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Your Ref:
Our Ref:
Date: 6th September 2012

By email only

Dear Mr Williets,

**Re: Need for a Development Consent Order
A1 Grade Separated Junction, land South of Grantham**

Thank you for your letter of 15 August 2012, please accept my apology for the delay in response.

As you know, development consent is required for projects which are considered to be Nationally Significant Infrastructure Projects (NSIP).

I note that you differ with the Highways Agency in your interpretation of law. It is not the function of the Planning Inspectorate to give advice on the interpretation of law. It is for those carrying out development to satisfy themselves that they have the necessary consents; having taken their own legal advice as appropriate. Ultimately, only the Courts can give definitive rulings on such matters.

Likewise, it is not our role to reach a conclusion on whether or not a project is an NSIP in advance of the submission of an application. The applicant should form their own view. However, I will try to address your query as fully as I can.

Whether or not the project is an NSIP

A new Grade Separate Junction, being highway development, would be an NSIP only if it is within s14(1)(h) of the Planning Act 2008 (PA2008). This requires that it falls within the thresholds in s22 of PA2008, which reads:

(1) Highway-related development is within section 14(1)(h) only if the Development is-

- (a) construction of a highway in a case within subsection (2).*
- (b) Improvement of a highway in a case within subsection (3), or*
- (c) Alteration of a highway in a case within subsection (4).*

(2) Construction of a highway is within this subsection only if the highway will (when

constructed) be wholly in England and-

- (a) the Secretary of State will be the highway authority for the highway, or
- (b) the highway is to be constructed for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority.

(3) Improvement of a highway is within this subsection only if-

- (a) the highway is wholly in England.
- (b) the Secretary of State is the highway authority for the highway, and
- (c) the improvement is likely to have a significant effect on the environment.

(4) Alteration of a highway is within this subsection only if-

- (a) the highway is wholly in England,
- (b) the alteration is to be carried out by or on behalf of the Secretary of State, and
- (c) the highway is to be altered for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority.

Whether or not transitional provisions apply

I note that you describe the project as benefiting from a planning permission that was granted pursuant to an application registered on 4 April 2008.

If you have satisfied yourself that the project would require development consent if brought forward today, then you will wish to consider whether or not the saving provisions of the Planning Act 2008 (Commencement No.4 and Saving) Order 2010 (the Order) apply.

Paragraph 6 of the Order provides that:

6. The provisions of the Act brought into force by this Order shall have no effect in relation to an application made before 1st March 2010 for any such consent or authorisation as is mentioned in section 33 of the Act (effect of requirement for development consent on other consent regimes)

Paragraph 4 of the Order brought s22, and thus the requirement for development consent for certain highways related development, into force in England. Paragraph 3 of the Order brought s33 of the PA 2008 into force in England.

S33(1)(a) of the PA2008 refers to planning permission. It also refers, in s33(4), to orders relating to highways development, which are separate consents, and provides that these cannot be made in relation to highways works for which development consent is required. PA 2008 s33(4) would therefore not apply in relation to planning applications made before 1 March 2010.

In effect therefore those orders referred to in s33(4) would, if required in respect of highways development for which a planning application had been submitted before 1st March 2010, need to be sought separately.

I hope this is helpful. If you have any other questions, please do not hesitate to contact me.

Yours sincerely,

Kathrine Haddrell
Senior Case Officer