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Our Ref: TWA 8/1/13

4th February 2015

Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A160/A180 (PORT OF IMMINGHAM IMPROVEMENT) DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Examining Authority, Mary O'Rourke BA(Hons) DipTP MRTPI, who conducted an examination into the application made by the Highways Agency ("the HA") on 8 January 2014 for the A160/A180 (Port of Immingham Improvement) Development Consent Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act").

2. The examination of the application began on 25 April 2014 and was completed on 4 September 2014. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by hearings held in North Killingholme between 15 July 2014 and 17 July 2014.

3. The Order would grant development consent for the upgrade of the existing single carriageway section of the A160 to dual carriageway, with associated junction improvements, along the length of the route between the junction with the A180 at the Brocklesby Interchange and the Port of Immingham (referred to in this letter as "the project"). The Order would also authorise the compulsory acquisition and use of land for the purposes of the project. The objectives of the project are to reduce traffic congestion, improve journey time reliability and improve safety on the A160 which is part of the strategic route between the Port and the national motorway network.

4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in section 2 of the report. The Examining Authority's findings are set out in sections 4 to 8 of the report, and her overall conclusions and recommendations are at section 9 of the report.

Summary of the Examining Authority's recommendations

5. The Examining Authority recommended that the Order be made, in the form set out in Appendix D to her report.

Summary of Secretary of State's decision

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Secretary of State's consideration

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. Where not stated in this letter, the Secretary of State can be taken to agree with the Examining Authority's conclusions as set out in her report. Unless otherwise stated, all paragraph references are to the Examining Authority's report ("ER") and references to requirements are to those in Schedule 2 to the Order, as set out in Appendix D to the ER.

Legal and policy context

8. Since the Examining Authority wrote her report, the Secretary of State designated the National Networks National Policy Statement ("NNNPS") under section 5 of the 2008 Act on 14 January 2015. The Secretary of State is accordingly required now to decide this application in accordance with section 104 of the 2008 Act (decisions in cases where national policy statement has effect) rather than section 105 of the 2008 Act, to which the Examining Authority referred at ER 3.2. This means that, in addition to the matters set out at ER 3.2, he must also have regard to the NNNPS as designated and must decide this application in accordance with the NNNPS unless any of the considerations described in section 104(4) to (8) of the 2008 Act apply.

9. The Secretary of State has accordingly taken into account the designated NNNPS. In doing so he has considered whether the HA and other parties should be consulted on the implications of the changes to the December 2013 draft NNNPS for the cases which they presented to the examination. He has concluded that none of those changes are significant to his decision on this application to an extent that warrants further consultation. He is satisfied that the policies in the draft NNNPS on the need for development of the national road network, assessment principles and generic impacts have been sufficiently carried forward into the designated NNNPS and were adequately addressed in the examination, such that, in the Secretary of State's opinion, the Examining Authority's overall conclusion on the project's conformity with the draft NNNPS (at ER 6.5) remains relevant in relation to the designated NNNPS. However, as regards those aspects of the designated NNNPS which differ materially from the December 2013 draft, the Secretary of State's consideration of those changes is explained below (see paragraphs 12, 23 and 24).

10. In all other respects the Secretary of State agrees with the Examining Authority's assessment of the legislation and policy that are relevant and important matters to be taken into account in deciding this application and the weight to be given to relevant policies (ER 3.3-52, 4.13-26), with the qualification that the designated NNNPS is now the primary basis for decisions on development consent orders relating to the national road network. He confirms that he has had regard to the legislation and policy referred to by the Examining Authority in considering the issues raised by this application.

The need for the project and alternatives

11. The Secretary of State notes that there was no dispute at the examination of the need for the project to address the current congestion problems on what is the principal route for road traffic from the A180 to the Port of Immingham, and to accommodate forecast traffic growth from permitted or planned large infrastructure projects (ER 4.29-35). In terms of benefits, he notes that the project would increase capacity and would improve journey time reliability and safety at junctions; and that it represents high value for money (ER 4.36-39). On this basis, he agrees with the Examining Authority that there is clear national and local policy support and a strong need for the project (ER 4.43-44). He considers further that the policy support for the project has been reinforced by the designation of the NNNPS which identifies (at paragraphs 2.1-20) the compelling need for development of the national road network.

12. With regard to paragraphs 4.11 and 4.26-27 of the designated NNNPS, the Secretary of State notes that the HA's consideration of alternatives did not consider any viable modal alternatives as this was not required at the time when the project was being developed. He does not, however, consider that alternative modes would realistically be likely to address the identified need for the project and he is satisfied that the consideration of alternatives described by the Examining Authority at ER 4.40-42 was sufficient and proportionate. In all the circumstances the Secretary of State considers that it would not be appropriate or serve a useful purpose to require the HA retrospectively to provide an assessment of modal alternatives to this project before he decides this application.

Landscape and visual impacts

13. The Secretary of State has considered the Examining Authority's assessment at ER 4.45-60 of the likely impacts of the project on landscape character and visual amenity. He notes in this regard that the area is not subject to any statutory designation and that the zone of visual influence for the project and the traffic using it is relatively limited (ER 4.49). The Secretary of State recognises that during construction there would be some adverse effects on the various landscape characters in the locality and some reduction in visual amenity (ER4.50-51). He agrees, however, with the Examining Authority that in the long term, taking into account the mitigation measures – including a Construction Environmental Management Plan (“CEMP”) and a landscaping scheme – which would be secured by the requirements, the residual effects of the project on landscape character and visual amenity would be minimised (ER 4.53-61). He is, furthermore, satisfied that in relation to paragraphs 4.28-35 of the designated NNNPS the HA has demonstrated good design.

Ecological impacts

Impacts on designated sites

14. The Secretary of State has noted the Statement of Common Ground agreed between the HA and Natural England (“NE”) in relation to European and national designated sites and agrees with the Examining Authority that the project would not adversely affect those sites (ER 4.67-71). He agrees further for the reasons given by the Examining Authority that significant effects can be excluded for all the features of the relevant European sites and that it is therefore unnecessary for him to carry out an appropriate assessment of the implications of the project for those sites under the Conservation of Habitats and Species Regulations 2010 (ER 5).

15. The Secretary of State notes that the project includes a range of mitigation measures designed to minimise impacts on designated sites, including the CEMP and the Ecological Management Plan that would be secured through the requirements (ER4.75-78). Taking into account the proposed mitigation and NE's advice, he agrees with the Examining Authority that the project complies with national and local policy objectives (ER 4.79). He is satisfied also that it complies with the objectives of the designated NNNPS (see paragraphs 5.20-38).

Impacts on protected species

16. The Secretary of State has noted that NE sees no impediment to the issuing of licences in respect of the impacts of the project on water vole and badgers (ER 4.81-83). Taking into account the range of mitigation measures that would be secured through the requirements, including for a re-survey for mobile species before works started on site, he agrees with the Examining Authority that the project complies with national and local policy, including the NNNPS as now designated (ER 4.84-87).

Impacts on habitats

17. The Secretary of State has noted that the project would lead to the loss of various types of habitat including arable land, woodland and hedgerows (ER 4.89-92). However, he is satisfied that appropriate mitigation measures would be secured through the requirements including the creation of new ecological habitats (ER 4.93-95). He agrees with the Examining Authority that overall the project accords with both national and local policies including the NNNPS as now designated (ER 4.96).

Impact on soils

18. The Secretary of State agrees with the Examining Authority that, with the soil management plan (which will form part of the CEMP) in place, the impact on soils as a result of the project would be acceptable, having regard to national and local planning policies (ER 4.97-100).

Heritage impacts

19. The Secretary of State notes that the project would not physically impact on any historic buildings and that no significant impacts on known archaeological heritage assets are predicted (ER 4.104, 107). He agrees with the Examining Authority that, taking into account the Written Scheme of Investigation and other measures specified in requirement 8, appropriate mitigation would be secured and there would be no conflict with the objectives of national and local planning policies for the protection of heritage assets, including the NNNPS as now designated (ER 4.108-112).

Noise and vibration

20. The Secretary of State has noted the Examining Authority's assessment of the effects of noise and vibration during construction of the project and the proposed mitigation measures including the use of appropriate working practices and restrictions on working hours (ER 4.120-128). He agrees with the Examining Authority that, while there is potential for significant adverse noise impact during the construction period, the duration of this impact would be short and the measures to be included in the CEMP provide an appropriate means to minimise the impact to an acceptable level (ER 4.129, 4.142).

21. The Secretary of State has noted the assessment of operational noise impacts on sensitive receptors at ER 4.131-136 and the additional mitigation in the form of noise barriers at two locations proposed by the HA during the examination (ER 4.137-139). He agrees with the Examining Authority that taking into account the carriageway alignment changes, the extension of low noise surfacing and the noise barriers, the project would produce a net benefit in terms of operational noise and vibration (ER 4.140-141, 4.143-144). He is, accordingly, satisfied that the project is consistent with the objectives of national and local planning policy, including the NNNPS as now designated.

Air quality

22. The Secretary of State has considered the Examining Authority's assessment of air quality impacts at ER 4.145-153. He agrees with the Examining Authority that through the CEMP and with the proposed dust control measures there would be appropriate and adequate mitigation to minimise the risk of unacceptable levels of fugitive dust emissions during the construction period for those living around the site (ER 4.154). In terms of operational impacts, the Secretary of State agrees with the Examining Authority that the project would not have a significant adverse impact on air quality and he notes that the project has a low risk of being non-compliant with the EU Directive on Ambient Air Quality (2008/50/EU) (ER 4.150, 154).

23. Although the HA did not provide in its Environmental Statement ("ES") a judgement on the risk of the project affecting the UK's ability to comply with that Directive, as now required by paragraph 5.9 of the designated NNNPS, the Secretary of State is satisfied that the project is unlikely to affect the UK's ability to comply with that Directive given the Examining Authority's conclusions on air quality impacts referred to above. With regard to paragraph 5.14 of the designated NNNPS he is similarly satisfied that the project is unlikely to delay the point at which the Yorkshire and Humberside air quality zone will meet compliance timescales. The Secretary of State therefore sees no reason to differ from the Examining Authority's conclusion that the project is consistent with national and local planning policy, including the NNNPS as now designated.

24. The Secretary of State has considered the assessment of the project's likely impact on greenhouse gas emissions as reported in Chapter 6 of the ES in the light of paragraphs 5.16-19 of the designated NNNPS. He notes that the TAG appraisal for the project predicted that over the first 60 years from opening, there would be an increase of 0.7% in CO₂ emissions in the traffic study area compared with vehicle emissions in the "Do Minimum" scenario. Although the ES did not assess the project against the Government's carbon budgets – which was not a requirement at the time of the application – it concluded that overall the project would not have a significant impact on air quality and that mitigation measures for the operational stage were unnecessary. The Secretary of State is accordingly satisfied that the carbon emissions resulting from the project are unlikely to be so significant as to affect the Government's ability to meet its carbon reduction plan targets.

Flood risk and drainage

25. With regard to flood risk, the Secretary of State notes that, in the light of the HA's updated Flood Risk Assessment, the Environment Agency ("EA") did not object to the project, despite a marginal increase in flood risk to third parties (ER 4.167). While he notes that the Rosper Road link and new bridge under the railway would be in Flood Zone

3, he agrees with the Examining Authority that this is an example of essential transport infrastructure which needs to be located in an area at risk of flooding and that options for mitigation are limited (ER 4.164, 4.168). With regard to the Exception Test, the Secretary of State notes that although there would be a marginal extension to areas of flood hazard and flood extent to the west of the railway line, there would be no additional threat to highly vulnerable development or to dwellings (ER 4.170). He agrees with the Examining Authority that any flood risk would be outweighed by the wider sustainability benefits which the project would bring to the community (ER 4.171). The Secretary of State is accordingly satisfied that the project does not conflict with the Exception Test and complies with national and local planning policy, including the NNNPS as now designated (ER 4.172).

26. As regards drainage, the Secretary of State notes that the EA was confident that the HA's strategy for managing surface water through the use of wet balancing ponds would be achievable (ER 4.174-175). He agrees with the Examining Authority that with the proposed mitigation in place there would be no adverse construction phase impacts as a result of surface water runoff; and that the proposed drainage scheme would adequately mitigate for the operational impacts of the project which would as a result be neutral or slightly beneficial (ER 4.176-179). The Secretary of State agrees with the Examining Authority's overall conclusion that the surface water drainage management strategy is appropriate and would address existing road drainage problems. He is therefore satisfied that the project complies with national and local planning policy, including the NNNPS as now designated (ER 4.180).

Traffic and highway implications

27. The Secretary of State has considered the Examining Authority's assessment at ER 4.181-197 of the implications of the project for road safety, connectivity and non-motorised users, and the cumulative impacts of construction traffic for other large developments in the area. He agrees with the Examining Authority that the project would adequately address the needs of cyclists, horse riders and pedestrians and would improve accessibility and reduce community severance (ER 4.198). He notes also that requirement 3(7) would address the need to coordinate construction traffic for other major projects. The Secretary of State is therefore satisfied that the project is fully consistent with the objectives of the now designated NNNPS as regards sustainable transport and accessibility (see paragraphs 3.15-21) and accords local planning policy (ER 4.198).

Socio-economic impacts

28. The Secretary of State notes that there is likely to be some short term disruption to local communities and businesses during the construction stage and is satisfied that the Order contains appropriate measures to mitigate those impacts (ER 4.202-208). In this context, he notes also that the outstanding objection of SMart Wind referred to at ER 4.209-212 was withdrawn on 1 December 2014 following conclusion of a private commercial agreement with the HA. As regards operational impacts, the Secretary of State agrees with the Examining Authority that the overall economic impact as a result of the project would be positive for the local and regional area (ER 4.215). He therefore agrees with the Examining Authority's overall conclusion that the socio-economic impacts of the project would be beneficial to the area and would contribute towards the objectives of national and local planning policy, including the NNNPS as now designated (ER4.216-217).

Overall conclusion on the case for development consent

29. The Secretary of State has considered the Examining Authority's assessment at ER 6 of the case for granting development consent for the project in the light of the designation of the NNNPS. As indicated at paragraph 9 above, he considers that the project is in broad conformity with the NNNPS as now designated, for the reasons given by the Examining Authority at ER 6.5. In other respects, he agrees with the Examining Authority that the Order application complies with all legal and regulatory requirements (ER 6.8). The Secretary of State accordingly agrees with the Examining Authority's overall conclusion that the need for the project to be delivered and the other benefits of the project outweigh any adverse impacts and that development consent should therefore be granted (ER 6.8-9).

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

30. The Secretary of State agrees with the Examining Authority that the environmental information provided by the HA in its ES, the Addendum to the ES and during the examination is sufficient for the purposes of his decision on the application (ER 6.3). He confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that, in coming to the above conclusions, he has taken into consideration all the environmental information as defined in regulation 2(1) of those Regulations. For the purposes of regulation 23(2)(d)(iii), the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of development are those specified in the requirements, including the CEMP.

Compulsory acquisition matters

31. The Secretary of State has considered the compulsory acquisition powers sought by the HA against the tests concerning compulsory acquisition in sections 122, 123 and 138 of the 2008 Act, relevant guidance and the Human Rights Act 1998. He agrees with the Examining Authority that there is a compelling case in the public interest for the land to be acquired compulsorily since there is a clear need for the project to go ahead, there are no practicable alternatives to meet the objectives of the project, and the public benefits of the project outweigh the loss to or restrictions on private interests (ER 7.112). He is satisfied that all reasonable alternatives to compulsory acquisition have been explored; that the land subject to compulsory acquisition is required for the project; and that funding for the project is assured from the Department for Transport's committed roads programme (ER 7.96-102, 7.113-114). The Secretary of State agrees also with the Examining Authority that the requirements of Article 1 of the First Protocol to, and Article 6 of, the European Convention on Human Rights have been met and that Article 8 is not engaged for the reasons given by the Examining Authority (ER 7.108-111).

32. In relation to the outstanding objections by affected persons, the Secretary of State agrees with the Examining Authority that the compulsory acquisition of land in the Town Street area for the purposes of the new bridge and its approaches is necessary and that the potential private disbenefits arising from the HA's proposals in this area would not be such as to outweigh the benefit of the project (ER 7.105-107). As noted at paragraph 28 above, the objection by SMart Wind referred to at ER 7.118-139 has been withdrawn since the close of the examination and, as a result, there are no outstanding representations from statutory undertakers such as would engage section 127 of the 2008 Act. For the purposes of section 138(4) of the 2008 Act the Secretary of State confirms that he is

satisfied that the extinguishment of the rights of statutory undertakers and the removal of apparatus provided for in article 30 of the Order is necessary for the purposes of carrying out the project.

33. For all these reasons the Secretary of State agrees with the Examining Authority that the compulsory acquisition and other powers sought by the HA should be included in the Order (ER 7.141).

The Development Consent Order

34. The Secretary of State has considered the Examining Authority's assessment of the Order and the description of amendments made to it during the course of the examination at ER 8.14-74. He considers that, taken together, the amendments have not changed the application to the point where it is a different application and he is satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order in the form recommended by the Examining Authority, subject to the qualifications set out in the following paragraphs.

35. In article 5 (limits of deviation), the Secretary of State has decided to amend paragraph (2) which would have permitted the relevant planning authority to approve non-material amendments to the engineering drawings and sections (see ER 8.20-23). This is because he does not consider that it is appropriate to circumvent the procedure for making such non-material changes to orders granting development consent which is prescribed under section 153 of the 2008 Act.

36. In paragraph 1 of Schedule 2 (requirements), the Secretary of State has deleted the definition of "commence". This is because he considers that it is inappropriate to substitute this definition for the provisions in section 155 (when development begins) of the 2008 Act or to enable potentially significant works to be carried out before mitigation measures such as the CEMP have been approved in accordance with the requirements.

37. In requirements 3(2), 7(4), 8(2), 9(3), 10(3) and 16(2) the part of the provision which would allow the Secretary of State to agree departures from approved details, plans or schemes, known as a tailpiece, has been deleted. These provisions are unnecessary because amendments to approved details etc. may be approved by the Secretary of State under requirement 17(2). In requirement 15, the tailpiece which would allow the Secretary of State to agree departures from the scheme design shown on the engineering drawings and sections has been deleted for the same reason referred to in paragraph 35 above. As a consequence of these changes, requirement 17(1) is unnecessary and has been deleted.

39. The Secretary of State notes that, following the withdrawal of SMart Wind's representation, there is no need to consider the case for the protective provisions referred to at ER 8.75-84.

40. The Secretary of State has made a number of other minor textual amendments to the Order set out in Appendix D to the ER in the interests of clarity, consistency and precision, and in order to conform with the current practice for drafting Statutory Instruments. He considers that none of these changes, either individually or taken together, materially alter the effect of the Order.

Secretary of State's conclusions and decision

41. For all the reasons given in this letter, the Secretary of State considers that there is a compelling case in the public interest for authorising the project. He has accordingly decided to accept the Examining Authority's recommendation at ER 9.5 and is today making the Order as recommended by the Examining Authority, but subject to the modifications referred to at paragraphs 35 to 40 above. The Secretary of State confirms that in reaching this decision he has had regard to all the matters specified in section 104(2) of the 2008 Act. He is satisfied that none of the considerations in section 104(4) to (8) of the 2008 Act apply and that the project accords with the principles in the designated NNNPS.

Challenge to decision

42. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

43. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Stephen Cave

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the date when the Order is published. The A160-A180 (Port of Immingham Improvement) Development Consent Order (as made) is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/a160-a180-port-of-immingham-improvement>.

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).