



Dynamic Transport Planning Ltd
The Riverside
Chester-Le-Street
County Durham
DH3 3QR
Company Number: 11024719

Catherine Townend
National Highways
Your Reference: NHPR 22-12
By Email

05/06/2024

Proposed Construction of Motorway Service Area at South/Western Boundary Fronting M69, Land East of Stretton Croft, Wolvey Road, Leicestershire.

Dear Catherine,

Dynamic Transport Planning Ltd is instructed on behalf of Welcome Break Ltd in relation to the above cross-boundary planning application, which is currently live with Hinckley and Bosworth Borough Council and Rugby Borough Council (Application Reference Number: 23/01023/HYB)

A full timeline of the planning application can be found within the Technical Note (TN) of March 2024 issued by DTP to NH. Pre-application discussions were held with NH in March 2023, with the application submitted in October 2023. Both Local Highway Authorities have confirmed no objection to the proposals.

A number of responses were received from NH in the 12 months subsequent to submission of the application, with significant differences in the advice provided within each response, as detailed within our TN. This letter forms a response to the latest set of comments provided by NH regarding the proposals, dated 8th May 2024.

It is disappointing to have received this latest response from NH (dated May 2024) which details a further change in stance and is another fundamental shift in position from NH in relation to this planning application.

Whilst NH's latest comments are addressed in detail below, we would note that this planning application is currently only being delayed by NH, with both local highways departments involved confirming no objections to the proposals. We have to date received a plethora of varying responses and advice from NH in both the 18 months that this application has now been live and through the pre-application advice. The applicant has confirmed that they will not continue with this unnecessary and protracted process.

It is considered that the behaviour of NH during this application has been wholly unreasonable. An appeal for non-determination of this application will be sought if NH continue to maintain continual and inconsistent unfair changes in position. To that end, working closely with the Local Planning Authority, the applicant would expect a decision to be made on the application by the end of August 2024.

Response to Latest NH Consultation Comments

Background

NH acknowledge the extant planning permission at the site for a mixed-use development including employment uses along with a Trunk Road Service Area (TRSA). However, NH state that there are 'fundamental differences' and therefore these proposals will be assessed on their own merits in line with their current policies, design standards and procedures.

It is not within NH's gift to attempt to disregard the planning context of the site and ignore established planning case law. Indeed, the applicant would refer NH to the high court judgement relating to Zurich Assurance Limited V North Lincolnshire Council and Simons Developments (case ref. CO/4764/2012), wherein it was established that the fallback planning position is a material consideration. This is further enhanced by the case of Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314. In the latter case it was established that the basic principle is that for a prospect to be a real prospect it does not have to be probable or likely, a possibility will suffice.

The extant planning permission on the application site (Application Ref. 20/00531/HYB) sets the fallback position of a roadside use on this site, including further details such as approved access arrangements from the A5 and approved trip generation numbers. There are a number of fundamental similarities between the approved trunk-road service area application and the current motorway service area application, and it is disingenuous to suggest that these two proposals are fundamentally different in nature. This includes HGV provision, abnormal load provision and also that, as agreed with the two local highway authorities, the current proposals would result in less peak hour vehicle movements than already permitted.

As evidenced above by information provided by the applicant, established case law sets out that an extant consent, whether approved through planning or under the GPDO, is a material consideration as a fallback position. i.e. the extant consent could be implemented resulting in no material difference. Where there is a realistic fallback position, as is the case here, it's essential that the decision maker compares the effect of a proposal against the effect of what other development could lawfully take place.

NH also suggest that these proposals should be assessed on their own merits due to changes in policy, design standards and procedures. Whilst there may have been an update in the DfT Circular to the latest 01/2022 issue, there were no material changes to the previous Circular regarding roadside services. The relevant design standards have seen no update in this time. Should NH have updated their internal procedures with regard to addressing planning applications, this is not relevant to the planning process.

Need for an MSA

NH comments suggest that the need for a MSA has not been established based on the 28-mile criteria, given that the distance from the site to M1 Leicester Forrest East and M6 Corley Services are 12 miles and 14 miles from the site, respectively. We trust that NH can acknowledge that the application site does not yet exist and, as such, there is an existing gap between services of 26 miles – notably close to the maximum threshold than appears implied in the comments.

Indeed, this position is consistent with the recently opened Moto Rugby Services on the M6, J1 which has a distance of 13.5 miles to Welcome Break's Corley Services to the West and 10 miles to Roadchef's Watford Gap Services on the M1, a total of 23.5 miles. Paragraph 76 of the Circular states that *"On this basis, the maximum distance between signed motorway service areas should be 28 miles"*. It is therefore reasonable to state that the 26-mile gap we currently see is towards the 'maximum' threshold.

NH have also questioned the drive-time data which has been included within the TN. It is confirmed that this was not anecdotal evidence and was determined using publicly available route-planning software provided by Google which is used by multiple Satellite Navigation systems.

Despite the fact that NH conclude that there has not been established a need for an MSA in this location based on the 28-mile criteria, they do note that in certain areas on the SRN in particular need of HGV parking (such as the application site, according to NH) should have distances between HGV parking areas of no more than 14 miles.

NH state that although the distance between the site and the nearest HGV parking area at a motorway service area is greater than 14 miles, other HGV areas such as truckstops have not been considered. Nonetheless, NH state that the site is located within an area of need for HGV parking. Therefore, by their own admission, NH agree there is a need for this facility in this location.

It cannot be argued that there is not a need for an MSA in this location whilst maintaining that the site resides within an area of need for HGV parking, thus requiring additional facilities.

NH also state that the access and egress arrangements must comply with DMRB requirements whilst at the same time not identifying any material concerns. The proposals are for an identical access arrangement to the previous application, which was approved and agreed with NH. As set out above, there has been no change to the relevant design standard (CD 123) since the application was approved. The applicant would reaffirm the information provided above regarding the established case law in respect of the fallback position.

Furthermore, and as both the LHAs have acknowledged, the anticipated peak hour trip generation for the site is now lower than was previously approved. NH have also already requested further information beyond what was covered in the previous application, such as additional vehicle tracking for an abnormal load, that has already provided.

CCTV and Lighting

NH have requested information regarding detailed CCTV and lighting matters, which is simply not a planning consideration for NH in this context. These matters will be addressed with the LPA at the appropriate stage and anticipated to be managed by condition with the LPAs. It is common for these matters to be conditioned to ensure that they can be finalised and agreed in detail without having to submit revised planning applications to address matters raised at the detailed design stage. For the avoidance of doubt, CCTV and lighting will be a part of the development proposals and will be submitted for consideration as part of the planning condition discharge process.

Parking Provision

NH acknowledge that traffic flow data from the M69 has been used to determine the appropriate parking provision for the site, but now request that in order to determine the parking provision, flows from the adjacent A5 should also be considered. This is the first time through numerous pre- and post-application discussions and responses that NH have requested additional information for the A5 given the application is for an MSA. NH have been provided with ample time to offer a response on all matters regarding this application and it is unacceptable that NH are once again moving the goalposts in relation to the application.

Moreover, the A5 is a trunk road, and the application is for an MSA. A dual-use trunk road / motorway service area would be a new concept, and it is not how the applicant would intend to operate the site. The applicant intends to operate the site as an MSA, which would result in amenities such as fuel provision being provided in line with prices at similar MSA sites. As an example, TRSAs provide fuel at a significantly lower price than MSAs and it is therefore concluded that it would be incredibly unlikely that A5 road users would make use of the site for this purpose. Food concessions also charge a premium rate at an MSA, further discouraging TRSA users.

Notwithstanding this, we have undertaken an exercise to demonstrate that the additional flows recorded on the A5 can be accommodated within the parking provision. Traffic flows taken from the A5 have been used to determine any additional trip generation which may result at the site. DfT Count Point data has been obtained from the A5 to the west of the site (Count ID: 56143).

Subsequent to the COVID-19 pandemic, the count point data in this location has shown a reduction in traffic flows year on year. To inform a robust approach, pre-pandemic (2019) data has been obtained, which is also consistent with the submitted TA.

The traffic survey data found within the submitted TA has been used to determine the proportion of traffic routing along the A5 only (so as to prevent double counting of vehicles also routing along the M69 and therefore already included in the motorway traffic data). This proportion is illustrated within **Flow Diagram 1** from the submitted TA.

The table below summarises the parking requirements based on the passing flow along the M69 and the A5. As per the DfT Circular 01/2022, the parking requirements for TRSAs have been applied to the A5 flows and parking requirements for MSAs applied to the M69 flows.

Count Point	Data Year	Traffic Flows			Parking Requirements			
		Cars	LGVs	HGVs	Car	HGV	Coach	Caravan
A5 (56143)	2019	17160	4423	2791				
A5-A5 traffic	2019	4479	1154	728	5	2	1	2
M69 (46056)	2019	42778	8409	5654	256	42	6	8
Combined	2019				261	44	7	10

The new parking requirement based on the combined data shown above has been considered in a new site layout plan which can be found enclosed within this letter. The new layout plan demonstrates that it meets the above parking requirements, with 272 car parking bays (inclusive of 17 disabled and 36 EV bays), 11 motorcycle parking bays, 44 HGV parking bays, seven coach parking bays and 10 caravan parking bays. Additional secure cycle parking is also shown on the site layout plan.

Staff Parking

It is noted that Staff Parking is not a requirement at a MSA as per DfT Circular 01/22 as the guidance covers all parking, inclusive of staff.

Any spaces on the proposed site layout plan that are indicated as for use by staff are not the sole parking provision for staff members. Should the number of staff on site exceed the number of staff parking bays, any of the general car parking provision can be utilised. The provision for staff is already considered within the assessment in line with the DfT Circular. Notwithstanding this, the applicant has confirmed that they would welcome a condition relating to Travel Plans as they would do this as standard practice.

Access

NH acknowledge that the site access arrangements remain the same as the previously approved roadside development at the site. However, NH claim that the proposed arrangements do not meet their requirements as drawings must be designed to DMRB guidance but offer no evidence of a change in design standards. The planning fallback position of the site cannot be disregarded by NH as noted above.

Moreover, DMRB guidance, particularly CD123, was issued in November 2021. There have been no changes to DMRB guidance subsequent to the previous application.

The Local Highway authorities have reviewed the planning application and have agreed that the proposed trip generation is lower than what is already approved on the site through previous applications. On this basis, the applicant could look to reduce the scale of the access proposals, however, to ensure the robust suitability of the scheme and to expediate the planning process, the approved arrangement has been retained.

Furthermore, NH state that the swept path drawing for an abnormal load has been provided by DTP, but they are yet to review and comment on this. It is again reiterated that NH have had ample time to review and comment on all aspects of these proposals and this further delay is considered unreasonable.

Trip Generation

NH have acknowledged that an updated trip generation assessment has been undertaken using the 'turn-in' rate methodology that they previously requested, but this is still not accepted. Both Local Highway Authorities have confirmed no objection to the proposals on the basis of the original TA TRICS-based assessment, which has been agreed with NH both pre-application and within their first consultation response.

Thus far, advice from NH with regard to trip generation has been that a TRICS assessment was appropriate, then not appropriate, and that a turn-in based assessment based on M69 flows would be appropriate, then not appropriate. This is unreasonable behaviour and NH are once again moving the goalposts in relation to the trip generation assessment.

NH request that in addition to flows on the M69, flows along the A5 need to be considered within the trip generation assessment. The application is not for a trunk road service area, and it is not intended to cater for vehicles routing along the A5, who are unlikely to use the site based on commercial factors. The site will operate as an MSA and will only be signposted from the M69.

Nonetheless, the additional trip generation resulting from traffic on the A5 has been considered. The traffic survey data found within the submitted TA has been used to determine the traffic flows routing solely along the A5 in the AM and PM periods, to avoid double counting of vehicles also routing along the M69. In order to determine an appropriate turn-in rate for vehicles routing along the A5, turn-in rate data has been sought from surveys undertaken by DTP at TRSA sites nationwide and are summarised as an average of AM and PM turn-in rates for each site in the table below.

TRSA Survey Sites	Planning Ref.	Turn in rate %
Ron Perry A19 Northbound Services	H/2024/0001	3.6
Ron Perry A19 Southbound Services	<i>In Submission</i>	3.4
A1 Applegreen Northway Services	24/00444/FP	2.5
A63 Beacon Services, South Cave	19/00838/PLF	3.1
AVERAGE		3.2

The data indicates that TRSAs can expect an average turn-in rate of around 3.2% of the passing vehicle flow on the trunk road. This turn-in rate has been applied to the A5-A5 flows recorded during the traffic survey at the site detailed within the submitted TA in the table below.

Trip Generation			
A5 - A5 Flows		Turn in Rate	Vehicles
AM	508	3.2%	16
PM	592	3.2%	19

The above table demonstrates that the site would be expected to generate an additional 16 and 19 two-way vehicle trips in the AM and PM peak hour periods, respectively. This additional trip generation still remains well below the headroom of previously approved trips at the site.

Travel Plan

NH's response regarding the Travel Plan does not appear to have changed in their latest response. It is considered that the latest response provided by DTP within the TN has not been acknowledged by NH.

Further to this, as part of the previous approval, there was a S106 agreement for a contribution from the applicant to staff bus passes. The applicant has already engaged in discussions with the LPA and are happy to also provide this for the current application.

Other Matters

NH state that the April 2024 TN submitted by DTP provided no further information relating to other matters such as junction capacity assessments, merge/diverge assessment and highways mitigation. Therefore, NH have implied that they would not comment further on these matters. However, no further information is needed on these matters, as they are all addressed within the submitted TA.

In their earlier responses, NH highlighted that they would not be commenting on these matters until concerns such as trip generation had been addressed, but no further information was requested. It is disingenuous and misleading of NH to suggest that they have been awaiting further information on these matters.

Furthermore, consultants acting on behalf of NH requested in December 2023 a copy of the traffic model, and this was provided by DTP. This suggests that this further information has been sat with NH for the previous 6 months, on which we have had no comments or response.

NH have had more than sufficient time to address all matters, we would note that it is not currently for DTP to provide further information on these matters, it is in fact for NH to comment on all highways matters with regard to the proposals.

Overall, it is concluded that the additional matters raised by NH in the latest response is another fundamental change of position with respect to the application. Despite this, it is considered that each of the matters have been addressed in detail above. It is again reiterated that the behaviour of NH during this application has been noted as unreasonable and an appeal for non-determination of this application will be sought if NH continue to maintain their holding objection in light of the information set out above.

Yours Sincerely,



Dr Jordan Bell
PhD, MSc, BSc (Hons), MTPS, AMCIHT
Senior Transport Project Manager
Dynamic Transport Planning Ltd.

Enclosed:
Proposed Site Layout Plan



REVISIONS	CUSTOMER	WELCOME BREAK
	PROJECT	WELCOME BREAK
		LAND OFF THE A5
		HINCKLEY, LE10 3JB
		PROPOSED SITE
	DATE	12.07.2023
	SCALE	1:500 @ A1
	NOB ID	1415
	NOB	260

Key

- Ownership boundary
- Site boundary
- Site Area 41,340.02sqm / 10.38ac
- Blimes roof finish
- Blimes path finish
- Concrete pavours
- Concrete
- Concrete Apron
- Concrete Kerb
- Double reinforced concrete to deliver standard delivery
- Kerb
- Pin Kerb
- Turf Kerb
- Drop Kerb
- Stainless steel ballast
- Soft Landscaping
- Tree to be removed
- BWR Root Protection Area
- Tactile paving
- New LPS 1175 SR2 rated kerbside kerb height 2.0m
- 18mm timber close boarded fence
- 2.2m timber acoustic fence as proposed by the Noise Impact Assessment
- Painted / stained timber post and rail fence
- Suggested drainage route from Title Plan LT15479
- Non illuminated signage
- Non illuminated sign NO ENTRY / ONE WAY
- Proposed Level

