

The Highways Agency and the Planning Application Process

A Protocol for Dealing with Planning Applications

We have prepared this protocol to assist developers and their representatives in working alongside us when submitting planning applications for development which could have an impact on the strategic road network. It is also to assist Local Planning Authorities and Local Highway Authorities and our own planning teams in the review of planning proposals, to enable prompt and consistent responses. By working in this way, all parties have the opportunity to avoid abortive costs and to minimise potential delays through the process.

The protocol is intended to complement Highways Agency policy and guidance on the planning process, set out in Department for Transport (DfT) Circular 02/2007 'Planning and the Strategic Road Network'¹.

Summary	2
What is the Highways Agency interested in?.....	2
How can we help?	2
How do we approach planning discussions?.....	2
Overview of the Process.....	3
Description.....	3
Stage 1: Pre-application discussions.....	4
Introduction.....	4
Pre-application discussions	4
Formal pre-application scoping.....	5
Stage 2: Formal consultation by the Local Planning Authority.....	5
Introduction.....	5
Submission of planning application	5
Our Consideration of the Planning Application	6
Identification and agreement of mitigation	7
Confidentiality	8
Resolution of disputes and delays.....	8
Monitoring and Review of this Protocol	8
Appendix A: Highways Agency planning regions and contacts	9
Appendix B – Summary of requirements for transport statements, transport assessments and travel plans.....	10
Appendix C – Securing satisfactory and deliverable mitigation measures.....	11

¹ DfT Circular 02/2007 Planning and the Strategic Road Network. <http://bit.ly/bYfnjR>

Summary

What is the Highways Agency interested in?

As the operator of the strategic road network in England, the Highways Agency has a duty to keep it operating safely and effectively. Therefore, we must respond to specific development proposals in respect of the potential impact on the capability of the strategic road network².

The Highways Agency on behalf of the Secretary of State for Transport may give directions restricting the grant of planning permission by local planning authorities, where permission would adversely impact the current network or on the route of a proposed future strategic road³.

It is not our role to determine planning applications. We will always work with developers and local planning authorities to find ways to overcome our objections while fulfilling our responsibilities in respect of the network.

How can we help?

As the operator of the network, we have a large amount of information about the operation of the network which is available to developers to help them when preparing planning applications. We also have a strong knowledge of the strategic road network and how it interacts with local roads, and can provide advice and guidance on the issues which may occur and how they can be resolved.

How do we approach planning discussions?

We adopt an open, collaborative and solution focused approach. We work with all relevant interested parties, which may include:

- The developer and the developer's representatives (transport and planning consultants);
- The local planning authority;
- The local highway authority;
- Other teams within the Highways Agency; and
- Other stakeholders where it is appropriate to do so.

We welcome and encourage early discussion of all relevant matters prior to the submission of formal planning applications.

In dealing with development proposals, we will liaise directly with the developer and local authorities to ensure consistency and to make sure that applications progress as they should. We will maintain clear and accurate records of discussions and agreements which will be distributed to all the relevant parties.

For the purposes of this document, references to the developer include the developer's representatives and consultants, and references to the Highways Agency include our consultants and contractors.

² Highways Agency Framework Document July 2009 ISBN 978-1-84864-017-7 <http://bit.ly/aGyV1w>

³ Town and Country Planning (General Development Procedure) Order 1995, Articles 10, 14 and 15. <http://bit.ly/c6gg3X>

Overview of the Process

Description

From our perspective, the planning process can be divided into two distinct stages. These are:

- Stage 1: Pre-application discussions about specific development proposals
- Stage 2: Response to formal consultation by the local planning authority

The flowchart below outlines the key stages in the planning application process where we are involved and indicates a desired maximum duration for these to be completed – unless longer timescales are agreed beforehand by the relevant parties, such as for large or complex applications. The boxes in orange indicate actions for developers; the boxes in blue are actions for us; and the boxes in green for both parties.

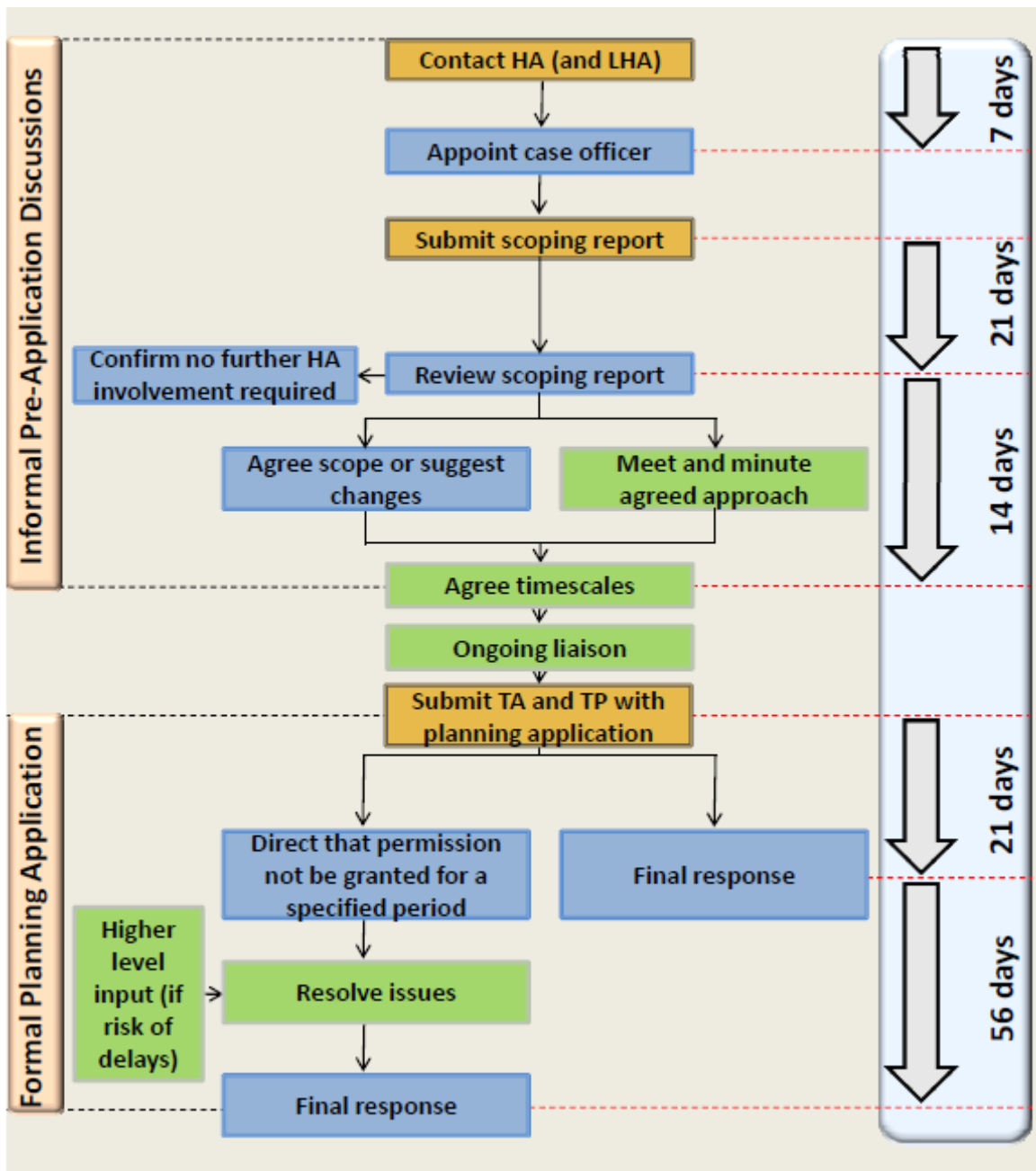


Figure 1: Highways Agency process for planning applications

Stage 1: Pre-application discussions

Introduction

The pre-application stage offers an opportunity for all parties to resolve any issues which may occur throughout the planning period.

We have a wealth of information and knowledge about the operation of the strategic road network and its interaction with local roads. Therefore, we are in a strong position to provide advice to developers considering whether or not to develop and what form development may take.

Whether or not previous discussions have taken place, formal pre-application discussions are an opportunity for us to advise the developer of our concerns and requirements and to explore potential solutions to issues related to the strategic road network which may delay or prevent the grant of planning permission. We normally recommend that the local planning authority and the local highway authority are also closely involved in these discussions to ensure consistency of approach.

Pre-application discussions

We welcome pre-application discussions with developers. These provide the opportunity to resolve as many issues as possible prior to the submission of a planning application. Initially, we will deal with pre-application consultations in accordance with the timescales shown in Figure 1. On initial receipt of a pre-application enquiry, we will respond within seven days of receiving the enquiry, with the contact details of a nominated Case Officer.

While Figure 1 sets out an indicative timescale for pre-application discussions, we seek to respond flexibly to suit developers' requirements. We encourage discussions and work at the pre-application stage to agree the methodology to be used in developing and submitting the necessary documents (such as travel plans, transport assessments or statements and environmental impact assessments).

When contacted in respect of any development proposal, we will:

- Respond to an initial request for discussions within seven days.
- Provide a named contact for discussions, which will be someone with knowledge and experience of the area.
- Advise the developer whether the development proposal is likely to be of interest to the Highways Agency.
- Advise the developer of known and identified potential constraints to the development proposal.
- If required, provide access for the developer to all relevant data and models. Where this is readily available, we will provide access to this to the developer at no cost.
- If required, review, comment on and agree where acceptable the methodology for assessing the impact of development.
- If required, review, comment on and agree where acceptable the principles of the scale and nature of necessary mitigation.
- Liaise with other relevant parties within the Highways Agency and externally as required by the developer.

It should be noted that where proposals are directly contrary to government policy or guidance, require land within the ownership of the Highways Agency which has not been declared surplus to requirements, or which raise direct and irresolvable safety issues, we will generally consider them unacceptable in principle.

Should an application be submitted for such a proposal, an indefinite direction of non-approval of the application would be issued to the local planning authority.

We will provide an unprejudiced view on the acceptability of any proposal during pre-application discussions. Where it is likely that a planning application may be considered unacceptable in principle, we will provide guidance as to what steps would need to be taken to resolve any potential objection.

Formal pre-application scoping

Depending on the nature of the site and the proposed development, the developer may submit a written scoping report or arrange a meeting with us. Where a meeting is arranged, the case officer will encourage developers to invite other relevant parties to attend the meeting if it is considered necessary. However, meetings will be chaired by the Highways Agency and remain focused on meeting the needs of the developer and the Highways Agency.

Where a scoping report is submitted, the developer should normally provide the following information:

- Details of the development, such as location, access arrangements, use class, size or number of units, and maximum number of parking spaces and any other relevant information.
- Proposed methodology for estimating the vehicular trip generation and distribution on the strategic road network, and resulting trip generation figures.
- Proposed methodology for assessing the impact of trip generation on the strategic road network.

The methodology used within the scoping report should normally be consistent with the approach set out in DfT's 'Guidance on transport assessment'⁴ unless the characteristics of the proposed development necessitate an alternative approach.

We will then check and agree with the local highway authority that the baseline assumptions are accurate, thus enabling a more productive meeting and minimising potential abortive work by the developer.

Both parties should seek to engage in open and ongoing discussions throughout the pre-application period. However, they should also seek to rationalise the submission of and requests for further information, to enable issues to be dealt with concurrently.

Stage 2: Formal consultation by the Local Planning Authority

Introduction

Following submission of the planning application to the local planning authority, we will be notified of the consultation period and asked to respond to them within 21 days⁵. There is a duty on local planning authorities to notify the Highways Agency in respect of any development which may materially affect the strategic road network.

Submission of planning application

When submitting a planning application, we expect the developer to provide all the information necessary to enable us to fully consider the impact of the development on the strategic road network, and the suitability of any proposed mitigation.

The nature of the information will vary by development, but as a guide the following information may be required:

⁴ DfT and DCLG Guidance on transport assessment. <http://bit.ly/bLHQaZ>

⁵ The Town and Country Planning (General Development Procedure) Order 1995 as amended by The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2005

- For developments generating more than 30 two-way trips to the network during any peak period, a transport assessment and travel plan prepared in accordance with DfT and DCLG's 'Guidance on transport assessment'⁶ and meeting the requirements of DfT Circular 02/2007⁷.
- For developments falling any of the categories of Appendix B of 'Guidance on transport assessment' requiring a travel plan, a travel plan that has been prepared in accordance with DfT guidelines should be provided.⁸
- For developments where construction traffic may adversely impact on the operation of the network for a limited period, a construction management plan should set out the management measures which will be used to minimise the impact.
- For developments within or close to air quality management areas affecting the strategic road network, an assessment of the air quality impacts of the development.
- For developments which may lead to issues of visual distraction, an assessment of the visual impacts of the development.

A summary of the key requirements of DfT's 'Guidance on transport assessment' and on travel plans is provided in Appendix B.

For outline planning applications where a travel plan would be required, a framework travel plan must be prepared by the developer and agreed with us prior to determination of the application. The travel plan forms an integral part of the assumptions that are made and agreed regarding travel patterns and hence the basis on which the application is determined. Therefore, the framework document will still need to include the key elements described in Appendix B.

Our Consideration of the Planning Application

We will consider the planning application documentation, and provide an initial response to the local planning authority within 21 days.

The response will take one of the following forms, with reasons given as appropriate:

- a) We offer no objection to the development.
- b) We recommend that the application should be refused, or granted only subject to conditions.
- c) We direct the local planning authority to impose specified conditions on any permission which may be granted.
- d) We direct that planning permission is not granted for a specified period.
- e) We direct that planning permission is not granted for an indefinite period.

Where we are not satisfied that the information provided is sufficient to fully assess the impact of the development and the suitability of mitigation proposals, we will direct under point d) above. This is not a step that we will ever take lightly and in all cases we will clearly set out what needs to be done in order for us to provide a view on the application. Where our concerns relate to assumptions made by the developer, we will review all the relevant documents and provide comments in a single review.

We will only make requests for further information or assessment where the information is material to the consideration of the impact of a development on the strategic road network. It shall not be used as a negotiating tactic or to unduly prevent or delay the issue of a decision.

Where we need to issue advice or a direction under b) to e) above, we will continue to engage proactively with the developer and other authorities to resolve as many matters as quickly as possible, and ideally prior to the target planning committee date.

⁶ DfT and DCLG Guidance on transport assessment. <http://bit.ly/bLHQaZ>

⁷ DfT Circular 02/2007 Planning and the Strategic Road Network. <http://bit.ly/bYfnjR>

⁸ DfT Good Practice Guidelines: Delivering travel plans through the planning system. <http://bit.ly/cWII6Y>

Formal requests for further information will be sent electronically to the planning officer and copied to the local highway authority and to the developer, to enable prompt action. Information that the developer provides directly to us should also be copied to the local planning authority and local highway authority as necessary.

Identification and agreement of mitigation

Identification of the scale and nature of mitigation required for a particular development is the responsibility of the developer. If required, we will help to identify options for mitigation and ensure that the developer is given the information necessary to make informed decisions about mitigation to be secured. The mitigation proposed must be sufficient to offset the detriment to the strategic road network. If the necessary mitigation is unaffordable we will have no option but to recommend refusal and, where appropriate, direct indefinite non approval of the application.

Our strong preference is that all mitigation measures should be secured through the use of planning conditions. Negative or 'Grampian-style' conditions should be used where mitigation measures can only be delivered by third parties or have financial implications. The scale and nature of necessary mitigation must be agreed with us before we can send our final response to the local planning authority.

Appendix C provides a non-exhaustive checklist of the criteria that must be met before we can 'sign-off' mitigation proposals requiring works to the highway network. Mitigation proposals need to be in an agreed form and should normally be to general arrangement level of detail prior to determination of the application. We may require more detail where the adequacy of the developer's control of land is an issue. Assessment and agreement of mitigation proposals (including Stage 1 Road Safety Audits and consideration of whether any departures from standard are acceptable) can be a lengthy process, and all parties should seek to progress them as soon as possible.

We will consider acceptable mitigation of impacts based on the following hierarchy:

- 1) All reasonable steps shall be taken to minimise the level of physical mitigation required, through the use of measures such as travel plans, development phasing, heavy goods vehicle booking systems and encouraging flexible working.
- 2) Physical measures on the local road network to minimise the impact on the strategic road network shall be utilised as far as is reasonably possible.
- 3) Once all reasonable minimisation and off-network mitigation has been implemented, we will consider capacity improvements on the strategic road network. We will not accept local capacity improvements where they would overload the wider network

Mitigation measures on the strategic road network will be subject to approval by the appropriate Highways Agency operational team. All proposals for physical mitigation to the strategic road network must be subject to a Stage 1 Road Safety Audit carried out in accordance with the standard current at the time.

Proposals for physical mitigation to the strategic road network must be fully consistent with the relevant standards set out in Design Manual for Roads and Bridges (DMRB) current at the time. Where proposals are not fully consistent with DMRB our Departures procedure must be followed. As part of this the developer will be required to demonstrate:

- that a design that complies with standards cannot be reasonably achieved; and
- that the proposed design is safe and fit for purpose

Developers should not assume that a departure will be acceptable. This information will need to satisfy the Agency's appropriate operational and technical teams who will be required to authorise a 'departure from standards' before the application can be granted.

Where works are required on the strategic road network, Circular 02/2007 requires that these are paid for by the developer through an agreement under Section 278 of the Highways Act 1980. Guidance on S278 agreements is provided by the Department for Transport⁹.

The full cost of any works carried out under Section 278, including the Agency's administration costs, must be paid by the developer. These costs will include the future cost of maintenance, which must be paid as a commuted lump sum. Commuted lump sums can be substantial; on request our Case Officer will provide the calculation method for the lump sum current at the time. In line with paragraph 36 of DOE Circular 11/95 'Use of conditions in planning permission'¹⁰ we will avoid securing mitigation which is undeliverable, unaffordable or not viable.

Where it is considered that the mitigation measures identified are unaffordable or not viable, the developer will be entitled to identify alternative methods of mitigation at any of the three steps in the hierarchy above. If no alternative viable mitigation can be identified, an indefinite holding direction will be issued.

Confidentiality

Developers should be aware that, as in common with other public authorities, the Agency must comply with the relevant Code of Practice under the Freedom of Information Act. Therefore, it would be helpful if developers could explain to us why any information they are providing, particularly during the Pre-application stage, is viewed as confidential. If we receive a request for disclosure of the information we will take full account of this explanation, but we cannot give any assurance that confidentiality can be maintained in all circumstances.

Resolution of disputes and delays

If either party is concerned that matters are unlikely to be resolved within the timescales indicated above or the timescales agreed at pre-application stage, they should pro-actively escalate the problem in order to try and resolve the issues. In such instances, we will contact the developer's lead representative and/or the developer should contact the appropriate Planning Manager, whose details can be found in Appendix A.

Monitoring and Review of this Protocol

This protocol is a live document that will be updated as and when changes in policy relevant to the above processes occur. Feedback on both the contents and application of the document is very much welcomed from all parties and this should be forwarded to Dave Parker, Yorkshire, Humber and North East Regional Planning Manager at dave.parker@highways.gsi.gov.uk.

All comments received will form part of an annual review process on the anniversary of issue and will be included in an updated version, as appropriate.

⁹ Guidance on agreements with the Secretary of State under section 278 of the Highways Act 1980
<http://bit.ly/9OtIUA>

¹⁰ DOE Circular 11/95: Use of conditions in planning permission. <http://bit.ly/di0eco>

Appendix A: Highways Agency planning regions and contacts

Planning Regions

For planning purposes, we operate on the basis of local government regions. Planning enquiries should therefore be directed to the appropriate region. Where a development is located across local authority boundaries, in the first instance, the contact should be the planning team for the lead authority.

Planning Teams

Pre-application enquiries should be directed to the appropriate planning team to enable the appointment of a case officer.

East

Alan Kirkdale
Tel: 0123 479 6095
Email: planningEE@highways.gsi.gov.uk

South West

David Wright
Tel: 0117 372 8994
Email: planningSW@highways.gsi.gov.uk

East Midlands

Colin Mercer
Tel: 0121 678 8547
Email: planningEM@highways.gsi.gov.uk

West Midlands

Mark Clough
Tel: 0121 678 8284
Email: mark.clough@highways.gsi.gov.uk

North West

Ruth Moynihan
Tel: 0161 930 5775
Email: planningNW@highways.gsi.gov.uk

Yorkshire & the Humber and North East

Yorkshire & the Humber – Nick Whitford
Tel: 0113 283 4815
Email: planningYH@highways.gsi.gov.uk

South East

South East (West) & London – Jessica Cluett
Tel: 0130 687 8136
Email: planningSE@highways.gsi.gov.uk

North East – Stephen Spink
Tel: 0113 283 5463
Email: planningNE@highways.gsi.gov.uk

South East (East) – Paul Harwood
Tel: 01306 878 471
Email: planningSE@highways.gsi.gov.uk

Appendix B – Summary of requirements for transport statements, transport assessments and travel plans

The transport statement or assessment should be prepared in accordance with the DfT and DCLG's 'Guidance on transport assessment'¹¹. However, in brief, a transport assessment should include:

- Existing conditions – accessibility, traffic flows, accident analysis, committed developments and highway works.
- Development details – use class, size / number of units, access arrangements, number of parking spaces.
- Predicted person trip generation and mode splits (and full details of how these have been calculated).
- Predicted residual vehicular trip generation based on proposed travel plan measures (and full details of how these have been derived).
- Distribution of residual vehicular trips (and full details of how these have been calculated).
- Junction capacity assessments and merge / diverge assessments at opening year and ten years after registration of application (if more than 30 two-way trips on any strategic road network junction or slip road).
- Details of proposed mitigation measures (in addition to travel plan), if appropriate.

Whilst the transport assessment and travel plan should form separate documents, they are inextricably linked. Most crucially, the residual vehicular trip generation used for the capacity assessments in the transport assessment should be based on the proposed travel plan measures and along with the predicted mode splits should form the initial travel plan targets.

The travel plan should be prepared in accordance with the DfT's 'Good Practice Guidelines: Delivering travel plans through the Planning System'¹². However, in brief, a travel plan should include:

- Details of existing accessibility.
- Firm commitment to appoint a travel plan co-ordinator. For commercial developments this should be for the lifetime of the development and for residential developments this should be for a minimum of five years post full build out.
- Firm commitment to implementation of or provision of funding for Travel Plan measures.
- Initial vehicular trip generation and mode split targets as used for the capacity assessments in the transport assessment and realistic ongoing targets to reduce single occupancy car trips over time.
- Comprehensive monitoring regime to ensure that targets are being met and an agreed fallback position should they fail to do so. These may include alternative mitigation measures, restrictions on subsequent phases of the development, or a commitment to reviewing the measures in consultation with the local planning authority and Highways Agency.

Depending on the nature of the development, other documents may also be required (as agreed at pre-application stage). For example:

- Construction management plan
- Car park management plan

¹¹ DfT and DCLG Guidance on transport assessment. <http://bit.ly/bLHQa7>

¹² DfT Good Practice Guidelines: Delivering travel plans through the planning system. <http://bit.ly/cu6wd9>

Appendix C – Securing satisfactory and deliverable mitigation measures

Any mitigation proposals that require works to the strategic road network or that would fall to be constructed by us must obtain our 'sign-off', we expect that they shall be:

- Assessed using the traffic generation based on any agreed transport assessment or statement and travel plan to ensure that they meet their objectives. This should be included in the transport assessment or statement, checked by the Highways Agency and, where appropriate, agreed with the local highway authority.
- Checked to ensure that they do not have an unacceptable adverse impact on existing environmental management areas, such as Air Quality Management Areas, or that suitable mitigation for such impacts is provided.
- In conformity with current standards as set out in the Design Manual for Roads and Bridges. If a Departure is applied for the developer is expected to provide a Departure Submission for consideration by the Highways Agency. Developers should not assume that proposals for Departures will be accepted.
- Subjected to a Stage 1 Road Safety Audit, commissioned by the developer and carried out fully in accordance with the standard current at the time¹³. The Audit Team and Audit Brief must be approved in advance by the Agency's nominated Project Sponsor. The Highways Agency's Case Officer will advise the developer who the Project Sponsor is. The Audit Team will report directly to the Project Sponsor. The Audit Team must be independent of the Design Team and direct contact between the Audit Team and the Design Team is not permitted except with the prior written approval of the Project Sponsor. Any Exceptions sought to the recommendations of the Audit require approval at Director level within the Agency.
- Checked and approved by the relevant operational team, to be co-ordinated by the Highway Agency case officer.

All of the above need to be completed prior to determination of the application and, as they can potentially be lengthy processes, all parties should seek to progress them as soon as possible.

¹³ DMRB Volume 5 Part 2 Road Safety Audit (HD 19/03). <http://bit.ly/ckZc3R>