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Your Ref: M1 Junction 10a Grade Separation Scheme

Our Ref: TR010009

Date: 7 June 2012

By email

Mr Henderson,

**TR010009 M1 Junction 10A Grade Separation Scheme
Draft Development Consent Order and Explanatory Memorandum**

Thank you for your email dated 4 May 2012 attaching a draft Development Consent Order, Explanatory Memorandum and related documents. In your email you requested our comments on the draft documents.

We have now considered the documents provided and set out our initial comments in the attached schedule. I hope you find these comments useful at this stage of the process and that they will assist in preparation of further drafts of the DCO. Our comments are entirely without prejudice to any future decisions of the Secretary of State, including the decision under Section 55 of the Planning Act 2008 to accept any application.

Yours sincerely,

Tracey Williams

Case Manager
The Planning Inspectorate

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 Planning Inspectorate 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.

SCHEDULE

M1 JUNCTION 10A GRADE SEPARATION SCHEME

COMMENTS ON DRAFT DEVELOPMENT CONSENT ORDER (DCO) AND EXPLANATORY MEMORANDUM (EM) SUBMITTED ON 4 MAY 2012

1. Introduction

1.1. This schedule is set out as follows:

- (a) General comment on the draft EM;
- (b) Comments on specific DCO provisions; and
- (c) Other comments.

1.2. These comments are provided without prejudice to any decision of the Secretary of State or of the Examining Authority (if the application is accepted for examination). For the avoidance of doubt, the absence of a comment on a particular provision is not intended to indicate that such a provision is likely to be acceptable to the Secretary of State or the Examining Authority.

1.3. It is for the applicant to be satisfied that the DCO contains all powers it requires in order to undertake the project.

1.4. We have not commented on typographical or similar errors. However we have noticed several minor errors (for example, it appears that paragraph 8.7 of the EM should refer to Article 22(2) rather than 23(2)).

2. General comment on the draft EM

2.1. In general, fuller explanation of the provisions in the DCO is encouraged. It should be noted that Regulation 5(2)(c) of the APFP Regulations requires the "purpose and effect" of the provisions to be set out in the EM. This includes the purpose and effect of provisions in the schedules.

2.2. We note that the draft EM indicates where the same or similar provisions have been used in similar legislation elsewhere, and where the provisions differ from the model provisions. While this information is helpful, and we would encourage this information to be retained (and expanded on where appropriate), it does not replace the need to set out the purpose and effect of all provisions in the DCO.

3. Comments on specific DCO provisions

3.1. Article 2 – Definitions:

- (a) "Order land" and "Order limits": It is noted that neither the land plan (referred to in the definition of "Order land") nor the works plan

(referred to in the definition of "Order limits") appear to have a feature labelled "development consent order boundary".

(b) Art 2(3): You may wish to consider, and provide further explanation in the EM, on the word "approximate" (including how this relates to the word "about" which precedes some distances in the schedules).

- 3.2. Article 4 – Maintenance: We suggest you explain in the EM the purpose and effect of each element of "maintenance".
- 3.3. Article 5 – Limits of Deviation: As regards the lateral deviation, it is noted that there is only a single limit of deviation for the entire project rather than limits of deviation for the scheduled works. You may wish to consider further and explain in the EM how it is intended that this power is interpreted in relation to the individual works at Schedule 1. We also suggest you explain in the EM the reasons for the 3m upward deviation power and unlimited downward deviation power.
- 3.4. Article 6 – Benefit of the order: As regards Art 6(2)(b), you may wish to consider whether it is clear which works are for the "express benefit" of owners etc, and whether these works can be expressly identified in this article or elsewhere.
- 3.5. Article 8 – Power to alter layout, etc, of streets: We suggest that you provide further information on purpose and effect of all aspects of this power such as the power to construct "sidings". The EM indicates that one of the reasons for the 8(2) power is that benefit of the DCO could be transferred to a person who may not be a street authority; you may wish to consider, and explain in the EM, the position of the street authorities in such circumstances.
- 3.6. Article 10 – Construction and maintenance of new and altered streets: You may wish to consider whether it is clear whether in Art 10(1) the words "shall be public highways" are descriptive or directive. You may also wish to identify in the EM any private streets affected by the project. As regards Art 10(2), you may wish to consider further and explain in the EM whose "intention" is being referred to in line 1.
- 3.7. Articles 11, 12, 13 – Classification of roads, clearways and speed limits: The EM should clearly explain the purpose and effect of these provisions. Copies of legislation should be provided where not widely available. Where any provisions are included that are not expressly envisaged in Schedule 5 to PA 2008 or elsewhere in that Act, the EM should also explain why these are appropriate for inclusion in a DCO (with particular reference to section 120 PA 2008).
- 3.8. Articles 14, 15 – Stopping up: In relation article 15 and any other provisions which introduce a deemed consent provision, you may wish to explain in the EM whether the affected bodies have been consulted about this.

- 3.9. Article 17 – Discharges of water: You may wish to identify in the EM the “persons” who fall within Art 17(3) and indicate whether those persons have commented on these provisions. You may also wish to explain the provenance of Art 17(3)(b).
- 3.10. Article 18 – Powers to survey and investigate: You may wish to consider further, and explain in the EM, the purpose and effect of enabling a notice to be given after entry into land.
- 3.11. Articles 19 to 31 – Powers of acquisition
- (a) Article 19: You may wish to explain in the EM the effect of making article 19 “subject to” article 26.
- (b) Article 21: As this is not a model provision we suggest that you provide fuller explanation of it in the EM. It is noted that Schedule 10 only contains two entries. You may wish to provide further information in the EM on the purpose and effect of Art 21(2), such as the proposed subject matter of any restrictive covenant, the intended extent of any rights, and the land on which land it such covenants may be imposed or such rights will be acquired. You may also wish to set out a more detailed explanation of the provisions of Schedule 11.
- (c) Article 22: You may wish to consider and set out a more detailed explanation in the EM of: the relationship between Art 22(1) and Art 22(2); the date in Art 22(2)(a); Art 22(4); and the significance of replacing “rights of way” with “rights” including why compensation for effects on “rights of way” has been retained in other provisions.
- (d) Article 24: You may wish to provide in the EM more details about the purpose and effect of this power including where and how it is likely to be used in this case. The EM may also wish to explain the overlap (if any) between articles 24 and 25 and whether Art 25(4) provides for compensation for entry into soil or airspace (absent appropriation).
- (e) Article 26: You may wish to set out in the EM further information on the purpose and effect of this provision, including the intended scope and location of “any other mitigation works” in Art 26(1)(d).
- (f) Article 27: Art 27(8) refers to “loss or damage arising from the execution of any works”, where as Art 26(8) refers to “loss or damage arising from the carrying of the development”. To the extent that this different terminology is intended, you may wish to explain this in the EM.
- (g) Article 28: Art 28(3) provides that the replacement land will vest in Luton Borough Council after the SoS has certified that a scheme has been implemented, but this is after the replacement land has been

“acquired”. You may wish to explain this provision further in the EM.

3.12. Requirements:

- (a) Requirement 1: You may wish to consider whether defined terms used in Art 2 of the DCO need to be defined here if the definitions are unchanged.
- (b) Requirement 3: You may wish to provide further information on the purpose and effect of this requirement, including how many stages are envisaged.
- (c) Requirement 4: You may wish to provide further information on the purpose and effect of this requirement, including which elements of the project require their layout, scale and external appearance to be approved. You may wish to consider whether the requirements can refer to any detailed drawings.
- (d) Requirement 5: You may wish to provide further information on the purpose and effect of this requirement, including how this relates to the ecological surveys undertaken already, and whether this is intended to deal solely with flora (only trees, shrubs and hedgerows are mentioned).
- (e) Requirement 7: You may wish to provide further information on the purpose and effect of this requirement, including whether any features of historic landscape have been identified.

3.13. Schedule 1 works: It is noted that Schedule 1 does not identify which development falls within section 115(1) and which within s115(2). You may wish to consider whether it would be useful to identify this and/or to provide an explanation of the position in the EM. You may also wish to consider whether all of the matters listed under “works” are actually works or are ancillary matters that can be dealt with elsewhere (e.g. classification of roads, de-trunking, changes to speed limits and clearway provisions). It is noted that the Schedule 1 works are referred to in the defined term “authorised development”, which term refers to development within the meaning of section 32 of PA 2008.

3.14. Description of locations in schedules: You may wish to consider whether the location of streets and works and other matters are defined with sufficient accuracy in the schedules.

3.15. Schedule 14: We note that this is currently blank.

4. **Other comments**

4.1. Other comments on specific parts of the draft EM

- (a) At paragraph 2.1, you may wish to consider providing further information on the “purpose” referred to (“purpose connected with

highway”) and addressing which subsections of section 22 apply to the project.

- (b) At paragraph 2.6, you may wish to address the new draft guidance issued by DCLG on associated development.
- (c) At paragraph 4 of the EM you may wish to indicate briefly which provisions have been taken from the model railways provisions and why.

4.2. Comment on the Book of Reference

The book of reference has not been considered in detail. However it is noted that Part 2 contains two parts (2A and 2B) dealing with the Compulsory Purchase Act 1965 and the Land Compensation Act 1973. You will no doubt be aware that the Localism Act 2011 amended section 57 of PA 2008 to include, in the definition of “relevant claim”, a claim under section 152(3) PA 2008.