



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: M20Junction10A@pins.gsi.gov.uk

Salvatore Zappala
Project Manager
Highways England
By email

Your Ref:

Our Ref: TR010006

Date: 21 September 2016

Dear Mr Zappala

Planning Act 2008 (as amended) – Section 89

Application by Highways England for an Order granting development consent for the proposed M20 Junction 10a

Procedural decision during Pre-examination stage

On 11 August 2016 the Secretary of State decided to accept the above application for examination. On the same date, the Planning Inspectorate issued a letter comprising advice to the Applicant provided under section 51 of the Planning Act 2008 (PA2008).

I was appointed as the Examining Authority on 9 September 2016, and this letter identifies the areas in which I require other information during the Pre-examination stage in furtherance of the s51 advice.

Works Plans and Environmental Statement

In the s51 letter of 11 August 2016 and box 32 of the Checklist, the Planning Inspectorate addressed the Works Plans (Doc 2.3) accompanying the application, and stated that the 'indicative' features expressed are insufficiently precise for the purposes of the examination of the application. In particular they do not provide a sufficient level of detail or certainty about the works proposed within the DCO boundary/limits of deviation for the works. The Planning Inspectorate also identified what appears to be inconsistent or missing labelling.

To enable my examination of the application, the Applicant is requested to submit updated Works Plans which address these issues **no later than 9 November 2016**.

When preparing the revised Works Plans, the Applicant should ensure that these accurately reflect the works outlined in Schedule 1 of the draft DCO, and together these documents reflect the development parameters described and assessed in the Environmental Statement.

Book of Reference

In the s51 letter of 11 August 2016 and box 32 of the Checklist, the Planning Inspectorate addressed the Book of Reference (Doc 4.3), and stated that the Applicant does not appear to have had regard to some of the statutory guidance set out in Annex D of DCLG guidance '*The Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*'.

To enable my examination of the application, the Applicant is requested to comprehensively review the Book of Reference and to submit an updated version of the document **no later than 9 November 2016**.

To assist the Applicant in its preparation of this update, a list of the Planning Inspectorate's observations in respect of the Book of Reference is provided at **Annex A**. This list is not exhaustive.

If you have any questions about the content of this letter, please do not hesitate to contact Richard Price, Case Manager, using the details provided at the top of this letter.

Yours sincerely

Mike Ebert

Dr Mike Ebert C Eng, MICE, FIC, CMC
Examining Authority

Annexes

A. Book of Reference: Schedule of observations

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

Book of Reference: Schedule of observations

No.	Location	Observation/ query
Introduction		
1	Para 1.1.1 to 1.1.4	Subject to examination in tandem with examining need for the 'Alternative Scheme'.
2	Para 1.1.6	Article 32 of the draft DCO also appears to be relevant, but is not listed. Distinction between compulsory acquisition powers (articles 21 and 24) and temporary possession powers (articles 31 and 32) needs to be precise and certain.
3	Para 1.1.12, 1.1.13 and 1.1.19	Reference to 'people' should be to 'persons', otherwise implies only human beings, without also including other legal persons (e.g. corporations). Paraphrasing of legislation not appropriate. Are these paragraphs needed?
4	Para 1.1.17	Who is the 'Land Valuer'? Why is he/she/it not an external valuer or a single employee of the Applicant? Is this paragraph needed?
'Schedule of documents included in this application document'		
5	'Introduction' and 'Schedule of documents included in this application document'	<p>a) As the Book of Reference (BoR) is provided in five parts, the presence of two numbered chapters confusing. Suggest 'A' and 'B', or no numbering/lettering at all.</p> <p>b) Regarding the title of 'chapter 2'; the document itself is the BoR. The title implies the BoR is a schedule to the document.</p>
Part 1		
6	Part 1	<p>a) Some entries (e.g. in the 5th column) say 'N/A', but much of the 7th column is simply left blank. Would it be better if the word 'None' was used instead of both 'N/A' and blank cells (as in Part 4)?</p> <p>b) Some entries say 'all interests', which would allow outright ownership to be acquired. Some say 'temporary possession and use', and some say 'temporary possession with rights acquired permanently'. Distinction between compulsory acquisition powers (articles 21 and 24) and temporary possession powers (articles 31 and 32) needs to be precise and certain.</p>

	Part 1 cont.	<p>c) In relation to acquisition of permanent rights, contrary to paragraph 10 of Annex D to <i>DCLC: Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, September 2013</i>, the proposed new rights to be created (or new restrictions to be imposed) are not identified either in the BoR or in the wording of the draft DCO.</p> <p>d) Article 24(2) of and Schedule 5 to the draft DCO refer to 'purposes' for which such things may be created, but do not identify the actual nature or detail of them i.e. they do not e.g. explain whether they would be access rights, rights to do works, rights to keep apparatus, etc. Difficult therefore to determine whether or not such powers are needed or whether or not there is a compelling case in the public interest for them to be granted.</p> <p>e) Note that as currently drafted, whilst the draft DCO seems to limit the plots listed in Schedule 5 to compulsory acquisition of both existing wayleaves and easements and the creation of new rights or restrictions only (to the exclusion of outright land ownership), it does not limit other plots to compulsory acquisition of outright land ownership only (to the exclusion of lesser interests, including creation of new rights or restrictions).</p> <p>f) In e.g. plot 3/16/f the words 'land not subject to compulsory acquisition' appear. So, why is it in the BoR? Will it come under <i>The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009</i>, regulation 7(1)(a)(ii) or (iii)? In addition, what relevance do those words have to the title of the column they appear in? Further, if the plot is to be excluded from compulsory acquisition powers, why is it shown in the plans referred to in the definition of 'Order land' in the draft DCO? Should it not be expressly excluded from articles 21 and 24 of the draft DCO?</p> <p>g) In e.g. plot 4/9/a what relevance does the word 'commercial' have to the title of the column it appears in? Also, does the term have any utility here?</p> <p>h) In plot 3/17/a, should 'Highways England, Company Limited' have a comma in it?</p>
Part 2		
7	Page 38	Should the narrative above the table end with 'Category 3'? The words after that imply that Part 2 shows only a subset of Category 3 persons, rather than all Category 3 persons.

Part 3		
8	Page 45	Is paraphrasing in the narrative above the table appropriate? Is the narrative required at all?
9	Final column	There are some typos e.g. should 'maintenance' be 'maintaining'?
10	Part 3	Some persons listed in Part 3 do not also appear in Part 1. This is contrary to paragraph 8 of Annex D to <i>DCLC: Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land</i> , September 2013.
Part 4		
11	Part 4	Why is article 43 of the draft DCO needed if Part 4 is empty?
Part 5		
12	Page 51	The narrative above the table could cause confusion, particularly the use of '(i)', '(ii)' and '(iii)' as those are not in turn used in the table itself.