs are 13.4.23-32. These can be read in full, but some comments are particularly telling in relation to HM6L and the western route:

13.4.24 I find no compelling support for the precautionary approach advocated in this context by Thames Water, which amounts to assuming, in the face of uncertainty, that an option is unacceptable until demonstrated otherwise...I consider that in principle, the need for further investigations in relation to a particular scheme should not automatically disqualify it from being included as a feasible option

13.4.29 ... the precautionary approach indicates that where doubt remains an appropriate assessment should be carried out. There is no indication that a scheme which requires an appropriate assessment should for that reason be considered unfeasible. I agree with the Environment Agency that a feasible option should not be excluded from consideration at the programme appraisal stage on the basis that an appropriate assessment would be required in the event that it is selected

7. The implications for the LCC/ ADAS assessment of a western route are in my view compelling. In one respect the TW inquiry took the discussion one stage further than on HM6L, in that the options dismissed by Thames Water were recognised as needing AA if they were to be taken forward, and the 'need for AA' was given as the reason for their exclusion. LCC/ ADAS, and ultimately NE, have adopted a position on western routes for a Heysham-M6 Link that they **are** likely to have an impact on the SAC, without bothering with an AA to establish any such impacts. This is not, however, a material difference between the two cases: STT and the western route were both excluded from further consideration by invoking the precautionary principle and saying that because they might have an impact on the integrity of their respective SACs they should not be taken any further: and this argument was rejected by the TW Inquiry Inspector.

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2 August 2012