

CLARE HALL, CAMBRIDGE

OBJ-213

Post-roundtable note to Inspectors on the applicant's Environmental Statement

1. Introduction

- a. The purpose of this note is to assist the applicant in determining whether to provide further environmental information voluntarily under Rule 17(6) of the Transport and Works (Applications and Objection Procedure) (England and Wales) Rules 2006 ('the Rules') and, in the absence of any further information from the applicant, to assist the Inspectors in making a determination as to whether to exercise their powers under Rule 17(1) or (2) to request such information.
- b. As indicated during the round-table session on the Environmental Statement ('ES') on 16 September 2025, this note seeks to address the following matters:
 - i. The correct approach to considering whether the environmental statement or environmental information provided to the inquiry is adequate; and
 - ii. the specific areas in which Clare Hall considers the environmental information provided to date to be deficient and where further information is required to satisfy the legal requirements for an ES/EIA.
- c. In addition, this note addresses one of Clare Hall's concerns regarding the proposed changes to Article 5 to the draft Order. The Inspectors will recall that Clare Hall reserved its position in respect of this proposed change, and that one of Clare Hall's concerns related to whether the applicant's ES was prepared on the assumption that the constraint in Article 5 would be imposed. As this matter relates to the ES, we address this point at the end of this note.

2. Correct approach to adequacy of the ES and Rule 17 powers

Legal context

- d. The EIA regime distinguishes between (i) the ES, which must contain certain things in order to be a lawful ES, (ii) "further information", which is any additional information which either needs to be added to that supplied in the ES for it to constitute an ES (i.e. to meet the statutory requirements) (Rule 17(1)), or which the Secretary of State directs

the applicant to provide because it is reasonably required (Rule 17(2)), and (iii) representations made by any person about the environmental effects.

- e. All these elements constitute “EIA information” (TWA 1992 s.13A), but there are specific legal requirements that must be satisfied in respect of the ES.
- f. The key provisions in the Rules for these purposes are as follows:
 - i. Rule 11(1) which sets out a list of matters which must be included in an ES;
 - ii. Rule 11(2) which provides that an ES shall also "*include the information required for reaching a reasoned conclusion on the significant effects of the works on the environment, taking into account current knowledge and methods of assessment*"; and
 - iii. Schedule 1, noting in particular paragraphs 5(2) (assessment of any indirect and secondary effects); 6 (a description of the evidence used to assess the significant effects on the environment); and (7) (a description of mitigation measures, explaining the extent to which significant adverse effects are avoided, prevented, reduced or offset).
- g. The system makes provision for further information to be provided by an applicant where this is necessary to ensure it includes the information required for the purpose of reaching a reasoned conclusion (Rule 17). That has two aspects:
 - i. Where the opinion is formed that the ES should contain any additional information in order to constitute an ES (Rule 17(1)); and
 - ii. Where it is judged to be appropriate to require the applicant to provide such further information as may be specified concerning any matter which is required to be, or may be, dealt with in an ES (Rule 17(2)).
- h. The first aspect is a strict legal duty, triggered by a conclusion that something required by the legislation is missing and needs to be added.
- i. The second aspect is a discretionary power and can be exercised if the information is judged to be reasonably required (even if the ES would still constitute an ES without that information).

- j. Additional steps are required by Rule 17(4) where the information is supplied pursuant to a direction under (1) or (2) and may be required where the information is provided voluntarily (6).
- k. As a result of the submission of Clare Hall's evidence to the Inquiry, and the applicant's evidence, there is now much more in the way of EIA Information available to inform the decision. That is helpful and the evidence will need to be tested in the usual way. If the Inspectors at any stage form the view that what is to be found in the ES (including ESA2) falls short of what is required in the Rules then they will be subject to the duty in Rule 17(1) to direct the applicant to supply the information in question. Similarly, if the Inspectors form the view that further information should be provided, even if the ES is not legally deficient without it, they have the power to direct that it be provided.
- l. The Courts have provided some guidance on this matter, identifying the purpose of the EIA legislation as being to ensure that planning decisions which may affect the environment are made on the basis of "full information": *R v. North Yorks CC, ex p Brown* [2000] 1 AC 397 at 404D. In this context "full information" means as much knowledge as can reasonably be obtained, given the nature of the project, about its likely significant effects: *R(Rochdale MBC, ex p Milne (No. 2)* [2001] Env LR 22, at [94].
- m. The question of what is meant by "full information" was also addressed in *R (Blewett) v. Derbyshire CC* [2004] Env. L.R. 29 at [41] [CD5-34], to which the Inspectors were referred by the applicant during the roundtable session. In that case, the court observed that it is "an unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain the 'full information' about the environmental impact of a project" and that the EIA Regulations are not based upon such an unrealistic expectation. Rather:

"...They recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting "environmental information" provides the local planning authority with as full a picture as possible..."
- n. The publicity and consultation on the RES has enabled Clare Hall to identify several deficiencies or lacunae. These deficiencies can – and should – be rectified, so that the Inspectors are provided with as full a picture as possible. If such information is not

provided voluntarily, Rule 17(1) and (2) enable the Inspectors or Secretary of State to request such information from the applicant.

- o. In forming a judgment about Clare Hall's concerns in this respect, there is an important distinction to be drawn between the approach to be adopted by the Courts when considering a challenge to the lawfulness of a decision-maker's judgment that an ES is adequate, and the approach to be adopted to that question by the decision-maker themselves at the substantive decision-making stage.
 - i. It is well-established that subject to the usual *Wednesbury* principles the adequacy of an ES is a matter of planning judgment for the decision-maker.
 - ii. The Courts quite rightly adopt a restrained approach to assessing the lawfulness of the judgment reached by the decision-maker (i.e. was information capable of meeting the requirement of the EIA legislation provided (see *Blewett* at [34] and [37])).
 - iii. For the decision-maker, however, the question is (and must necessarily be) different. It is one that requires a consideration of *substantive* adequacy as a matter of an exercise of planning judgment, and not simply whether the information is "capable" of being regarded by a rational decision-maker as adequate.
- p. As Clare Hall explained during the roundtable session, it is not suggested that the ES is so deficient that it is incapable of rectification. Rather, Clare Hall is concerned that the applicant did not properly consider the significant impacts of the scheme on the college when selecting the route and has still not properly recognised and grappled with the implications of those impacts including the requirement for further mitigation. By raising these issues at the PIM, and again on the first day of the inquiry, Clare Hall is providing the applicant with an opportunity to provide this information so as to satisfy the legal requirements including the need to ensure the decision-maker has the information reasonably required to assess the likely significant effects of the proposed development.

3. Information required for the ES to be legally adequate

- q. As explained during the roundtable session on 16 September 2025, whilst in respect to reasonable alternatives and the significance of Clare Hall Grade II* listed building, Clare Hall considers that the Inspectors and Secretary of State now have a legally adequate level of environmental information, the ES remains legally inadequate in respect of the other matters discussed at the roundtable session on the ES.
- r. The deficiencies in the ES fall into two categories:
 - i. Information that is required regardless of any finding reached by the Inspectors on the evidence; and
 - ii. Information that would be required should the Inspectors prefer Clare Hall's evidence on relevant matters.
- s. Clare Hall considers it would be better if all of this information were provided at an early stage of the process. This would reduce the risk that requests for information have to be made following the hearing of evidence, should the Inspectors and/or Secretary of State decide that Clare Hall's evidence had merit on key matters.
- t. Below we outline Clare Hall's position in respect of each of the headings for which Clare Hall considers that the information provided in the ES remains legally inadequate. A list summarising the information that Clare Hall considers is necessary for the ES to be adequate is provided at the end of this document.

Assessment of likely significant effects arising from flood risk and measures proposed to avoid, prevent, reduce or offset likely significant effects

- u. Mr Sinclair's recent position statement [CD26-08-W3-3] in section 5.0 explains that there is still a lacuna in respect of information on downstream mitigation for the modelled increase in velocity, both in terms of identifying the mitigation and assessing its efficacy, and in securing the provision of such mitigation so that it can be relied on for the purposes of EIA and decision-making. That is information that should be in the ES and is required to reach a reasoned conclusion on the environmental effects.
- v. In Clare Hall's July Note [CD9-52] at [3.1] we identified a further concern as to whether the landscape and visual impact of the proposed Bin Brook bridge had been properly assessed. In response to that concern, the applicant refers to the conclusion in ESA2

[CD1-10.07] [3.1.4] and the Technical Report 8 – Landscape [CD1-11.08.1], section 1.1.2 and tables TR8-4-1 and TR8-4-3. As explained during the roundtable session, however, Clare Hall has given careful consideration to what is said in those documents and they do not answer this concern.

- w. ESA2 [CD1-10.07] [3.1.4] states that the undulating topography is “expected to limit potential adverse landscape or visual effects”, and for that reason “no likely significant effects will occur”. So far as Clare Hall has been able to discern, this is the only specific reference in the application documents to the potential landscape or visual effects of the very substantial road bridge proposed to be constructed and regularly used by buses in the open countryside at Bin Brook. Nothing further is provided by way of assessment or evidence to explain how the conclusion in ESA2 was reached, including, for example, what views were considered. Further, having looked at the documents to which the applicant’s ESA2 [CD1-10.07] refers at [3.1.5] Clare Hall’s concern remains. On investigation, the Technical Report 8 [CD1-11.08.1] appears to contain no actual assessment of the impact of the Bridge. Indeed, there are only 4 mentions of ‘Bin Brook’ in the document and none come in the context of an assessment of the landscape and visual impact of this substantial new engineered structure. As for tables TR8-4-1 and TR8-4-3, neither make any reference to the bridge at Bin Brook, although TR8-4-3 does refer to the “associated M11 overbridge” (the other bridge referred to as a “main element” of the Scheme in section 1.1.2). The identified lacuna remains.
- x. As explained above, the decision-maker must form a planning judgment as to whether what has been provided is – as a matter of substance – an assessment of likely significant landscape and visual impacts of this substantial piece of proposed infrastructure, and the evidence used in that assessment. Furthermore, even if it were concluded that those bare requirements are met, the decision-maker must also form a judgment as to whether this provides the Secretary of State with the information required for reaching a reasoned conclusion on the significant effects of those proposed works on the environment.

Assessment of the effects of operational noise

- y. Although the EIA note referred to the acknowledgement by the applicant as part of its own assessment that operational impacts could exceed impact thresholds, it will be apparent from its Statement of Case and the evidence of Mr Blacklock that Clare Hall’s

concerns about the adequacy of the submitted noise assessment embrace both construction and operational noise, and construction vibration (see Mr Blacklock's proof and rebuttal [**CD26-08-W4-1 and W4-3**]).

- z. In terms of construction noise, in the absence of adequate details of mitigation, Clare Hall maintains its position that this has not been addressed in a way that meets the legal requirements for EIA. There is also dispute as to the assessment of likely noise and vibration levels during construction. If Clare Hall's case is accepted, that is likely to involve a requirement for further mitigation which would need to be described, and its effects assessed.
- aa. For both construction and operational noise, the information in respect of mitigation should include an assessment of its likely effect on noise levels, so that there is full information to inform judgments by the decision-maker on the following matters:
 - i. the likely effect and efficacy of the proposed mitigation, and the acceptability of the residual noise impact;
 - ii. whether additional and/or more specific mitigation measures ought to be required and secured at this stage; and
 - iii. any adverse environmental effects associated with the likely necessary mitigation measures themselves (e.g. impact on the heritage significance of the Grade II* LB).
- bb. That is because:
 - i. the ES must include a description of mitigation measures which explains the extent to which significant adverse effects are avoided, prevented, reduced or offset (Sch. 1 to the Rules at [7]); and
 - ii. the description of likely significant effects must include not only direct effects but also those which are 'indirect' or 'secondary', which includes effects arising from the provision of mitigation measures.
- cc. In terms of operational noise, it can be seen from the written evidence that there is a debate as to whether this has been adequately assessed and/or the potential mitigation proposed (electric buses / time restrictions) are adequate.

- dd. The Inquiry now has the benefit of Clare Hall's noise evidence to supplement the assessment put forward by the applicant in the ES. Clare Hall's case is that the evidence shows that further mitigation will be needed and should be secured. In Clare Hall's Rebuttal evidence, however, it is explained that providing further mitigation here is far from straightforward because of the structure and proximity of the Listed Building and the practical and heritage issues that arise when considering possible additional mitigation (Blacklock Rebuttal [CD26-08-W4-3] at [3.39]-[3.44]). If the Inspectors accept that more mitigation is needed, the ES will need to be supplemented to address those matters and the likely effects (positive and negative) of the relevant measures.
- ee. Therefore, the key concerns raised in Clare Hall's Note [CD9-52] about the assessment of noise impact remain.

Assessment of in combination effects

- ff. Clare Hall's concern reflects the requirement in Rule 7A of the Rules that the EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed works on factors including population and human health; land; material assets, cultural heritage and the landscape; and the interaction between those factors (Rule 7A(2)).
- gg. That requires a holistic approach to assessing the interaction between the key impacts on Clare Hall, including in particular noise, landscape and visual impacts, the way these will interact to adversely affect the functioning of Clare Hall as an academic institution and the impacts on the significance of Clare Hall as a heritage asset where its significance reflects the fact it is a nationally important architectural response to the physical and functional requirements of an academic institution of this specific type in this specific environment.
- hh. In ESA2 the applicant refers to the assessment of socio-economic receptors in Technical Report 4 [CD1-11.04] and Table TR4-3-2, but (a) the description of receptors considered in that Table does not on its face include Clare Hall, and (b) there is nowhere in the ES where these various effects are brought together and considered holistically. Not only is that a failure to satisfy the legal requirements for an ES, it also simply fails to reflect the obvious interaction between say the noise and visual impact of passing buses.

- ii. Importantly, Clare Hall’s ongoing success as an academic institution of significant public interest importance also relies on its ability to service, maintain and further develop the college. The impact of the proposals on its ability to achieve that is explained in CH’s evidence, but it is missing from the ES and not adequately addressed in ESA2.
- jj. The applicant’s evidential response to those concerns about access is inconsistent as between different witnesses: Mr Baker says only rights currently enjoyed will be offered (Baker Rebuttal [CD26-01-APP-W1-4] [8.9.41]), but Mr Lonergan says construction access “will be allowed in line with any planning consent” (Lonergan Rebuttal [CD26-01-APP-W8-4] [3.4.2(g)]). As matters stand no agreement has been offered or reached that would secure the access Clare Hall plainly needs for these purposes. That has two main implications for the adequacy of the ES:
 - i. the adverse effect on Clare Hall as a socio-economic receptor of high public importance of compromising this critically important means of access has not been assessed in the ES either alone or in-combination with the other effects on its function and ongoing success; and
 - ii. the practical implications of such access with the scheme in place and operation (if in due course it is secured) have not been assessed. Those implications could include, for example, highway safety and impact on the operation of the buses.
- kk. The applicant’s assessment fails to recognise or grapple with those points. In part this is to do with the shortcomings of its assessment of effects by reference to the individual topics but more generally it reflects a failure adequately to consider the issue of interaction of effects.
- ll. Again, if Clare Hall’s evidence as to the need for further noise mitigation measures is accepted, the interactions would require further assessment than is to be found even in CH’s written evidence.
- mm. This remains, therefore, a concern that goes to the legal adequacy of assessment.

4. Summary and conclusion on adequacy of the ES

nn. In summary, therefore, Clare Hall considers that the following information is required regardless of any finding reached by the Inspectors on the evidence:

- i. Information on downstream mitigation for the expected increase in velocity in the Bin Brook channel immediately downstream of the busway crossing;
- ii. An assessment of the landscape and visual impact of the proposed bridge at Bin Brook;
- iii. Details of proposed mitigation for construction noise; and
- iv. An identification, description and assessment of ‘in-combination effects’ of the Scheme on Clare Hall as an academic institution, heritage asset, and socio-economic receptor, including the effects arising from the access to Clare Hall via Rifle Range Road being comprised as a result of the Scheme.

oo. Clare Hall considers that the following information will be required should the Inspectors and/or the Secretary of State find that there is merit in Clare Hall’s evidence on construction and operational noise:

- i. Details of further mitigation for operational noise, construction noise and vibration levels during construction.

5. Proposed modification of Article 5 of the draft Order

pp. As outlined in the introduction to this note, one of Clare Hall’s concerns at the first roundtable session on the proposed modifications to the draft Order was whether the applicant’s ES was prepared on the assumption that the constraint in Article 5(8) would be imposed.

qq. Having reviewed the ES Main Report **[CD1-10.1]**, it would appear to Clare Hall that the ES was prepared on the basis that the constraints in the draft Order (as it existed at the time of assessment/application) would exist. For example, at [12.5.1] the ES states that “[t]he design and construction will accommodate and otherwise be subject to the

various commitments enshrined in the consent”. Article 5(8) is clearly one such commitment.

- rr. At the roundtable session, the applicant explained that its motivation for the removal of paragraph (8) was allow for greater flexibility in terms of the type of works that could be undertaken on certain plots of land, beyond that currently permissible with paragraph (8) in place. On the face of it, therefore, the potential consequences of this change in the scope of what works may be undertaken in different locations within the Order Limits has not been assessed as part of the ES. At the very least it would seem to be necessary for the applicant to provide (a) a clear explanation of the likely consequences of the additional flexibility sought, in terms of what works would now be authorised in the affected plots that would not previously have been authorised, and (b) evidence that the assessment undertaken would not be affected in any material way by this widening of the scope of the authorised works.
- ss. Clare Hall is still investigating the impacts this proposed amendment may have on its own interests and continues to reserve its position in respect of this second concern.

HEREWARD PHILLPOT KC

STEPHANIE BRUCE-SMITH

22 September 2025

Francis Taylor Building

Temple EC4Y 7BY