

Transport Action Network

To:
Secretary of State for Transport

Cc:
Baroness Vere of Norbiton, Parliamentary Under Secretary of State for Roads
Jill Adam, Director Strategic Roads, Economics & Statistics, Department for Transport
Jim O'Sullivan, Chief Executive, Highways England
James Heath, CEO, National Infrastructure Commission
Chris Stark, CEO, Committee on Climate Change

By email

4 March 2020

Dear Secretary of State,

In light of the Court of Appeal's decision in *R (Friends of the Earth) -v- Secretary of State for Transport and others* [2020] EWCA Civ 213 ('the Heathrow judgment') and other recent significant changes in circumstances, we are writing to ask you to review various statutory and non-statutory documents regarding road infrastructure and pause certain decisions and processes pending that review.

National Networks National Policy Statement

The Planning Act 2008 requires the Secretary of State to review each national policy statement whenever s/he thinks it appropriate to do so (s.6(1)). The circumstances in which such a review is triggered include a significant change in circumstances and the Act provides the Secretary of State with the power to suspend the operation of all or any part of the NPS until a review has been completed (s.11).

In light of the significant change in circumstances outlined below, we request that pursuant to the Planning Act 2008 you review the National Networks National Policy Statement ('the NPS') and suspend those parts of the NPS set out in Appendix 1.

As you explained to the House of Commons on 28 February, "[t]he Court's judgment is complex and requires careful consideration." Clearly the Department received fundamentally flawed legal advice about climate policy and it is not credible to suggest this only had an impact on its aviation policy. In relation to roads, the judgment's implications are even more important and complex than for airports as:

- despite your Department's forecasts and efforts, surface transport emissions have grown and now contribute 23% of UK emissions, with 2019 statistics showing an increase in traffic and new car emissions;

- technological measures to reduce emissions, without wider demand management, would lead to rebound effects, jeopardising key economic objectives and potentially limiting availability of low carbon energy sources for other modes and sectors, and
- the wider carbon impacts of surface transport on other sectors identified by the Committee on Climate Change (CCC) as challenging to address, for instance industry and buildings.

Section 10(3)(a) of the Planning Act 2008 requires the Secretary of State to have particular regard to mitigating climate change when deciding whether to review an NPS. Since the NPS's designation in 2014, the UK became a signatory to (December 2015) and subsequently ratified (November 2016) the Paris Agreement within the United Nations Framework Convention on Climate Change. In May 2019, MPs approved a motion to declare an environment and climate emergency and in June 2019, the Government legislated to increase the 2050 greenhouse gas emissions reduction target in the Climate Change Act 2008 from at least 80% to net zero ('the net zero target'). In the circumstances we cannot see how the NPS for what is now the highest emitting sector of the economy can remain in place, let alone in practice continue to prohibit objections to road developments on the basis of their carbon emissions.

The draft objectives for Road Investment Strategy 2 ('RIS2') emphasise unlocking housing and it is indeed proposed that specific funding is made available to build roads to unlock housing sites. The carbon impacts of such housing have not been assessed, however, whether in terms of construction, heating or transport, despite public transport oriented development having a far lower carbon footprint and energy requirements. For instance, detached housing requires up to four times more embodied energy to construct (particularly if well insulated) and heat compared to apartments of a similar size because of the larger number of exterior walls¹. Car ownership and requirements for access roads in such housing will be higher, again entailing higher embodied carbon and operational energy requirements.

Our argument here is in some respects analogous to the ground in the Heathrow judgment regarding non-CO2 effects, insofar as the wider carbon impacts of the NPS on emissions from other sectors have not been considered, these emissions are more important in light of the net zero target. Although they are uncertain, the precautionary principle applies and alternative solutions such as funding to unlock new housing through public transport improvements ought to have been prioritised instead.

When deciding whether to review an NPS, sub-section 10(3) of the Planning Act 2008 also requires you to have particular regard to achieving good design. In relation to this we request you give particular weight to the recent landmark report *Living with beauty: report of the Building Better, Building Beautiful Commission* (MHCLG, 2020). This concluded that "[e]very sector of the industry has told us, and our specialist working group and wider research has confirmed, that overly car-dominated places tend to be less attractive or popular places in which to spend time" (p102).

¹ For instance, see Rode, P., Keim, C., Robazza, G., Viejo, P., and Schofield, J. (2014) 'Cities and Energy: Urban Morphology and Residential Heat-Energy Demand': *Environment and Planning B: Planning and Design* 41(1)

The report criticises “the existing practice of treating highway design as an issue separate from placemaking”, noting that “recent government support for house-building has often failed to create successful new places” (p23). The expert panel recommended that it “may often be the case that local infrastructure (the quality of streets, ease of public transport) is a better investment than major new roads” (p90). The NPS failed to mention beauty (other than in the context of designated landscapes) or placemaking at all, let alone consider the relationship between new transport infrastructure and quality of resulting developments. With the Department increasing policy support and funding for road-building to unlock new housing, the findings of this report are of critical importance for reviewing the NPS.

Transport Appraisal Guidance and Applications for Development Consent Orders

Paragraph 4.5 of the NPS states that the business case for Development Consent Orders (DCOs) based on the Department’s Transport Appraisal Guidance (TAG, formerly WebTAG) “will be important for the Examining Authority and the Secretary of State’s consideration of the adverse impacts and benefits of a proposed development”. The most recent update to TAG was before the net zero target and TAG’s approach of monetising carbon emissions, rather than treating them as a pass or fail for a proposed development, appears incompatible with it. In addition, TAG treats loss of indirect tax, such as reduction in fuel duty receipts, across the 60 year appraisal period as a negative cost. The proposed ending of sales of certain types of vehicles by 2035 or earlier means this should not be considered as the central case. Furthermore, TAG fails, for instance in TAG unit A2.2 Appraisal of Induced Investment Impacts or the Valuing Housing Impacts Workbook, to appraise these wider carbon impacts, indeed neither refer to carbon at all.

We therefore request that you review TAG with respect to its ability accurately to appraise the direct and indirect carbon effects of road schemes individually, and the RIS2 programme as a whole, in the light of current policy and legal requirements.

In relation to ongoing applications for DCOs for Nationally Significant Infrastructure Projects (NSIPs) relating to roads, we therefore request that pursuant to section 108 of the Planning Act 2008 you direct the suspension of all incomplete examinations of road NSIPs pending review of the NPS and TAG.

For any completed such examinations where you are not minded to refuse the grant of development consent, we request that you allow all interested parties to make further submissions regarding the impact of the significant changes set out in this letter, pursuant to rule 19 of the Infrastructure Planning (Examination Procedure) Rules 2010, though we reserve the right to argue that anything but refusal would be unlawful in the circumstances.

Road Investment Strategy 2

We request that you pause publication of Roads Investment Strategy 2 (RIS2), to reconsider its environmental effects pursuant to sub-section 3(5) of the Infrastructure Act 2015, in light of all the reasons above. This also appears necessary pursuant to the duty to have regard to the safety of users of highways pursuant to the same section, to take account of the review of the safety of smart motorways. Given RIS2 was supposed to commence on 1 April, a

report will need to be laid before Parliament pursuant to sub-section 3(7) of the Infrastructure Act 2015, explaining the delay with regard to ensuring compliance with the net zero target.

Part 6 of the Highways England Licence ('the Licence') sets out a detailed process for setting and varying a RIS involving a multi-year process of negotiation between the Department for Transport, Highways England and the Office of Rail and Road across stages such as draft Strategic Business Plans and efficiency reviews. We are aware that while preparation for RIS2 has been underway since 2015, the CCC only published "Net Zero – the UK's contribution to stopping global warming" in May 2019. It is, in our view, unrealistic to maintain that the CCC's conclusions and recommendations could have been properly taken into account in this process in order for RIS2 to comply. In any event the wider carbon impacts on non-transport sectors have not been assessed adequately if not at all. The amendments required to ensure RIS2 is net zero compliant are likely to entail a major variation and thereby require the draft RIS2 at the very least to be reopened pursuant to paragraph 6.29 of the Licence, if not the whole process to be reset.

We note that the 2018 National Infrastructure Assessment (NIA) did not mention net zero or the Paris Agreement, so conclude that it suffers from the same failing as the Airports NPS, and that if it had, far more radical recommendations could be expected to have been included. For instance, the NIA only suggested your Department consider reallocating highways spending before 2025 to local roads maintenance rather than making it a formal recommendation.

Impact of vehicle sales consultation

The consultation launched on 20 February 2020 on ending sales of new petrol, diesel and hybrid cars and vans ('ICE vehicle sales consultation') by 2035 or earlier has further complex and challenging interactions with the NPS and objectives for RIS2. Even with such a change, the CCC advised a 10% modal shift away from road use is needed to comply with carbon budgets.

The Road Traffic Forecasts 2018 modelled the impacts of a 2040 ban on sale of Internal Combustion Engine cars and vans as the most extreme of the scenarios it considered. This scenario forecasted for 2050 increases in traffic on the Strategic Road Network (SRN) by 59% and in congestion on all roads by 129% by 2050. The effect of the consultation proposals to end sales by 2035 or earlier would - without additional demand management - mean an even larger increase in traffic and congestion and sooner. An increase of this scale would jeopardise multiple policy objectives in the NPS and RIS2 for instance regarding economic growth, resilient journeys etc. It would also exacerbate the concerns of the Building Beautiful commission regarding the deleterious effects of car-dominance.

According to DfT Transport Statistics, 16% of road emissions are from HGVs, two-thirds of them on the SRN. The Draft RIS2 Government Objectives document flagged the impact of congestion on HGV fuel efficiency. Without demand management measures such as road charging, increased EV traffic would increase HGV emissions. While the consultation process provides an opportunity to provide feedback, it would be too late regarding the interactions with RIS2, unless RIS2 is delayed.

Next steps

In the circumstances we submit the only reasonable and lawful step is for you forthwith to review the NPS and suspend parts of it, at least reopen RIS2 and reconsider your approach to TAG and current DCOs pending such reviews.

Tackling emissions from road transport, including indirect emissions, is particularly important and to show global leadership at COP26 through an ambitious Nationally-Determined Contribution and to fill the carbon gap to secure compliance with forthcoming carbon budgets. We would be delighted to meet with you to discuss the contents of this letter and the required next steps in more detail.

We look forward to hearing from you at your earliest convenience and in any event within 14 days.

Yours sincerely

Chris Todd
Director
Transport Action Network

Appendix 1 - NPS suspension

The following parts of the NPS should be suspended forthwith in light of the significant changes discussed above and set out below.

Paragraphs or, where text quoted, parts	Significant change and reason
2.4	Policies required for a net zero trajectory mean these forecasts are out of date.
2.10-2.27	The unexpected Heathrow judgment and incorporation of net zero into law mean the Government's policy for addressing need on roads requires a fundamental review. Second order impacts of moves to bring forward the end of sales of ICE cars and vans to before 2035 were also unexpected and are also highly relevant.
3.8	<p>Current policies to tackle emissions have not been as effective as expected.</p> <p>Carbon emissions from schemes have been greater than forecast: pp54-55 in Sloman L, Hopkinson L and Taylor I (2017) <i>The Impact of Road Projects in England</i> Report for CPRE.</p> <p>The Environment Bill proposes greater emphasis on reducing particulate emissions, in particular PM2.5s, and there is now greater appreciation of the contribution of tyre and brake wear compared to exhaust emissions.</p>
3.23	The increases in traffic and congestion from resulting from the ICE vehicle sales consultation mean alternative ways to manage demand are urgently required to tackle congestion. Particularly for hard to decarbonise freight, the net zero target is likely to require road pricing. National road pricing cannot be ruled out.
4.5. "The business case will normally be developed based on the Department's	The net zero target means that TAG needs fundamental revision.

<p>Transport Business Case guidance and WebTAG guidance.”</p> <p>4.6 “The Examining Authority and the Secretary of State do not need to be concerned with the national methodology and national assumptions around the key drivers of transport demand”</p> <p>4.7</p>	
<p>4.27 From “Where projects have been subject to full options appraisal”</p>	<p>The net zero target means that previous options appraisals are unlikely to remain sound.</p>
<p>5.16 “The Government has a legally binding framework to cut greenhouse gas emissions by at least 80% by 2050. As stated above, the impact of road development on aggregate levels of emissions is likely to be very small.”</p>	<p>The net zero target has replaced the 80% target, while as set out under 3.8 above the assertions about emissions are not sound.</p>
<p>5.17-18</p>	<p>The rise in surface transport emissions means this policy was unfit for purpose, even before adoption of the net zero target. DfT figures show that in the last year traffic levels have increased as have new car emissions.</p>
<p>Annex A & B</p>	<p>As a result of the net zero target, these forecasts are no longer sound.</p>