

# Norwich Western Link – Planning Application

## Norfolk County Council Handling Arrangements (P08 – January 2024)

### 1. Background and Introduction

- 1.1 Norfolk County Council is both the Highway Authority and a Local Planning Authority (“LPA”) for its area. As Highway Authority it is the promoter of the Norwich Western Link (“NWL”) project and it follows that the application for planning permission will be made and pursued by the County Council.
- 1.2 Section 316(6) of the Town and Country Planning Act 1990 (“1990 Act”) defines “interested planning authority”, in relation to any land, as “any body which exercises any of the functions of a local planning authority in relation to that land”. So the County Council is an interested planning authority in relation to the land comprised in the NWL. Regulation 3 of the Town and Country Planning General Regulations 1992, as amended (“the 1992 Regulations”), requires that planning applications for planning permission to develop any land of that interested planning authority are to be determined by that authority (unless the application is referred to the Secretary of State under section 77 of the 1990 Act for determination by him). This applies where the relevant land is in that authority’s administrative area, irrespective of whether the Council owns the land, or whether it will carry out the development alone or jointly with one or more partners.
- 1.3 The planning application for the NWL project will therefore be both made and decided by the County Council.
- 1.4 Following environmental impact assessment (“EIA”) screening, the planning application for the NWL will also be ‘EIA Development’ for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”), meaning that it will be the subject of an Environmental Impact Assessment.
- 1.5 Under Regulation 64(2) of the EIA Regulations, where an LPA brings forward a proposal for development and that authority will also be responsible for determining its own proposal, it must make appropriate administrative arrangements to ensure there is a functional separation, where performing any duty under the EIA Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal.

### 2. Statement of Intent

- 2.1 In this context it is essential that there is clear separation of the Highway Authority, applicant role (“the Applicant”) and the Local Planning Authority role (“the Authority”). Basic provision is made by Regulation 10 of the 1992 Regulations, which requires that where a committee, sub-committee or officer is at all involved in management of any land or buildings to which the application relates, they must not decide the application.

The NWL is a complex project, and these basic safeguards need to be supplemented by clear and comprehensive administrative arrangements (“Handling Arrangements”) which will govern all stages of the process in accordance with the requirements of the EIA Regulations to ensure the separation of functions between the Applicant and the Authority in relation to the NWL, thereby safeguarding the independence and objectivity of decisions made by the Authority in connection with the planning application for the NWL.

- 2.2 Independence and objectivity in this context do not require separate legal personality, full self-administration or a ring-fenced budget.
- 2.3 The appropriate objective is therefore not to prohibit communication between the Applicant and Authority, as dialogue and discussion is a necessary and desirable element of assessment of the planning application for any major development. Instead, the objective is that communication and responsibilities are effectively managed to ensure that the integrity and effectiveness of the planning process is not compromised. Provision also needs to be made in relation to other County Council functions which may need to provide advice, comments or other services to both the Applicant and the Authority
- 2.4 Appropriate Handling Arrangements therefore need to be in place to ensure that:
- 1) The functions of the Authority are undertaken by identified persons with the necessary resources and acting impartially and objectively;
  - 2) Any person acting for or assisting the Authority in the handling of the planning application for the NWL is not involved in promoting or assisting in the promotion of the NWL planning application for the Applicant;
  - 3) Any person involved in promoting or assisting in the promotion of the planning application for the NWL does not give any instructions to, or put any pressure upon, any person acting or assisting in the handling of the planning application for the NWL, or attempt to do so; and
  - 4) Discussion or communication about the planning application for the NWL between persons acting for or assisting (a) the Authority, in its handling of the application, and (b) the Applicant, in its promotion of the application, and between persons acting for or assisting or (c) the Authority and the Applicant in their respective functions and (d) any other member of the Project, do not take place, otherwise than in accordance with these Handling Arrangements.
- 2.5 This note therefore describes the detailed Handling Arrangements that are in place to secure the above objective. It should be noted that the requirements at paragraphs 4.13 to 4.20 which apply to officers and project teams also apply to any consultants and contractors engaged by either the Applicant or the Authority.

### **3. Permissible Practical Arrangements**

- 3.1 These Handling Arrangements do not prevent discussion or communication:
- 3.1.1 About the planning application for the NWL, between the Authority and the Applicant, through the formal channels appropriate to the planning application process. These include, but are not limited to, the terms of any Planning Performance Agreement; pre-application meetings or correspondence; screening and scoping for the purpose of the EIA Regulations; post-application submission meetings or correspondence to discuss and agree actions in respect of responses received through publicity and consultation; and post-submission meetings or correspondence to progress planning

conditions or s106 obligations, in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 and other relevant legislation. They are in place to help ensure that all discussion or communication between the Authority and the Applicant take place in a way which respects the functional separation between the Applicant and the Authority and safeguards the independence and objectivity of the Authority's decision making.

- 3.1.2 Between the Authority and / or the Applicant and other members of the Council for factual reporting or programming purposes, for example, to report on the timings for and progress of the planning application for the NWL. They also do not prevent such discussion or communication as is necessary to inform any executive or non-executive decisions by the Council directly or indirectly in connection with the plans or proposals for the Project, which decisions are separate and distinct from the Authority 's determination of the planning application for the Project.
- 3.1.3 In the performance of ordinary staff management functions at the Council, subject to the safeguards set out in these Handling Arrangements.
- 3.2 Planning (Regulatory) Committee members shall be mindful of the guidance set out in the Planning Advisory Service publication "*Probity In Planning – Advice for councillors and officers making planning decisions*" and "*Openness and transparency on personal interests*" published by the Ministry for Housing, Communities and Local Government. Project Board Members for the NWL application will not sit as members of the planning Committee?
- 3.3 Nothing in these Handling Arrangements shall fetter the performance of the Authority's statutory functions or the public's access to information on the plans or proposals for the Project, in accordance with the Freedom of Information Act 2000 or Environmental Information Regulations 2004 or other relevant legislation.

## **4. The NWL Handling Arrangements**

- 4.1 This note sets out the practical arrangements that the Council has put in place to ensure a functional separation between the Applicant and the Authority, in connection with the planning application for the NWL. Amongst other things, this helps ensure that there is a clear process for handling the Application, which minimises the risk of potential conflict of interest or undue influence, or any perception of such, and thereby safeguards the independence and objectivity of the Authority's decision-making.
- 4.2 The Applicant's project team and the Authority's planning team are each answerable to a different Director. The Director for Culture and Heritage, supported by the Head of Planning, oversees the Authority's functions. The Director for Highways, Transport and Waste, supported by the Infrastructure Delivery Manager, oversees the Applicant's functions.
- 4.3 Both Directors ordinarily report to the Executive Director of Community and Environmental Services. However, the determination of planning applications under the Town and Country Planning Act is a non-executive function and is thus the responsibility of the Planning (Regulatory) Committee in circumstances where the Council's constitution specifies that determination is not to be made by officers. These circumstances include receipt of specified types and numbers of objections, and the need for an Environmental Statement. The practical reality for the NWL is that (unless the planning application is called in by the Secretary of State) planning permission for the NWL may only be granted by means of a Decision Notice issued and signed by the

Head of Planning, pursuant to a recommendation by the Planning (Regulatory) Committee to grant planning permission.

- 4.4 Other elements of the Authority's role (e.g., seeking additional information where required, preparation of reports) are delegated to the Executive Director, but also to the Head of Planning Services, together with their senior officers and line manager. The constitution leaves to officer discretion to determine which delegated officer will exercise a power in relation to a given matter. In relation to the NWL the Executive Director of Community and Environmental Services will not exercise Authority functions. These will be undertaken by the Director of Culture and Heritage (at the time of writing, Steve Miller) instead. As a result of these Handling Arrangements the separate functions and responsibilities of the Authority and the Applicant in relation to the NWL will be kept distinct and independent from each other.
- 4.5 Officers from other teams within the Council and external parties will provide technical advice/support to the Applicant and the Authority, separately.
- 4.6 To ensure it is clear whether advice/support is being given as a consultee to the Authority or to the Applicant Project team developing the NWL, specific officers within those teams and the Council function they represent are listed in Table 1 below; and external parties are set out in Table 2.

**Table 1 – Officer Advisors**

Discipline	Advising the Authority Team A	Advising the Applicant Team C
Highways	Liz Poole	Ian Parkes
Natural Environment – Landscape	Emily Smith	no data
Natural Environment – Trees	AT Combs, Andy Coombes, Gavin Combes	no data
Natural Environment - Ecology	Samuel Demmen-Sewell	no data
Natural Environment - Ecology	Martin Horlock	no data
Historic Environment	John Percival	no data
Lead Local Flood Authority	Sarah Luff	no data
Public Rights of Way	Sarah Leece	no data
Climate Change	Dominic Allen	no data
Public Health	Jane Locke	no data
Resilience	Richard Cook	no data
Economic Development	Roberta Willner	no data
Gypsy and Roma Traveller Service	John Cross	no data
Norfolk Fire and Rescue	Tim Allison	no data
Planning	Nick Johnson	no data
Environment	Wendy Brooks	no data
Planning Policy	Caroline Jeffrey	no data
Planning Development Management	Michael Zieja	no data
Planning Services	Mark Annetts	no data
Legal	Rachel Garwood	Jodie Cunnington-Brock

**Table 2 – External Advisors**

Discipline	Advising the Authority Team B	Advising the Applicant Team D
Engineering Design	no data	WSP, Ferrovia Construction
Environmental	no data	WSP, Aspect Ecology, Ferrovia Construction
Legal	Landmark Chambers	Pinsent Masons LLP Cornerstone Barristers

- 4.7 The Applicant and the Authority may at any time substitute or add additional County officers or external advisors (who may be officers, or a consultant or contractor engaged, separately by each the Applicant or the Authority where appropriate). Any substitution or addition will be communicated to the appropriate contact (see para 4.22) and Tables 1 and 2 updated accordingly.
- 4.8 The **Appendix** to this note sets out the details for the external persons acting for or assisting the Authority and the Applicant, respectively. These details have been redacted for data protection reasons.
- 4.9 For the purposes of this note, the persons identified in groups A and B act on behalf of **the Authority**. The persons identified in groups C and D act for **the Applicant**. Persons acting for the Authority and persons acting for the Applicant are entitled to receive information on the planning application for the NWL in order to perform their respective roles and responsibilities.
- 4.10 In correspondence or when attending meetings, officers should be clear whether they are advising/representing the Applicant or the Authority. This includes those named in Table 1, as well as any officers or advisors team members and Assistant Directors. Any discussion or communication between the Authority team and the Applicant team shall only be carried out to the extent permitted by these Handling Arrangements.
- 4.11 Any officer providing technical advice or support to the Authority, will not have assisted the Applicant in preparing the application. Similarly, any officer providing advice or support to the Applicant will not have had prior involvement in the assessment of the NWL for planning purposes by the Authority. Furthermore, no person on the Applicant team shall be involved in the casework or decision-making in connection with the planning application for the NWL. No person on the Authority team shall be involved in promoting the planning application for the NWL.
- 4.12 Information on the planning application for the NWL may not, except with express authority of Adrian Thompson Assistant Director of Finance (Audit) be disclosed to or discussed with any person not on the list of persons to whom such information can be disclosed. Any authorisation must comply with Regulation 64(2) of the EIA Regulations and must require any authorised person discussing or receiving such information to comply with that Regulation and these Handling Arrangements.

### Detailed Handling Arrangements

- 4.13 These Handling Arrangements shall be publicly available, subject to any personal details redacted as appropriate for data protection reasons.
- 4.14 Each person on the Applicant team and on the Authority team shall be provided with a copy of these Handling Arrangements and receive a briefing on their content.
- 4.15 These Handling Arrangements shall be recirculated to the Applicant team and the Authority team annually, or earlier where there is a material amendment or update. The publicly available version will be kept under review on the same basis.
- 4.16 The Government's National Planning Policy Framework advises that "Local planning authorities should approach decisions on proposed development in a positive and creative way" and "work proactively with applicants". This advice applies to all developments and to secure an effective and efficient process:
- (a) the Applicant may seek the views of Authority officers through formal pre-application discussions,
  - (b) the Authority's officers may seek further information or clarification on any appropriate matter arising from the application, and
  - (c) officers of the Authority and the Applicant may engage in discussion and negotiation of the application (including amendments where appropriate).
- 4.17 In doing so, information shall be shared on the following basis:
- Information can be shared orally or in writing.
  - Written information can take the form of words or images (maps, plans, drawings, photos etc.);
  - Written information includes information shared electronically (by e-mail, data sharing or information exchange platforms, social media etc.);
  - All information on the planning application for the NWL shall be shared between the Applicant team and the Authority team through the formal channels appropriate to the planning application process. Discussion or other communication about the merits of the planning application for the NWL shall not take place between the Applicant team and the Authority team (or with other members of the Council) outside of the parameters set out in these Handling Arrangements.
  - In respect of written information, persons on the Applicant team and the Authority team shall clearly identify the intended recipient of the information. This can be done, for example, by marking the information for the attention of the Applicant team / Authority team, as applicable.
- 4.18 The Applicant will maintain secure electronic and paper filing systems which can only be accessed by the Applicant's project team.
- 4.19 The Authority will maintain a secure electronic and paper filing system which can only be accessed by the Authority's planning team.<sup>1</sup>

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<sup>1</sup> Once a valid application has been submitted the County council will publish the application, supporting documents and comments received in response to public consultations on the Norfolk County Council web site. The

- 4.20 The Council maintains a list of every person working on the planning application for the NWL on the Applicant's team and on the Authority's team, respectively, including date of assignment to the task and, where appropriate, date of leaving the task.
- 4.21 Members of the Applicant team and the Authority team shall report to Adrian Thompson Assistant Director of Finance (Audit) on the performance of the practical Handling Arrangements set out in this note. Where improvements are identified as reasonably necessary to secure the outcomes identified in the Statement of Intent, the Council shall take all reasonable steps to implement these amended or additional measures as soon as reasonably practicable.
- 4.22 Day to day contact between the Applicant's project team and the Authority's planning team will wherever possible be through named individuals. The Authority named persons are Angelina Lambert and Andrew Sierakowski and the Applicant named persons are Mark Kemp and John Leggett. Substitutes and/or alternative contacts may be notified at any time.
- 4.23 These Handling Arrangements will apply to the pre-application and application process, and the discharge of any requirements of the Town and Country Planning Act 1990 or related matters (including the requirements of EU Environmental Directives incorporated into UK law), and any discharge of conditions (or post-decision amendment applications) if permission is granted for the project.

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application will also be added to Planning Register held by Broadland District Council.

## Appendix

Named external individuals acting for or assisting the Authority or the Applicant in their respective functions, including task allocation, date of assignment and date of leaving the task (as appropriate)

### Authority Team (Group B)

<b>Name</b>	<b>Task</b>	<b>Date of Assignment / Leaving Task</b>
Andrew Sierakowski	Planning Application Case Officer	Not applicable
Neil Cameron KC (Landmark Chambers)	Counsel	Not applicable

### Applicant Team (Group D)

<b>Name</b>	<b>Task</b>	<b>Date of Assignment / Leaving Task</b>
Ralp Lewis (WSP)	Planning	Not applicable
John Leggett (WSP)	Consenting and Project Manager	Not applicable

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