

**National Highways: A303 Amesbury to
Berwick Down Project, Development
Consent Order Application**

Scheme Reference: TR010025

Any Other Matters

**Response to Secretary of State's call for further
representations on his Statement of Matters
Bullet Point 5**

for

**The Stonehenge Alliance
(Reference No. 2001870)**

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4 April 2022

Response to Secretary of State’s call for further representations on his Statement of Matters Bullet Point 5: Any Other Matters

Introduction

With respect to issues considered under this heading, we refer to paragraph numbers in NH’s response, prefixed by “NH 1.5” unless otherwise indicated. As recognized by NH, two significant matters have arisen since November 2020: the 2021 Decision of the WHC and the outcome of the legal challenge to the Decision made by the SoS. Both matters are referred to in our comments below.

1. World Heritage Committee (WHC) [Decision 44 COM 7.B.61](#)

1.1. The Applicant states, in [NH 1.5](#), para. 1.2.6, that

‘the WHC is not a decision-making body set up to determine whether developments around the world are acceptable or not. Consequently, the views of the WHC should be treated as the views of a consultee, to be given appropriate weight by a decision maker.’

And, in para. 1.2.14, the Applicant states that ‘consenting of the Scheme would not justify inscription of the WHS on the List of World Heritage in Danger.’

The Applicant misunderstands the function of the WHC which is the *only* body which decides whether a WHS has integrity, authenticity and OUV, and whether inscription on the list of WH in Danger is justified. If the WHC should decide that a WHS has lost any of the relevant qualities, it can withdraw the WHS designation; it has threatened to do so in the present case, should the Scheme proceed unaltered. The UK Government has an obligation, under the WH Convention and the planning policy framework, to protect the WHS and its setting and thus not to jeopardize its designation. The WHC has indicated that the Scheme would lead to HMG not meeting that obligation. The WHC is, in this instance, a key consultee *and* decision-maker to whose views great weight must be given, as indicated in the [High Court Judgement](#) at para. 281:

‘ . . . the western cutting has attracted strong criticism from the WHC and interested parties at the Examination, as well as in findings by the Panel which the SST has accepted. These criticisms are reinforced by the protection given to the WHS by the objectives of Articles 4 and 5 of the Convention, the more specific heritage policies contained in the NPSNN and by regulation 3 of the 2010 Regulations.’

1.2. The Applicant states in NH 1.5, para.1.2.7,

‘The Scheme seeks to avoid and minimise adverse impacts on the Attributes that convey the OUV of the WHS, its Integrity and Authenticity, wherever possible, and to sustain the OUV of the WHS.’

And, in paras.1.2.13 and 1.2.14, points to the conclusion of its HIA that:

‘the Scheme would not impact upon the continuing relevance and application of the WHS inscription criteria.’

Critically, in the opinion of the WHC the Scheme does not sufficiently achieve these aims.

1.3. We address the issue of the longer tunnel options referred to by the WHC in our response to NH document *Response to Bullet Point 1 – Alternatives (Document reference: Redetermination - 1.1)*. However, we re-emphasise here, that NH has refused to take into account the Secretary of State’s damning conclusions on the heritage impact of the new road: these are listed at the Appendix to this submission. In this document (Redetermination - 1.5) and in its alternatives assessment, NH makes its submissions on the basis that there will be an overall benefit for the WHS. That is not what was found by the Secretary of State who found permanent and irreversible harm. There is no new evidence to discount or decrease the level of harm found, in fact recent evidence (as set out in the Appendix to this submission) makes clear that the harm was under-estimated by the Secretary of State. The fact that NH fails to engage with the Secretary of State’s findings demonstrates that its updated information is not fit for purpose.

1.4. The Applicant, in NH 1.5, para. 1.2.12, sees an ongoing opportunity for engagement ‘in regard to the Scheme and its impact on the OUV of the WHS’ between National Highways, the WHC and the WH Centre and its advisory bodies. We note, however, that item 10 of the [WHC’s Decision](#) states:

‘Notes furthermore the State Party’s commitment to ongoing engagement with the Committee, the World Heritage Centre, and ICOMOS, but also considers that it is unclear what might be achieved by further engagement unless and until the design is fundamentally amended’

Lack of fundamental amendment to the Scheme casts doubt on the likelihood of worthwhile ongoing engagement between National Highways and UNESCO bodies and advisers.

1.5. The Applicant, in NH 1.5, para. 1.2.14, states that the SoS did not find substantial harm. However, it fails to acknowledge the many and various damning findings of the Secretary of State (listed at Appendix, below), not least,

‘. . . the SST accepted the specific findings of the Panel on the harm to the settings of designated heritage assets (e.g. scheduled ancient monuments) that would be caused by the western cutting in the proposed scheme. He also accepted the Panel’s specific findings that OUV attributes, integrity and authenticity of the WHS would be harmed by that proposal. The Panel concluded that that overall impact would be “significantly adverse”, the SST repeated that (DL 28) and did not disagree . . .’ (High Court Judgment, para. 279

1.6. In respect of the Applicant’s position concerning a potential breach of the WH Convention as set out in NH 1.5, para. 1.2.15, we make the following comments.

1.6.1. Para. 217 of the High Court Judgement correctly states that

‘the SST was entitled to decide that the policy approach in paragraphs 5.133 and 5.134 of the NPSNN (read together with the surrounding paragraphs) is compliant with the Convention.’

The same paragraph continues:

‘That is a tenable view. If I had to decide the point of construction for myself, I would still conclude that those policies are compliant with the Convention . . .’.

The fact that NPSNN policies are compliant with the Convention, however, does not mean that there is no breach of the Convention in this case. Nor, does it mean that the WHC will not downgrade the status of the WHS. In fact, all of their recent decisions indicate or make clear that to go ahead with the scheme presents a serious risk that the WHS will be placed on the list of ‘world heritage in danger’. This is what happened to the Liverpool WHS before its world heritage status was finally removed. We refer again to the High Court Judgement at para. 281 (quoted above under our 1.1, above):

‘. . . the western cutting has attracted strong criticism from the WHC and interested parties at the Examination, as well as in findings by the Panel which the SST has accepted. These criticisms are reinforced by the protection given to the WHS by the objectives of Articles 4 and 5 of the Convention, the more specific heritage policies contained in the NPSNN and by regulation 3 of the 2010 Regulations.’

1.6.2. The Applicant refers to para. 220 of the High Court Judgement but apparently fails fully to take note of the final sentence:

‘I also note that in its Guidance on Heritage Impact Assessments for Cultural World Heritage Properties, ICOMOS accepts that a balance may be drawn between the "public benefit" of a proposed change and adverse impacts on a WHS (para. 2-1-5).’

The guidance is that a balance may be drawn, but only between *public benefit* and adverse impacts on a WHS. In relation to this Scheme the public benefit is heavily outweighed by the adverse impacts upon the WHS and other heritage assets.

1.6.3. The High Court Judgement goes on to state, at para. 282:

‘. . . this is not a case where no harm would be caused to heritage assets (see Bramshill at [78]). The SST proceeded on the basis that the heritage benefits of the scheme, in particular the benefits to the OUV of the WHS, did not outweigh the harm that would be caused to heritage assets. The scheme would not produce an overall net benefit for the WHS. In that sense, it is not acceptable per se. The acceptability of the scheme depended upon the SST deciding that the heritage harm (and in the overall balancing exercise all disbenefits) were outweighed by the need for the new road and all its other benefits. This case fell fairly and squarely within the exceptional category of cases identified in, for example, Trusthouse Forte, where

an assessment of relevant alternatives to the western cutting was required (see [269] above).'

And at paras. 283–4:

'283. The submission of Mr. Strachan QC that the SST has decided that the proposed scheme is "acceptable" so that the general principle applies that alternatives are irrelevant is untenable. The case law makes it clear that that principle does not apply where the scheme proposed would cause significant planning harm, as here, and the grant of consent depends upon its adverse impacts being outweighed by need and other benefits (as in para. 5.134 of the NPSNN).

284. I reach that conclusion without having to rely upon the points on which the claimant has succeeded under ground 1(iv). But the additional effect of that legal error is that the planning balance was not struck lawfully and so, for that separate reason, the basis upon which Mr. Strachan QC says that the SST found the scheme to be acceptable collapses.'

It is primarily for these reasons that ground 5(ii) of the legal challenge was upheld and the SoS's Decision to approve the Scheme was found to be unlawful.

1.7. In view of these findings by the Secretary of State, it would be a matter of some interest to learn whether Historic England and the National Trust remain of the opinion that there would be overall benefit to the WHS as a result of the Scheme.

1.8. The Applicant, in its discussion of this matter, has failed to point out that the WHC warned in its 2021 Decision that, should the DCO be granted, there could be inscription on the List of World Heritage in Danger and potential loss of WH status for the WHS. This would include Avebury, the other part of the same WHS. The relevant Items of the Decision are:

'11. Regrets that the Development Consent Order (DCO) has been granted for the scheme; and therefore, further considers in conformity with Paragraph 179 of the Operational Guidelines that the approved A303 improvement scheme is a potential threat to the property, which - if implemented - could have deleterious effects on its inherent characteristics, notably to its integrity;

12. Notes moreover that in the event that DCO consent was confirmed by the High Court, the property warrants the inscription on the List of World Heritage in Danger;'

The DCO was quashed by the High Court. Nevertheless, the WHC's threat of placing the WHS on the List of WH in Danger continues should the SoS grant a DCO following redetermination. Without fundamental amendment, the Scheme poses a major threat to a heritage asset of the highest significance in NPSNN terms. That the WHC is capable of and willing to remove WHS status is underlined by loss of status for Liverpool Maritime Mercantile City WHS in 2021: a major disgrace for the UK Government.

Appendix

Findings of the Secretary of State concerning the Proposed Scheme

In short, the Secretary of State has found:

- a. The Scheme represents ‘the greatest physical change to the Stonehenge landscape in 6000 years and a change which would be permanent and irreversible, unlike a road constructed on the surface of the land’ (para 258 of the High Court Judgment and para 5.7.225 ExAR and adopted by SoS at his Decision Letter (DL)[10]);
- b. The overall impact to the WHS (i.e. once benefits have also been taken into account) would be ‘significantly adverse’ (para 279 High Court Judgment);
- c. The scheme would not produce an overall net benefit for the WHS and, in that sense, it is not acceptable *per se* (para 282 High Court Judgment);
- d. There would be net harm to OUV attributes, integrity and authenticity of the WHS (para 285 High Court Judgment);
- e. Attributes (3), (5) and (6) of the OUV would suffer ‘major harm’ (para 97 High Court Judgment and ExAR 5.7.227-229 and adopted by SoS at DL[10]);
- f. ‘Irreversible harm would occur, affecting the criteria for which the Stonehenge, Avebury and Associated World Heritage Site was inscribed on the World Heritage List’ (PR 5.7.326 cited at para 103 High Court Judgment)
- g. The Longbarrow Junction falls firmly within the settings of the WHS as a whole and of asset groups 12 and 13 (ExAR 5.7.241). Seen from above, the Longbarrow Junction would ‘dwarf all other individual features, including the Stones’ (ExAR 5.7.243 and adopted by SoS at DL[10]). Further its broad geometric outlines would be evident at surface level and would ‘appear at odds with the surrounding smaller scale morphology of rectilinear fields and small groupings of traditional buildings’ (ExAR 5.7.224 and adopted by SoS at DL[10])
- h. ‘The Junction, together with the cutting leading to the western portal, represents a single, very large, continuous civil engineering undertaking, spanning the western boundary of the WHS. Given the arbitrary nature of the boundary and the underlying expansive and unified character of the cultural landscape, the junction would have effects on the OUV similar to those described for the cutting and western portal.’ (ExAR 5.7.245 and adopted by SoS at DL[10])

- i. 'The harm [caused by the Longbarrow Junction] reflects that caused by the cutting on the OUV, including a continuation of the harm to the Wilsford/Normanton dry valley. Also, the harm to the overall assembly of monuments, sites, and landscape through major excavations and civil engineering works, of a scale not seen before at Stonehenge. Whilst the existing roads could be removed at any time, should a satisfactory scheme be put forward, leaving little permanent effect on the cultural heritage of the Stonehenge landscape, the effects of the proposed junction would be irreversible.' (ExAR 5.7.247 and adopted by SoS at DL[10])
- j. The OUV of the WHS would be harmed by 'potentially serious loss of assets...because of the civil engineering excavation works' (ExAR 5.7.308 and adopted by SoS at DL[10])
- k. The Secretary of State has 'serious concerns regarding the effects of elements of the Proposed Development on the OUV of the WHS, and on the cultural heritage and the historic environment of the wider area' (ExAR 5.7.207 and adopted by SoS at DL[10])
- l. The western part of the WHS would be 'seriously disturbed by the intervention of the cutting and the western portal' (ExAR 5.7.217 and adopted by SoS at DL[10]);
- m. The presence and scale of the cutting would be much greater than shown in Highways England's 'Western Cutting Zone of Theoretical Visibility study' [REP7-025] (ExAR 5.7.223 and adopted by SoS at DL[10])
- n. Whilst much harm arises from the effect of existing roads including the A303 'the roads could be removed at any time, should a satisfactory scheme be put forward, just as the A344 was removed, leaving little permanent effect on the cultural heritage of the Stonehenge landscape.' (ExAR 5.7.224 and adopted by SoS at DL[10])
- o. The eastern portal and cutting would 'harm the landscape values of the OUV. In addition, the Countess barrows would be a little nearer the line of the road than at present, having a slight negative effect on the OUV. However, the main danger to Blick Mead would be harm or loss to Mesolithic remains through changes in patterns of ground water, which could give rise to enormous damage...' (ExAR 5.7.256 and adopted by SoS at DL[10])
- p. The Secretary of State found the following overall effects to each of the OUV attributes (ExAR 5.7.307-313 and adopted by SoS at DL[10]):

Attribute 1: Stonehenge itself as a globally famous and iconic monument.
The tunnel would remove the intrusion of trunk road traffic, allow partial reunification of the WHS, and reconnection of the Avenue. However, the

recognised importance of Stonehenge would suffer were the major permanent and irreversible engineering works proposed to take place within the WHS and its setting.

Attribute 2: The physical remains of the Neolithic and Bronze Age funerary and ceremonial monuments and associated sites. The tunnel would allow preservation of the monuments and sites under which it would pass and prevent any further traffic damage arising from the surface roads. However, potentially serious loss of assets could occur because of the civil engineering excavation works.

Attribute 3: The siting of Neolithic and Bronze Age funerary and ceremonial sites and monuments in relation to the landscape. The removal of the existing road would enhance the settings of sites and monuments, reunify much of the landscape, and reunite the Avenue. However, this would be at the expense of the intervention of major engineering works in the Wilford/Normanton dry valley, both within and to the west of the WHS, which would irreversibly harm the landscape of the WHS including the settings of monuments either side of the valley, the site of the Early Bronze Age route to Stonehenge, flanked by significant arrays of monuments, as well as the wider setting of the landscape.

Attribute 4: The design of Neolithic and Bronze age funerary and ceremonial sites and monuments in relation to the skies and astronomy. The Proposed Development would enhance this Attribute through the removal of surface traffic and light pollution which can interfere with appreciation of solstice events and the night sky.

Attribute 5: The siting of Neolithic and Bronze Age funerary and ceremonial sites and monuments in relation to each other. The removal of the road would lead to the reunification of much of the landscape, to an extent restoring the relationships of sites and monuments to each other. However, this would be at the expense of much more fundamental spatial severance and visual disturbance to the relationship of monument groups either side of the Wilford/Normanton dry valley, and the significant space they create between them, and to the setting of the WHS as a whole caused by the intervention of the Longbarrow Junction.

Attribute 6: The disposition, physical remains and settings of the key Neolithic and Bronze Age funerary, ceremonial and other monuments and sites of the period, which together form a landscape without parallel. The removal of the road and the reunification of much of the landscape, together with the reconnection of the Avenue, would benefit aspects of the landscape assembly of sites, monuments and their interrelationships, whilst the associated engineering works would substantially harm other aspects. In the ExA's view, the benefits would not outweigh the harm arising from the excavation of a deep, wide cutting and other engineering works, within the WHS and its setting, of a scale and nature not previously experienced historically in this 'landscape without parallel'.

Attribute 7: The influence of the remains of Neolithic and Bronze Age funerary and ceremonial monuments and their landscape settings on architects, artists, historians, archaeologists and others. Whilst the present road intrusion would be removed, in the ExA's view, the aesthetic and spiritual damage would be profound and irreversible.

- q. With regards to integrity the Secretary of State found that the proposed development would compromise the opportunity to enhance the integrity or intactness of the WHS 'because of the location of the Longbarrow Junction, an extremely large engineering structure alien to the WHS OUV, at or near an area which might be integrated into the WHS. This would be in addition to the harm to integrity arising from the continuation of the Junction's road system as a cutting into the WHS, introducing irreparable spatial division and harming understanding, into the WHS.' (5.7.315 ExAR and adopted by SoS at DL[10])
- r. With regards to authenticity the Secretary of State found:
- 'The authenticity of the WHS would be enhanced by the removal of the surface roads which confuse its ability to clearly and credibly express its cultural values through the attributes noted. However, the Proposed Development would bring a deeper and permanent confusion, through fundamentally altering the assembly which conveys understanding of the historic use of the landscape and its relationships of location and setting, and would thereby inhibit access to the spirit and feeling of the WHS.' (ExAR 5.7.319 and adopted by SoS at DL[10])
- 'The Proposed Development would seriously harm the authenticity of the WHS.' (ExAR 5.7.320 and adopted by SoS at DL[10])
- s. Overall the Secretary of State found:
- 'The Proposed Development would benefit the OUV in certain valuable respects, especially relevant to our present generation. However, permanent irreversible harm, critical to the OUV would also occur, affecting not only our own, but future generations. The benefits to the OUV would not be capable of offsetting this harm. The overall effect on the WHS OUV would be significantly adverse.' (ExAR 5.7.321 and adopted by SoS at DL[10])

