



Department for Transport

Bircham Dyson Bell LLP
50 Broadway
London
SW1H 0BL

Martin Woods
Head of the TWA Orders Unit
General Counsel's Office
Department for Transport
Zone 1/14-18
Great Minster House
33 Horseferry Road
London SW1P 4DR

Enquiries: 020 7944 3293

E-mail: transportandworksact@dft.gov.uk

Web Site: www.gov.uk/dft

Our Ref: TWA 8/1/10
Your Ref: ADW/146593

30 September 2014

Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE CENTRAL BEDFORDSHIRE COUNCIL (WOODSIDE LINK HOUGHTON REGIS) 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, Glyn Roberts, who conducted an examination into the application made by Central Bedfordshire Council ("the applicant") on 14 May 2013 for the Central Bedfordshire Council (Woodside Link Houghton Regis) 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 8 October 2013 and was completed on 4 April 2014. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held in Dunstable between 15 November 2013 and 23 January 2014.

3. The Order would grant development consent for construction of a 2.9 kilometre highway between the Woodside area of Dunstable/Houghton Regis and new Junction 11a on the M1 which is to be constructed as part of the A5-M1 Link Road scheme. The Order would also authorise the compulsory acquisition and use of land for the purposes of the project. The new highway (referred to as the "Woodside Link") would provide a more direct route for traffic between the Woodside Industrial Estate and the primary road network avoiding the centres of Dunstable and Houghton Regis. It would also serve the Houghton Regis North Phase 1 ("HRN1") urban extension scheme which comprises a substantial housing development with business and retail elements.

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 6 of the report, and his overall conclusions and recommendation are at section 7 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 his 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. All paragraph references, unless otherwise stated, 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. The Secretary of State agrees with the Examining Authority that, since no National Policy Statement ("NPS") has yet been designated for highway projects, he is required to decide this application in accordance with section 105 of the 2008 Act (decisions in cases where no national policy statement has effect) (ER 3.4, 7.1). He agrees also that the draft NPS for National Networks published for consultation on 4 December 2013 is, as an emerging statement of relevant Government policy, an important matter in considering the Order application (ER 3.5-15). In all other respects, he 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 3.18-23, 3.37-119). He agrees further, for the reasons given by the Examining Authority, that the Woodside Link can be properly regarded as a Nationally Significant Infrastructure Project for the purposes of the 2008 Act as it applied at the time of application, while also serving important local highway purposes (ER 3.24-36).

9. The Secretary of State has considered the Examining Authority's comments at ER 3.120-122 about differences between the draft National Networks NPS and the National Planning Policy Framework ("NPPF") in relation to Green Belt policy. He does not consider that the two statements of policy are inconsistent because the two approaches reflect the differences between the two types of development and their likely impact on the Green Belt. Local transport schemes are likely to have significantly less impact on the Green Belt than Nationally Significant Infrastructure Projects which have greater size and corresponding impacts. In any event, the Secretary of State is satisfied that this issue does not prevent him from reaching a conclusion on the conformity of the project with either of those policy statements (see paragraph 12 below).

10. The Secretary of State has considered the changes made to the application referred to by the Examining Authority at ER 3.124-130. He agrees with the Examining Authority that none of these amount to a significant change in the scope of the project and that they have not changed the application to the point where it is a different application. He is accordingly 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, taking into account also the further changes to the Order referred to at paragraphs 32 and 33 below.

Issues arising in Local Impact Reports

11. The Secretary of State confirms that in reaching a decision on this application he has, as required by section 105 of the 2008 Act, had regard to the Local Impact Reports (“LIRs”) submitted by Central Bedfordshire Council as planning authority (“CBC”) and Luton Borough Council (“LBC”) which are summarised at ER 4.5-103. He notes that both LIRs conclude that the social and economic benefits of the scheme outweigh the negative environmental impacts and that the scheme should be supported subject to the mitigation measures proposed (ER 4.72, 4.103).

Conformity with local plan policies

12. The Secretary of State has considered the Examining Authority’s assessment at ER 4.104-120 as to whether the proposed development in the Green Belt is acceptable having regard to the NPPF, the draft National Networks NPS and the saved Local Plan Green Belt policy. He agrees with the Examining Authority that in this context the decisions made in relation to the HRN1 application by CBC and the Secretary of State for Communities and Local Government are relevant and important considerations because of the consequences of those decisions for the future of the Green Belt in this area (ER 4.111). The Secretary of State agrees, for the reasons given by the Examining Authority, that the Woodside Link can legitimately be regarded as local infrastructure that is not inappropriate in the Green Belt in accordance with paragraph 90 of the NPPF (ER 4.112-113). He agrees further that, even if the development were properly to be regarded as inappropriate development in the terms of the draft NPS, very special circumstances exist that outweigh the harm to the Green Belt and any other harm arising from the development (ER 4.115).

13. The Secretary of State agrees with the Examining Authority that, taking into account the LIRs submitted by CBC and LBC, the Woodside Link proposals are in general conformity with all other relevant Development Plan policies (ER 4.121).

Principle of the development and conformity with the key policy statements

14. The Secretary of State agrees with the Examining Authority that there is a clear need for new highway capacity and connectivity with the national network to be created in the area through which the Woodside Link is proposed to be routed (ER 4.122-128). He agrees also, for the reasons given by the Examining Authority, that the project is in general conformity with the emerging strategic land use planning and transport planning framework, the draft National Networks NPS, the NPPF and with the energy suite of NPSs (ER 4.129-138).

Environmental issues:

Road drainage and the water environment

15. The Secretary of State has considered the Examining Authority’s findings at ER 4.178-192 regarding the effects of the project on the water environment and the concerns raised by LBC and local residents. He agrees with the Examining Authority that the Woodside Link is an appropriate form of development for the location proposed, having regard to the Flood Risk Assessment (“FRA”) agreed between the applicant and the Environment Agency; that the Order provides adequate safeguards in relation to water quality, flood risk and the water environment; and that subject to implementation of the mitigation measures set out in the FRA and required by the Order no additional flood risk should arise from the project (ER 4.189). The Secretary of State is therefore satisfied, like

the Examining Authority, that the relevant provisions of the NPPF and the draft National Networks NPS have been addressed satisfactorily, including the Sequential Test in relation to development in areas of flood risk (ER 4.193).

Cultural heritage effects

16. The Secretary of State has noted the Examining Authority's findings at ER 4.231-243 about the effects of the project on cultural heritage. He agrees with the Examining Authority that the project would give rise to no effects on heritage assets that would be so adverse as to justify refusal of the application (ER 4.244). The Secretary of State does not consider that it is necessary to adopt the consolidated version of requirements 15 and 16 suggested by CBC since requirement 15 as included by the applicant in its preferred version of the Order already provides sufficient flexibility for the planning authority to minimise delays to the delivery of the project (ER 4.38, 4.238-239).

Landscape and visual effects

17. The Secretary of State has considered the Examining Authority's assessment at ER 4.252-278 of the impacts of the project on various receptors along the route of the Woodside Link. He agrees that the likelihood of the HRN1 development proceeding must be taken into account as it would provide additional screening and would change the setting and backdrop against which the new road would be viewed. This is because that development would over time reduce substantially the landscape and visual impacts of the project for properties north of Parkside Drive (ER 4.259-260). He notes that residents overlooking the southern section of the Woodside Link would experience an adverse impact in varying degrees, but like the Examining Authority he is satisfied that the applicant and the planning authority together have the capacity to ensure delivery of appropriate landscape and visual mitigation (ER 4.268). The Secretary of State agrees with the Examining Authority's overall conclusion that the project has met the criteria for good design in the draft National Networks NPS and that none of the landscape or visual effects of the project would be so significant or adverse as to provide a basis for refusing the application (ER 4.271, 4.279).

Transport assessment

18. The Secretary of State has considered the Examining Authority's review of the applicant's transport assessment and the further information provided by the applicant during the examination (ER 4.301-339). He has noted in this context the uncertainties involved in assessing cumulative impacts since traffic predictions for all proposed and emerging development proposals were not available to the applicant either when the assessment was prepared or before the close of the examination (ER 4.333-334, 7.3 (*13th bullet point*)). He has noted also that the assessment of cumulative impacts in the applicant's Environmental Statement ("ES") relied on the ESs for the A5-M1 Link Road and the HRN1 development (ER 4.339).

19. In the light of these uncertainties, the Secretary of State agrees with the Examining Authority that, apart from the specific mitigation provisions to be included in the Order, the need for a wider set of traffic measures to deal with the cumulative effects of the range of developments under consideration in the area would best be addressed by liaison between relevant authorities rather than through the terms of the Order (ER 4.303). He is, nevertheless reassured by the Statement of Common Ground ("SoCG") between the applicant and the Highways Agency that the Woodside Link can be accommodated without

compromising on safety, capacity and accessibility; and that the Woodside Link and the A5-M1 Link Road taken with the principal local roads in the area are intended to provide adequate capacity to meet the existing and anticipated traffic growth in the area, based on available information, in a safe and sustainable manner (ER 4.312, 4.315). The Secretary of State is satisfied also that, having regard to the SoCG between the applicant and LBC about the robustness of the information and assumptions underlying the applicant's traffic, noise and air quality assessments, the applicant's ES provides an adequate basis for the assessment of those impacts (ER 4.335).

The Parkside Link

20. The Secretary of State has considered carefully the concerns raised by residents living on the Houghton Park Estate and by Houghton Regis Town Council about the Parkside Link – which would connect Parkside Drive and the Woodside Link – and the Examining Authority's assessment of this issue at ER 4.340-385. He recognises in particular that the re-opening of the southern end of Parkside Drive to vehicular traffic would alter significantly the peaceful environment currently enjoyed by some residents in this area. However, the Secretary of State agrees with the Examining Authority that the Parkside Link could potentially assist the connectivity of the estate by providing a connection to jobs and social facilities to the benefit of local residents; that the Parkside Link is acceptable in traffic and environmental terms, even taking into account traffic flows from the HRN1 development; and that the proposed traffic monitoring scheme specific to Parkside Drive under requirement 19 would provide a degree of safeguard to the local community in the event that traffic levels exceeded the predictions in the ES (ER 4.366, 4.377, 4.384). The Secretary of State agrees with the Examining Authority's conclusion that on balance the potential benefits of the Parkside Link to the Houghton Park Estate and the surrounding area as a whole are likely to outweigh the level of the relative dis-benefit that may be experienced by those residents living close to the southern end of the existing Parkside Drive (ER 4.386).

Air quality

21. The Secretary of State agrees with the Examining Authority that, taking into account the assessment of impacts and mitigation measures summarised at ER 4.387-413, reasonable safeguards have been built into the Order in relation to the control of air quality effects, including the control of dust in dry weather during the construction period. He is satisfied also that no air quality effects once the Woodside Link was in operation would be so adverse as to justify refusal of the application (ER 4.415).

Noise and vibration

22. The Secretary of State has considered the Examining Authority's findings on the likely noise and vibration impacts of the project and the concerns of local residents, as set out at ER 4.443-470. He notes in this regard the Examining Authority's view that the concerns of those who live nearest to the route of the Woodside Link and the Parkside Link are not without foundation, but that the level of increase in traffic noise needs to be understood in its proper context. The Examining Authority explained that the backdrop against which the specific effects of the Woodside Link must be assessed is the overall growth in traffic across the wider strategic and local road network, much (but not all) of which would be related to the effects of traffic growth on the M1 Motorway (ER 4.445-451).

23. In relation to construction noise, the Secretary of State agrees with the Examining Authority that, taking into account the measures in the applicant's Construction Environmental Management Plan, the effects should be kept to a manageable level and would not be so adverse as to justify refusal of this application (ER 4.469). As regards operational impacts, he notes that the overall level of noise in the area would be increased (though only partly attributable to the Woodside Link); and that while a limited number of properties would experience a significant increase in noise (from a very low level), others would experience significant reductions in noise compared with existing levels. The Secretary of State agrees with the Examining Authority's overall conclusion that, taking into account the mitigation measures provided for in the Order, none of the predicted noise effects would be so adverse as to justify either the omission of the Parkside Link or refusal of the Woodside Link as a whole (ER 4.469-471).

Socio-economic impacts, including community and private assets

24. The Secretary of State has considered the Examining Authority's evaluation at ER 4.490-508 of the applicant's ES (Chapter 11) and summary socio-economic assessment. He agrees with the Examining Authority that the Woodside Link makes economic sense by providing a greatly improved connection between the Woodside Industrial Estate and the motorway network. He has noted that the Woodside Link is critical to the successful delivery of the HRN1 development; and that in turn the HRN1 development would provide a significant financial contribution to the cost of the A5-M1 Link Road, which is an important part of the London-Scotland Route Enhancement Strategy. Taking into account also the mainly short term adverse effects of constructing the Woodside Link, for example in terms of severance, the Secretary of State agrees with the Examining Authority's overall conclusion that the project would contribute a range of significant and positive economic and social effects. He agrees further that the Parkside Link could contribute to the economic and social well-being of residents on the Houghton Park Estate (ER 4.509).

25. The Secretary of State has noted the applicant's proposal for creating a new area of public open space along the northern edge of the Woodside Link to offset the loss of parts of the mainly unmanaged green space between Houghton Park and Lewsey Farm Estates (ER 4.507-508). The Secretary of State for Communities and Local Government has today issued certificates under sections 131 and 132 of the 2008 Act as to the adequacy of these proposals. The Order will accordingly not be subject to Special Parliamentary Procedure.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

26. The Secretary of State agrees with the Examining Authority, for the reasons given at ER 4.510-521, that the applicant's ES as supplemented by the information provided during the examination provides an adequate basis for assessing the environmental impacts of the Woodside Link for the purposes of this decision. In particular, he agrees that it is unnecessary for him to undertake an appropriate assessment under the Conservation of Habitats and Species Regulations 2010; and he confirms that, in coming to a conclusion on this application, he has had regard to the conservation of biodiversity as required by section 40 of the Natural Environment and Rural Communities Act 2006.

27. The Secretary of State 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 Construction Environmental Management Plan, and the speed limits in Schedule 3 to the Order.

Overall conclusion on the planning case for the project

28. The Secretary of State agrees with the Examining Authority that the project is in broad conformity with relevant adopted national and local planning and transport policies and that the socio-economic benefits of the project are substantial and clear. While he recognises that there would be some negative environmental impacts arising from the project, he agrees that none are sufficient to justify refusing development consent for the project. The Secretary of State therefore agrees with the Examining Authority that the overall balance between the benefits and dis-benefits of the project falls clearly in favour of granting development consent for the Woodside Link (ER 4.522-525).

Compulsory acquisition matters

29. The Secretary of State has considered the compulsory acquisition powers sought by the applicant against the tests concerning compulsory acquisition in sections 122 and 123 of the 2008 Act, relevant guidance and the Human Rights Act 1998. He agrees with the Examining Authority that the case in relation to the public benefit of the project has been made (ER 5.81); that the process of selecting the route of the new road was appropriate and the route selected was a reasonable response to the circumstances and relevant constraints (ER 5.84, 85); that the scale of the proposed development is appropriate (ER 5.86); and that the case for the extent of the proposed acquisition of land has been fully and properly justified (ER 5.87-89).

30. The Secretary of State is further satisfied that the requirements of the European Convention on Human Rights and the Human Rights Act 1998 have been met in relation to the compulsory acquisition powers applied for (ER 5.90-105). As regards funding, he agrees with the Examining Authority that it is likely that the project can be funded within the five year timescale for commencement of the project; that funding would be available for compulsory acquisition of land; and that the resource implications of the costs of blight have been taken into account by the applicant (ER 5.114). The Secretary of State has accordingly accepted the Examining Authority's recommendation that the compulsory acquisition powers sought by the applicant should be granted (ER 5.115-123).

The Development Consent Order

31. The Secretary of State has considered the Examining Authority's description of the evolution of the Order at ER 6.1-23. Subject to the exceptions detailed in the following paragraphs he is satisfied that the form of the Order set out in Appendix D to the ER is appropriate for the implementation of the project.

32. With regard to article 21 (compulsory acquisition of rights), the Secretary of State considers that it is appropriate in the circumstances of this case to authorise the applicant to impose restrictive covenants over the plots of land detailed in Schedule 7 to the Order. He is satisfied that in relation to those plots outright acquisition is not justified and that the nature of the development proposed on that land is such that restrictions might need to be imposed on the future use of the land, in order to protect that development or access to it. The Secretary of State is not, however, persuaded that it is appropriate to give a general

power to impose restrictive covenants over any of the Order land as defined in article 2(1) in the absence of a specific justification for conferring such a wide-ranging power in the circumstances of this project and without an indication of how the power would be used. The Secretary of State has therefore decided to amend article 21 to limit the power to impose restrictive covenants to the plots of land detailed in Schedule 7 to the Order.

33. 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 overall conclusion and decision

34. 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 construction of the Woodside Link. He has therefore decided to accept the Examining Authority's recommendation at ER 7.4 and is today making the Order granting development consent and imposing the requirements as proposed by the Examining Authority, but subject to the modifications referred to at paragraphs 32 and 33 above. He confirms that, in reaching this decision, he has had regard to all the matters specified in section 105(2) of the 2008 Act.

Challenge to decision

35. 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

36. 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,

Martin Woods

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 from the date when the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 (as made) is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/eastern/woodside-link-houghton-regis-bedfordshire/>.

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 (0207 947 6655).