

21 May 2010

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Our ref: TR010002

Dear Ms Pickering

A556 KNUTSFORD TO BOWDON ENVIRONMENTAL IMPROVEMENT SCHEME

I am writing with regard to the above proposal and have categorised the topics below for ease of reference.

AMENDED PREFERRED ROUTE ANNOUNCEMENT

I refer to your amended preferred route announcement dated March 2010. As the initial consultation took place some time ago, you will need to judge the risks associated with starting the pre-application consultation under the provision of the Planning Act 2008 (the "2008 Act") at the preferred option stage.

As you know, at the acceptance stage the Commission will decide whether or not you have complied with the pre-application consultation requirements in the 2008 Act and in making this decision will have regard to your consultation report. In deciding whether or not to accept an application, Commissioners will be concerned to know that the statutory pre-application consultation was fair and robust. In particular, applicants will have to show how they have had regard to the views of consultees. This should be set out in the consultation report. If the Commissioner(s) considers that consultees had been unable to influence or have a say in the development of the options for the project, before the application was submitted, and therefore that the promoter had not had regard to the Guidance on pre-application consultation, then there would be a risk that the application would not be accepted for examination by the Commission.

In the last paragraph of the Highways Agency's amended preferred route announcement it is stated that "The IPC will review previous consultation outcomes". Past consultations may be relevant to the IPC's consideration of the application at acceptance stage (as above) in so far as the Commission may (when assessing whether the applicant has fulfilled its duties in accordance with the 2008 Act) consider the extent to which statutory pre-application consultation work has built upon previous consultation outcomes. The Commission will consider whether, in accordance with the principles in the Guidance, effective consultation leading up to submission has resulted in a better developed application "in which the important issues have been articulated" (paragraph 9 of the CLG Guidance on pre-application consultation) and whether consultees have had an opportunity to influence proposals (the duty to take account of relevant responses and their definition are set out in s.49 of the 2008 Act). It would be helpful if you could clarify how and in what format you propose to submit information about previous consultation to

the IPC. If the information is to be included in the consultation report you may wish to explain the extent to which the project was taken account of in any relevant policy making processes including, for example the statutory Development Plan consultations in the intervening years between developing the route options and the present day. As the relevant draft National Policy Statement has yet to be published, it is likely that the policies within the Development Plan (the adopted Regional Spatial Strategy plus the relevant Local Plan/Local Development Framework) will be important and relevant to the Commission's consideration of the application.

PRESCRIBED CONSULTEES

Thank you for your email dated 28 April 2010 raising a few queries regarding the draft list of prescribed consultees that was sent to you by the Commission on the 25 March 2010.

As you referred to in your email, the Commission has produced Advice Note 3 Scoping Opinion Consultation setting out the Commission's understanding and application of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("APFP regulations") in relation to identifying the consultation bodies. As you know, the list I supplied is in draft only and we are currently reviewing which bodies we may need to consult when your scoping request is submitted. The following comments may assist in clarifying the Commission's approach.

Integrated Transport Authorities (ITAs) and Passenger Transport Executives

(PTEs): The Commission must apply the "circumstances test" (which is set out in Advice Note 3) before deciding whether to consult a body prescribed by name in the APFP regulations. The ITA and PTE are prescribed bodies so the circumstances test applies, which requires the Commission to decide using its reasonable judgement whether the proposed application is "likely to affect transport, within, to or from the relevant integrated transport area of the ITA or PTE". The Circumstances test for ITA / PTE is not based on whether the ITA/PTE has responsibility for the "location" of the proposal but instead focuses on whether the project may affect transport within, to or from the ITA / PTE which potentially may extend to an area further than the location of the proposal.

We have not identified any ITA or PTE in the Cheshire East area. Please inform us if you have further information on this matter. As the project may have impacts on transport for West Yorkshire and Merseyside we are proposing to include these bodies as consultees.

Highways Authorities: Your email queried why we had included a Macclesfield office as our Trafford contact. This was an administrative error in our list. The Commission will be consulting Geoff Ball at Trafford Transport, and John McGowan at Cheshire East Transport (Macclesfield Depot).

Network Rail (CTRL) Ltd: The Planning Act 2008 (Railways Designation) Order 2010 designates Network Rail Infrastructure Limited and Network Rail (CTRL) Limited as approved operators under s.25 of the 2008 Act. The Commission must apply the "circumstances test" set out in Column 2 of Schedule 1 before deciding whether to consult bodies prescribed by name in the APFP regulations. Whether or not the circumstances in Column 2 apply will be a matter of judgment which the Commission will exercise on a case by case basis.

In this case the Commission determined that the circumstance test in Column 2 has been met for the approved operators and following a cautious approach Network Rail

Infrastructure Limited and Network Rail (CTRL) Limited will be consulted. Network Rail Infrastructure Limited and Network Rail (CTRL) Limited are also statutory undertakers. In accordance with Advice Note 3, the Commission has decided to consult these railway undertakers as a railway is located within 10km of the proposed location of the development and as a rule of thumb the Commission will seek to identify any relevant statutory undertaker within a 10km radius of the location.

The British Waterways Board (BWB) appears in Schedule 1 as both a prescribed named consultee for which the Circumstance Test in Column 2 must be applied by the Commission to decide whether to consult and also as a relevant statutory undertaker. In accordance with Advice Note 3, the Commission has decided to consult BWB as canal infrastructure is located within 10km of the proposed location of the development applying the rule of thumb set out above which is used to assist the Commission in reaching a reasonable judgement on whether to consult a consultee.

Health Bodies: Health bodies under s.16 of the Acquisition of Land Act 1981 ("the ALA") are statutory undertakers which the Commission must consult before adopting its Scoping Opinion. The Commission has consulted the the Department of Health Legal Services to confirm the list of health bodies which the Commission must consult with under s.16 of the ALA. In relation to England, strategic health authorities, special health authorities, NHS trusts, NHS foundation trusts and primary care trusts must be consulted where they are relevant. As health bodies are statutory undertakers, as a rule of thumb the Commission will seek to identify any relevant health bodies within a 10km radius of the location.

Relevant Local Authorities District, County and Unitary: Before adopting a scoping opinion the Commission must consult authorities within s.43 of the 2008 Act. When identifying the local authorities which the Commission must consult, s.43 of the 2008 Act sets out the method for identifying these local authorities depending on whether they are a "B" local authority (in which the proposed project will be located) or a "A" local authority (which shares a boundary with the (B) local authority in which the project is located). The rule of thumb adopted by the Commission in relation to distance for "relevant" prescribed consultees under Schedule 1 is not applicable to the identification of local authorities which is set out in the 2008 Act. We are currently reviewing the identification of s.43 local authorities and also Parish Councils who will need to be consulted.

If you have any queries on these matters, please contact me.

Yours sincerely

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