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The Planning Inspectorate
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Your Ref
TRO10009
Our Ref
OZP/RJO/Y068969
Date
10 October 2012

Dear Ms Sully

**Luton Borough Council
The M1 Junction 10a Grade Separation Scheme**

Further to Tracey Williams' letter of 7 June, in which she provided PINS' comments on some of the draft application documents, on behalf of our client Luton Borough Council ("the Council") please find below our response to those comments, setting out how they were taken into account in the documents submitted with the Council's application on 29 June 2012.

For ease of reference we have adopted the same headings to our response as Tracey Williams did in the schedule to her letter.

General comment on the draft EM

We noted the comment that the Explanatory Memorandum ("the EM") should include fuller explanation of the Development Consent Order ("DCO") provisions, in particular setting out in more detail "the purpose and effect" of the provisions. We have, as far as possible, given fuller explanation to the DCO provisions in the EM.

Comments on specific DCO provisions

Para 3.1 Article 2 - Definitions

(a) The definition of "Order land" and "Order limits" has been amended in line with PINS' comments. Please see Article 2 of the DCO.

(b) The word "about" has been removed from the Schedules, which now use the term "approximate". Paragraph 5.5 of the EM now gives an explanation of the intention behind this word.

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Article 4 - Maintenance

The EM has been updated to explain the purpose and effect of each element of “maintenance”. Please see paragraphs 6.3 - 6.5 of the EM.

Article 5 – Limits of Deviation

Please see the further explanation in respect of limits of deviation which is set out at paragraphs 6.6-6.9 of the EM. Note that the upward vertical limit was reduced to 1.5 metres in the application draft of the DCO.

Article 6 – Benefit of the order

Please see paragraph 6.12 of the EM which clarifies further the exceptions where the DCO will self-evidently benefit others, e.g. rights for statutory undertakers and mitigation works outlined in the Schedule 1 description of the works.

Article 8 – Power to alter layout, etc, of streets

Please note that article 8 referred to above has now been removed from the DCO and that the relevant street works are now included in Schedule 1 to the DCO.

Article 10 – Constructions and maintenance of new and altered streets (now Article 9)

Please see paragraph 7.6 of the EM which sets out a full explanation of the purpose and effect of the new article 9.

Articles 11, 12, 13 – Classification of roads, clearways and speed limits (now Articles 10, 11, 12)

The EM has been amended to explain more fully the purpose and effect of the above-mentioned provisions. Please see paragraphs 7.7 – 7.19 of the EM for further details. With regard to copies of legislation to be provided where not available, should PINS be unable to access any of the legislation referred to in the DCO or the EM, we would be happy to provide copies on request.

Please note that since submitting our first draft of the DCO for your comments, the following provisions (using up-to-date numbering) in the DCO have been amended and included in the latest draft submitted with our application:

- Article 10(1), (2) and (3);
- Article 11(1) and 11(4)(d); and
- Article 12(1), (2) and (2)(b)(ii).

Articles 14, 15 – Stopping up (now Articles 13 and 14)

With regard to provisions which introduce a deemed consent provision, please see paragraph 3.5 of the EM which states that the relevant authorities have been consulted on a draft of the DCO and the EM.

Article 17 – Discharge of water (now Article 16)

Prior to submission of the application, the draft DCO and EM were shared with a range of statutory undertakers and relevant public bodies, including the Environment Agency, Thames Water, the Highways Agency and Central Bedfordshire Council. No comments were received on this article, which is essentially the same as the model provision.

As far as we are aware, in the documents supplied to PINS there is not, and has not been, a paragraph (3)(b) in this article.

Article 18 – Powers to survey and investigate (now Article 17)

Please see a more detailed explanation of the purpose and effect of this provision at paragraphs 8.3 – 8.5 of the EM.

Please note that article 17(3)(a) has been amended, removing the requirement for any person entering the land on behalf of the undertakers to produce written evidence of authority after entering the land.

Articles 19, 21, 22, 24, 26 – Powers of acquisition (now Articles 18, 20, 21, 23 and 25)

Having considered your comments in respect of these provisions, we think that the explanation provided in the revised EM submitted with the application is sufficient to explain the purpose and effect of the provisions in question.

Article 27 – Temporary use of land for maintaining authorised development (now Article 26)

Articles 26(8) and 25(8) are intended to have the same effect in relation to the subject matter to which the respective articles relate (i.e. the former construction works, the latter maintenance works).

Article 28 – Special category land (now Article 27)

Further to your comments, Article 27(3) of the DCO has been amended and the provision now takes account of the fact that Luton Borough Council will have already acquired the land.

Requirements

Requirement 1

In accordance with your request, we have removed the duplication of defined terms from Schedule 2 to the DCO.

Requirement 3

Please see paragraph 12.4 of the EM which provides further information on the purpose and effect of this requirement.

Requirement 4

Requirement 4 has been amended and it now provides that approval by the relevant planning authority is only required for layout, scale and appearance of sign gantries. Further explanation of this requirement can be found at paragraph 12.5 of the EM.

Requirement 5

Requirement 5 has now been amended to reflect that the undertaker will prepare an ecological strategy, which must be approved by the relevant planning authority and in accordance with which the authorised development is to be carried out. Please see Schedule 2 to the DCO and paragraph 12.6 of the EM for further details.

Requirement 7

See paragraphs 12.8 – 12.9 of the EM. Historic landscape features are shown on Figure 5.3 in Volume 2 of Part C of the Environmental Statement (document reference LBC 6.2.3).

Schedule 1 works

Further to PINS' comments, Schedule 1 was revised so that it describes those matters which constitute development, with ancillary matters dealt with elsewhere in the DCO. Further we have also provided a fuller explanation of the section 115(1)-(2) position in respect of the works referred to in Schedule 1, in paragraphs 2.6-2.10 of the EM.

Description of locations in schedules

In accordance with PINS' comment, the description of locations in Schedules has now been updated.

Schedule 14 (now schedule 12)

Schedule 12 has been updated and now contains protective provisions for the protection of highway authorities. These may be subject to amendment, and protective provisions for other third parties may be proposed, as negotiations continue before and during the examination period.

Other comments on specific parts of the draft EM

Paragraph 2.1

Paragraph 2.1 has been amended to provide further information on the purpose of the new junction.

Paragraph 2.6

Please see footnote 4 of the EM which states that in addition to the *Guidance on associated development: Applications to the Infrastructure Planning Commission (Department for Communities and Local Government) (September 2009)* the Council has also had regard to the CLG draft guidance on associated development published for consultation on 13 April 2012.

Paragraph 4

We have amended the EM throughout to deal with the comment regarding the railway model provisions. Therefore where railway model provisions were adopted instead of the general model provisions, we have indicated in brackets in the headings throughout the EM, and given an explanation as to why each such provision is needed.

Comment on the Book of Reference

We note the comment that the Localism Act 2011 amended section 57 of the Planning Act 2008 to include, in the definition of “relevant claim”, a claim under section 152(3) of the Planning Act 2008. We have dealt with this issue in the version of the Book of Reference submitted as part of our application.

I hope this letter deals satisfactorily with the points PINS has raised.

Yours sincerely



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