

Date: 23 April 2019
Our ref: STRE/TWHI/2037086.000020
Your ref: TR010016
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The Planning Inspectorate
Major Applications & Plans
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By Recorded Delivery & By Email to A63castlestreet@pins.gsi.gov.uk

Dear Sir/Madam

**A63 Castle Street Improvement, Hull (TR010016)
Written Representation on behalf of HIN Hull Limited and HICP Limited**

1 Introduction

- 1.1 This Written Representation is made on behalf of HIN Hull Limited and HICP Limited ("**Holiday Inn**"), for whom we act in respect of the proposed A63 (Castle Street Improvement, Hull) Development Consent Order (the "**Proposed Order**").
- 1.2 We refer to the Relevant Representation dated 29 November 2018 submitted on behalf of Holiday Inn (the "**Relevant Representation**"). A copy of the Relevant Representation is appended to this Written Representation for ease of reference.
- 1.3 For the reasons set out in the Relevant Representation, and pursuant to Regulation 10(4) of The Infrastructure Planning (Examination Procedure) Rules 2010, Holiday Inn restates its **objection** to the Proposed Order (in particular the proposed compulsory acquisition and temporary use powers and the terms on which it is proposed these will be exercised). However, Holiday Inn hopes to be in a position to withdraw this objection as soon as Highways England ("**HI**") agrees and completes the necessary Option and Mitigation Deed (the "**Option Deed**") which we are endeavouring to progress with it.

2 Current Position

- 2.1 Paragraph 6 of the Relevant Representation contains the outline terms of a settlement proposal put forward by Holiday Inn which sought inter alia, in accordance with the principles of national policy, to: (i) minimise land take associated with the Proposed Order, (ii) provide for the voluntary acquisition of land and other interests required by HE in lieu of the exercise of powers of compulsory purchase, (iii) secure appropriate protection for Holiday Inn's existing and future operations, and (iv) mitigate the adverse impacts anticipated to arise from the carrying out of works associated with the Proposed Order.

- 2.2 Following an all-parties meeting, a draft Option Deed was provided to BDB Pitmans, who act for HE, on 20 December 2018.
- 2.3 Whilst the process of negotiation of the Option Deed has been somewhat lengthier than Holiday Inn had originally anticipated, particularly given its proactivity in preparing and

To: The Planning Inspectorate
Date: 23 April 2019
Page: 2

issuing drafts of the documents, a substantial measure of 'in principle' agreement now exists between Holiday Inn and HE.

- 2.4 Certain matters pertaining to the Option Deed do, however, remain outstanding between the parties, particularly in relation to ensuring that the documented mitigation measures will be binding on any party exercising powers under the Proposed Order.
- 2.5 As at the date of this Written Representation, a substantive response is awaited from HE in respect of the outstanding points.

3 Next Steps

- 3.1 As both the Examining Authority and HE will be aware, the confirmed timetable for Examination of the Proposed Order necessitates the further detailed involvement of all Interested Parties (including Holiday Inn) at a number of stages in the coming weeks and months.
- 3.2 In the short-term, this is likely to include responding in detail to the Examining Authority's First Written Questions and requests for further information (each by 10 May 2019), and preparation for, and attendance at, compulsory purchase and other issue-specific hearings relating to the Proposed Order (during the week commencing 3 June 2019).
- 3.3 **In accordance with the Examination Timetable included at Annex A to the Rule 8 Letter of 1 April 2019, this letter constitutes written notice that we may wish to attend and speak at the compulsory purchase and other issue-specific hearings on behalf of Holiday Inn. However, we await written confirmation from the Examining Authority as to the exact dates on which these hearings are to be scheduled.**
- 3.4 Cognisant of these deadlines, and the substantial resources, time and cost required to be expended in preparing for them, it is Holiday Inn's strong preference for the Option Deed to be agreed by **Wednesday 8 May**, being two clear working days before Deadline 2 of the Examination (10 May 2019). It is anticipated that completion of the Option Deed will follow shortly after Wednesday 8 May, depending on the availability of Holiday Inn's and HE's authorised signatories.
- 3.5 We consider that it is entirely realistic to expect the Option Deed to be agreed by this deadline, although Holiday Inn wishes to place on record at this juncture its

disappointment that, through no fault of its own, the Option Deed was not agreed before the Preliminary Meeting as had been originally and reasonably requested.

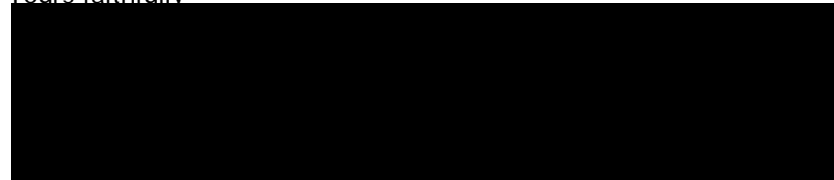
- 3.6 In the event that the Option Deed cannot be completed before the revised deadline of Wednesday 8 May, Holiday Inn will have little choice but to provide the Examining Authority with a supplementary written representation outlining the nature of its continued concerns regarding the Proposed Order.
- 3.7 We hope that the proposed course of action will be acceptable to the Examining Authority, and would invite it to make early contact with the writers of this letter if it is not. Whilst we are cognisant of the need to ensure the efficient progression of the Examination, we remain keen to avoid both the unnecessary wasting of resources, and burdening the Examining

To: The Planning Inspectorate
Date: 23 April 2019
Page: 3

Authority with detailed written material that should, in the event of appropriate engagement by HE as promoter, ultimately prove unnecessary.

- 3.8 Further, and as stated in Paragraph 6.6 of the Relevant Representation, Holiday Inn will also be left in a position whereby it will have to revise terms relating to mitigation into protective provisions and request that the Examining Authority place these on the face of the Proposed Order, which would then render them subject to Section 161 of the Planning Act 2008. Doing so would also ensure that they are binding on parties other than HE which are authorised to exercise powers under the Proposed Order.
- 3.9 However, Holiday Inn very much hopes that it will not have to engage substantively in the Examination of the Proposed Order, and looks forward to HE engaging with it so as to swiftly complete the Option Deed.
- 3.10 Please let Sheridan Treger or Tom White of this office know if you have any queries in relation to this Written Representation.

Yours faithfully



Bryan Cave Leighton Paisner LLP

CC (By Email): A63CastleStreet.Hull@highwaysengland.gov.uk.

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To: The Planning Inspectorate
Date: 23 April 2019

Appendix 1

Relevant Representation of Holiday Inn (29 November 2018)

Date: 29 November 2018
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Dear Sir/Madam

A63 Castle Street Improvement, Hull (TR010016) Relevant Representation on behalf of HIN Hull Limited and HICP Limited

1 OBJECTION

1.1 Please accept this letter as the response of HIN Hull Limited and HICP Limited ("**Holiday Inn**"), for whom we act, to the notice issued to the latter on 5 November 2018 by Highways England pursuant to Section 56 of the Planning Act 2008 in respect of the proposed A63 (Castle Street Improvement, Hull) Development Consent Order (the "**proposed Order**").

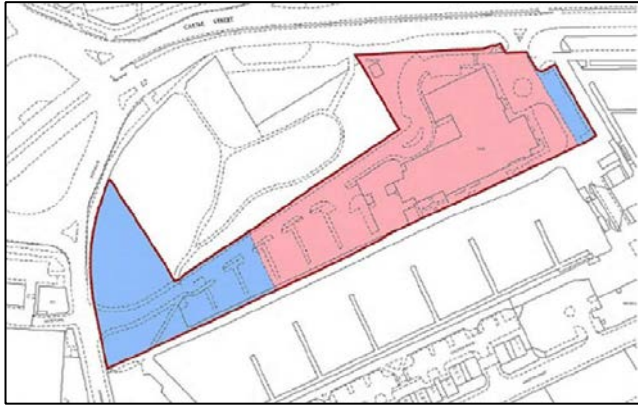
1.2 **Holiday Inn objects to the proposed Order** subject to satisfactory mitigation being secured by way of an appropriate agreement between Highways England and the Holiday Inn, as further described in this response.

2 HOLIDAY INN'S INTEREST IN LAND SUBJECT TO THE PROPOSED ORDER

HIN Hull Limited holds a 125-year leasehold interest in the whole of the land edged red¹ below and granted a 20-year under-lease of all that land on 27 July 2015 to HICP Limited (with effect from 2 April 2015)² (the "**Hotel Land**):

¹ Title No. HS148908

² Title No. HS380678



3 **THE HOLIDAY INN**

3.1 The Holiday Inn owns and operates a three-storey, 100 bedroom hotel on the Hotel Land (the "Hotel").

4 **POWERS IN THE PROPOSED ORDER OVER THE HOTEL LAND**

4.1 The powers comprised in the proposed Order which relate to the Hotel Land are substantial and very broadly drafted. Highways England asserts that these are "not considered to affect the ability of the hotel to do business and should not substantially impact the user experience". This is an untenable position for Highways England to take. If exercised on their terms, it is clear that the powers will cause immense disruption to the trade and operation of the Hotel for several years and are highly likely to necessitate its closure.

4.2 A main flood relief sewer running between Waterhouse Lane to the northeast of the Mytongate junction (on the northern side of the A63) to Commercial Road (Work No. 23) is proposed to be diverted through the Hotel car park. There are to be alterations to the Hotel's car park, access, internal roads and amendments to the existing drainage arrangements (Work No. 26), all which will cause major disruption and loss of parking during construction.

4.3 The following extracts from the Works Plans submitted with the proposed Order highlight the geographical extent of the Hotel Land identified by Highways England as being required for works relating to the authorised development, and denote, by reference to Works Numbers, the works proposed.³

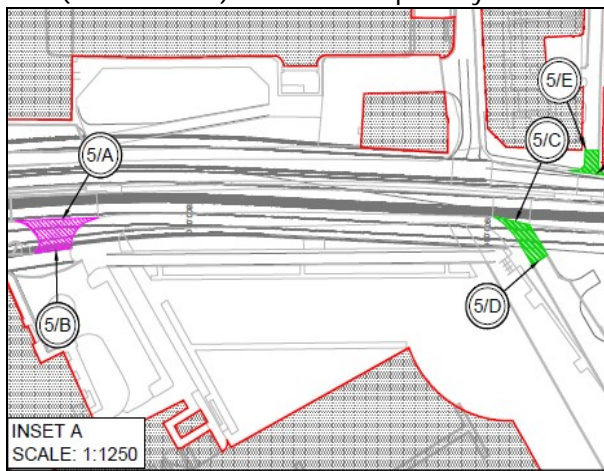
³ Areas hatched pale green on the Works Plans are proposed to be used for minor utilities diversions and other 'minor' works. Areas cross-hatched green and shaded pale green on the Works Plans are proposed to be used as a work area and for minor utilities diversions and other 'minor' works. Purple dashed line denote proposed utilities diversion works.



29 November 2018
 3

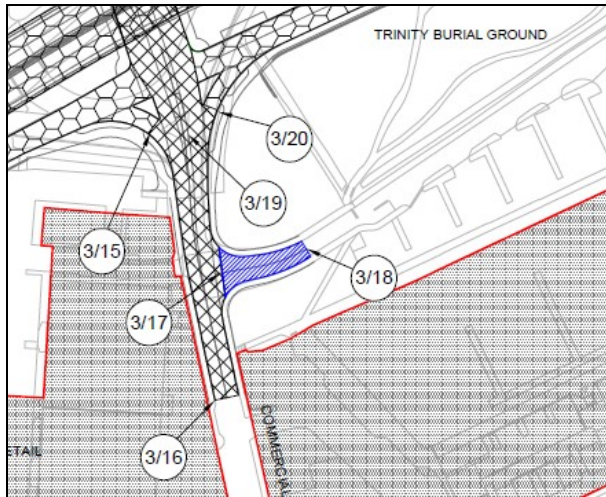
4.4 Work No. 24 (Works Plans - Option A, Sheet 3 of 6) would necessitate a loss of amenity land at the Commercial Road entrance to the Hotel Land in order to facilitate construction of a new pumping station and Northern Powergrid substation.

4.5 Highways England will be permanently stopping up the private access road to the Hotel from the A63 (Castle Street).⁴ This is the primary vehicular access route to the Hotel.

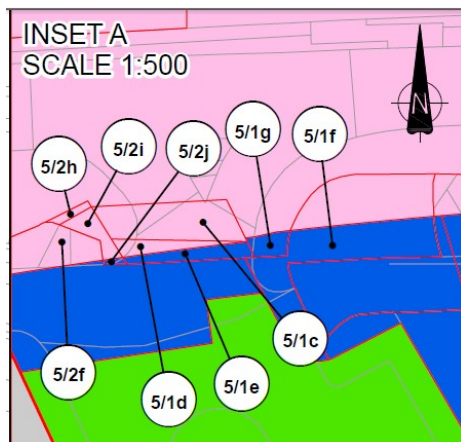
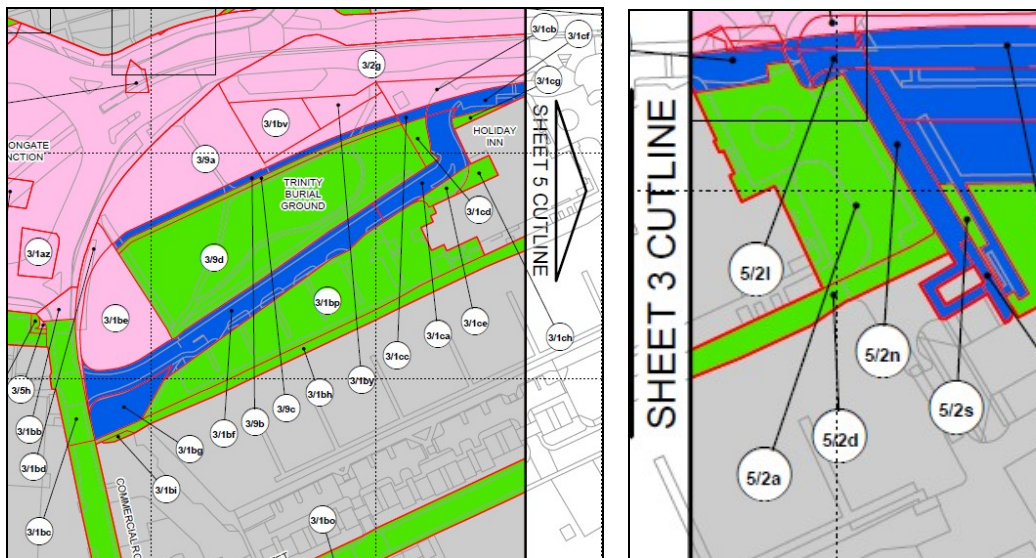


4.6 Highways England is to carry out works to another private access road, a secondary access to the Hotel off Commercial Road⁵:

⁴ Hatched pink between Points 5/A and 5/B on Sheet 5 (Inset A) of the Streets, Rights of Way & Access Plans.
⁵ Shaded blue between Points 3/17 and 3/18 on Sheet 3 of the Streets, Rights of Way & Access Plans.



4.7 The proposed Order seeks extensive powers of compulsory acquisition and temporary possession over the Hotel Land as illustrated on the following extracts from Sheets 3 and 5 of the draft Land Plans:



Land Plan Key:	
	LAND TO BE ACQUIRED OR USED PERMANENTLY FOR CONSTRUCTION, OPERATION AND MAINTENANCE WORKS
	LAND TO BE USED TEMPORARILY AND RIGHTS TO BE ACQUIRED PERMANENTLY
	LAND TO BE OCCUPIED OR USED TEMPORARILY

- 4.8 Highways England proposes the compulsory acquisition of all interests in **Plots 3/1bd, 3/1be, 3/1cb, 5/2i and 5/2f** which Holiday Inn owns, for construction, operation and maintenance works (shown pink in the Land Plan extracts above).
- 4.9 The proposed Order seeks the temporary use of the following Plots owned by Holiday Inn, to be followed by the acquisition of permanent rights over the same Plots (shown blue in the extracts above):

Plot	Powers
3/1bf, 3/1bg, 3/1ca, 5/2g, 5/2j	A right to construct, use and maintain a Yorkshire Water sewer diversion.
3/1cc, 3/1cf	A right to construct, use and maintain a retaining wall over soft landscaping and private car parking to Holiday Inn situated south of the A63 Castle Street, Hull.

29 November 2018

5

- 4.10 The proposed Order seeks the temporary use, for an indeterminate period of time, of Plots 3/1bh, 3/1bi, 3/1bp, 3/1cd, 3/1ce, 3/1cg, 3/1ch and 5/2a owned by Holiday Inn (being soft landscaping, car parking and access road on the Hotel Land) (shown green in the Land Plan extracts above).
- 4.11 The proposed temporary possession and use powers extend over the full extent of the Hotel Land (excluding the Hotel itself). As a consequence, all of the Hotel's current parking facilities, vehicular and pedestrian access routes, internal roads, servicing areas and outdoor seating areas may be used by Highways England for an indeterminate period of time.
- 4.12 In addition to the above, Highways England may enter onto any land within the Order limits or, indeed, other land which may be affected by the authorised development, for survey and investigation purposes. As drafted this potentially includes not only the Hotel Land but the Hotel itself (even though the latter is technically outside of the Order limits). Highways England may remove soil core samples, carry out archaeological or ecological investigations and, critically, retain apparatus on the land concerned.
- 4.13 The proposed Order⁶ authorises unspecified, generic works which are 'associated' with the principal development anywhere within the Order limits, including street layout alteration works, diversion, interference or installation of apparatus, site preparation works, establishment of site construction compounds and other works of any nature which are necessary for, or related to, the construction, operation and/or maintenance of the authorised development. On the current drafting of the Proposed Order the Holiday Inn can only prudently proceed on the basis that these wide powers will be exercised without limitation, which further increases the likelihood that the Hotel will have to close.

⁶ Art. 3 and Schedule 1.

- 4.14 Highways England's environmental statement acknowledges that acquisition of land in front of the Hotel adjacent to A63 Castle Street means that car parking spaces will be lost and the area in front of the Hotel will become unsuitable for coaches and buses. The Hotel car park will need to be reconfigured and private roads in front of the Hotel will need to be modified to allow coaches and buses to access the front of the building using the Commercial Road access.
- 4.15 The existing Holiday Inn substation is to be demolished and there is uncertainty surrounding the provision, location, capacity and operational suitability of a replacement facility. Holiday Inn is concerned to ensure that any physical switchover to the replacement facility does not lead to a consequent loss or interruption to electricity supplies to the Hotel.
- 4.16 There are no secured or agreed arrangements for maintaining adequate access to the Hotel throughout the construction phase, from Commercial Road or otherwise.
- 4.17 The Hotel Land will need to be reconfigured for the construction of a 2.2m+ high retaining wall between the westbound A63 slip road and the grounds of the Holiday Inn and Trinity Burial Ground to the south, with construction and finish details undefined.
- 4.18 Highways England's environmental statement acknowledges that congestion and lane closures as a result of construction will disrupt the Hotel's customer, staff and supplier access, particularly during busy or event periods. There will be noisy and disruptive night time and weekend working which will impact on the commercial operation of the Hotel.

5 IMPACTS ON THE HOTEL IN THEIR STATUTORY AND POLICY CONTEXT

Conflict with national policy on impacts

- 5.1 The National Policy Statement for National Networks ("**NPS**"), to which the Secretary of State must have regard in determining Highways England's application for the proposed Order, provides as follows:
- 5.2 "The Government recognises that for development of the national road and rail networks to be sustainable **these should be designed to minimise social and environmental impacts and improve quality of life.**
- 5.3 In delivering new schemes, **the Government expects applicants to avoid and mitigate environmental and social impacts** in line with the principles set out in the NPPF and the Government's planning guidance." (emphasis added)
- 5.4 As it stands, for the reasons described above, the scheme for which the proposed Order seeks powers is not in accordance with the NPS for the purposes of Section 104(3) so far as the Hotel and the Hotel Land is concerned.
- 5.5 It is appreciated that Highways England is currently promoting or preparing to promote a very significant number of development consent orders in circumstances constrained by available human and capital resources, and that Holiday Inn is only one affected party in respect of the proposals to the A63.
- 5.6 Even so, the powers sought in the proposed Order in respect of the Hotel Land are inappropriately "broad brush" and insufficiently considered – they do not provide for obvious and entirely

To: The Planning Inspectorate
Date:
Page:



reasonable secured mitigation for the social and environmental impacts on the Hotel, which Holiday Inn has identified to Highways England throughout consultation.

5.7 The environmental assessment which accompanies the proposed Order is inadequate. It has diminished or dismissed impacts on the Hotel either without evidence or on the basis of assumed mitigation which is neither detailed nor secured.

Conflict with statutory and policy requirements on compulsory acquisition

5.8 In conflict with Section 122 of the Planning Act 2008, there is no engineering evidence that all the land owned by Holiday Inn and comprised in the Book of Reference/Land Plans is required for the development to which the proposed Order relates, or is required to facilitate, or is incidental to, that development. Or indeed that all such powers are required all of the time and for indeterminate periods of time as sought in the proposed Order.

- 5.9 It is clear that, in conflict with applicable Guidance,⁷ all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have not been explored in this case. Highways England has not demonstrated that interfering with the rights of Holiday Inn is necessary and proportionate.
- 5.10 The proposed Order as drafted indicates that Highways England does not have a clear idea of how it intends to use the Hotel Land which it is proposed to acquire or use “temporarily”, or has considered an appropriate extent of that use, and has thus sought very wide powers in this location. The fact alone that temporary possession and use powers are currently sought over the full extent of the Hotel Land (excluding the Hotel itself) is sufficient to demonstrate this.
- 5.11 In the event that Highways England were to exercise temporary possession and use powers in the manner contemplated, neither Hotel staff nor guests could actually access the Hotel from the public highway. No clear explanation has, to-date, been provided to explain why such an extensive use of land is necessary to deliver the project or, indeed, why it is proportionate in the public interest.
- 5.12 This is a matter which will need to be vigorously interrogated during the course of the Examination of the proposed Order and at its compulsory acquisition hearing. Irrespective of the merits of whether development consent should be granted for the proposals, it remains to be demonstrated that the tests for the granting of all of the compulsory acquisition and temporary possession powers sought by the proposed Order have been met, or whether the book of reference should be amended for the purposes of any finally made Order in respect of the Hotel Land.
- 5.13 The quantum of compensation payable pursuant to the exercise of compulsory acquisition powers is not a matter for the examining authority. But it must prudently be a matter for Highways England. The current “broad brush” approach taken to powers sought over the Hotel Land is likely to result in the Upper Tribunal awarding very substantial compensation to Holiday Inn under the head of “disturbance”. This is because the Hotel, operated by Holiday Inn, is highly successful, and the broad powers which Highways England is entitled to exercise are likely to result in the Hotel having to cease totally its operation.⁸ This is highly likely to necessitate a compensation payment on the basis of extinguishment value.
- 5.14 Secretary of State Guidance requires Highways England to seek to acquire land by negotiation wherever practicable - compulsorily acquisition should only be sought as part of the proposed Order if attempts to acquire by agreement fail. Agreement to acquire the necessary rights and interests in the Hotel Land is clearly practicable. Holiday Inn has informed Highways England consistently throughout the evolution of its proposals that Holiday Inn is amenable to meaningful negotiations concluding in an agreement in respect of required rights, interests and mitigation measures. That Highways England is pursuing
- multiple development consent orders for projects with linear routes and many affected parties is no reason for Guidance on compulsory acquisition to be ignored.

⁷ Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land - September 2013 - Department for Communities and Local Government

⁸ Whilst the Hotel itself is outwith the current Order limits, it is clear that if adequate vehicular or pedestrian access cannot be made available, the Hotel will be unable to trade.

6 A WAY FORWARD

6.1 It is entirely open to Highways England in this location to acquire necessary rights by negotiation and to minimise appropriately the impacts of the Project (and compensation liability) in compliance with national policy by entering into an agreement with Holiday Inn on the use of the powers sought and reasonable mitigation prior to the start of the Examination (an “**Option and Impact Mitigation Deed**”). Holiday Inn is keen to work with Highways England to achieve this on reasonable terms to the satisfaction of both parties, and has indicated this throughout consultation.

6.2 Whilst the details would be for negotiation, Holiday Inn are looking to the Option and Impact Mitigation Deed to secure the following:

MATTERS FOR THE OPTON & IMPACT MITIGATION DEED	
1	Agreement as to the extent of temporary land use and permanent land take. (Where the design of works comprised in the proposed Order is not sufficiently progressed to secure an appropriate minimisation of temporary land use and permanent land take, Holiday Inn and Highways England will need to agree minimum matters to be safeguarded in the course of that design).
2	An appropriate compensation and works package for any necessary internal and external re-configuration of the Hotel as a result of the works.
3	Provision of adequate parking for staff and visitors and loss of car parking revenue throughout the works, including agreeing and defining any off-site parking arrangements and management processes.
4	Maintenance of vehicular and pedestrian access for staff, visitors, coaches and servicing vehicles throughout the works (including the provision of adequate and suitable pedestrian access during the Princess Quay footbridge works).
5	Agreeing and defining the works associated with the closure of the Hotel's existing A63 access and alterations to the Commercial Street access throughout the works.
6	The details of mitigating construction impacts in this location, e.g. noise, dust, vibration and working hours.
7	Agreement regarding daytime and night time DB levels and protocols for exceedances.
8	Specific temporary signage for the Hotel during the works, along with new signage (including both direction and main signage) for the Hotel post-construction.
9	Visual impact mitigation (e.g. bespoke construction shrouds).
10	A mechanism for agreeing dates for a minimum number of non-construction periods to avoid commercially-critical times for the Hotel (e.g. wedding receptions).

11 | A detailed construction phasing programme and plans specific to works on the

MATTERS FOR THE OPTON & IMPACT MITIGATION DEED

- | | |
|----|---|
| | <p>Hotel Land, including the duration of Highways England's presence on the Hotel Land and the duration and phasing of the sewer diversion works.</p> <p>(This will also need to encompass a procedure for identifying and agreeing upon a maximum level of disruption above which it will not be safe or commercially viable to operate the Hotel).</p> |
| 12 | <p>Parking and movement of contractor vehicles, the location of any site compounds and welfare facilities and the stockpiling of materials affecting the Hotel Land and access to Hotel Land.</p> |
| 13 | <p>A strategy to enable the implementation and completion of Holiday Inn's planning permission (reference 16/00893/FULL) for a lounge and bedroom extension which expires in March 2020, and an appropriate approach to compensation where it is deemed necessary for Holiday Inn to submit a new application (either due to the expiry of the current permission, or due to the cost or practical impossibility of implementing it in the context of the works).</p> |
| 14 | <p>The detailed design and finish of the proposed retaining wall to the Hotel Land.</p> |
| 15 | <p>The boundary treatment and landscaping replacement strategy affecting the Hotel Land, including appropriate boundary lighting, and the removal of the existing hedgerow along the internal car park access road adjacent to Trinity Grounds to better facilitate access by coaches.</p> |
| 16 | <p>Re-provision of the current quantity of car parking spaces post-construction and reinstatement to an agreed quality level of all surfaces, kerbing, drainage, soft landscaping and lighting.</p> <p>(This will include provision of electronic controls for coaches at the Commercial Street access, a narrowed road section, works to the current reception car parking area, and all necessary works to infrastructure).</p> |
| 17 | <p>Agreeing and defining the impact on the Hotel's services and utilities, surface water and foul drainage throughout the works, including interruption and disruption periods, and emergency procedures.</p> |
| 18 | <p>The approach to use of the Hotel's utilities, services and facilities by Highways England contractors, where this could mitigate impacts (e.g. the avoidance of noisy generators), including appropriate compensation charges.</p> |
| 19 | <p>Safeguards for staff and visitors against construction vehicle movements during construction, including the potential use of a banksman for appropriate vehicular circulation routes.</p> |
| 20 | <p>Highways England compliance with all appropriate statutory health and safety, CDM and Hull County Council construction requirements.</p> |
| 21 | <p>Security measures for works within the Hotel Land.</p> |

22	Appropriate screening and acoustic attenuation of the pumping station site.
23	Agreement relating to permanent access for maintenance, inspection, repair and renewal of the proposed Yorkshire Water sewer whilst minimising disruption to the

MATTERS FOR THE OPTION & IMPACT MITIGATION DEED

	Hotel's access, parking and servicing.
24	A dedicated construction liaison officer on behalf of Highways England (or its contractor) with appropriately regular meetings.
25	A suitable procedure through which Highways England will provide Holiday Inn with advance notice of works.
26	Allocation of responsibility for boundary structures (e.g. retaining wall and other boundaries).
27	Holiday Inn's right to claim compensation pursuant to the compensation code in respect of heads of compensation (which will be more appropriately considered following construction) along with reimbursement for its reasonable professional costs incurred during negotiation of the Impact Mitigation Agreement, and in respect of appropriate matters required in relation to the proposed Order more generally.
28	Demolition and reprovision of the electricity substation situated on the Hotel Land. (This will need to encompass provision, location, capacity and operational suitability of a replacement facility, along with a mechanism for agreeing a physical switchover of supply which minimises or, indeed, avoids interference with the existing electrical supply to the Hotel).

6.3 We are mindful that Highways England has not yet provided any draft terms in respect of the impacts of its works or the rights required for it. Commencement of the preliminary hearing of the examination of the proposed Order is likely at the end of February or the start of March 2019. It is clearly possible for an Option and Impact Mitigation Deed to be concluded between Highways England and Holiday Inn in respect of the matters above before then.

6.4 This would avoid Holiday Inn incurring unnecessary or wasted expense during the examination because it need not be necessary for the matters described in this response to be examined and/or determined if an appropriate Option and Impact Mitigation Deed is concluded.

6.5 We will in due course be providing a draft Option and Impact Mitigation Deed for Highways England's consideration and would urge Highways England to negotiate in good faith towards a speedy completion of it in advance of the examination of the proposed Order.

6.6 If a draft Option and Impact Mitigation Deed is not agreed before then, Holiday Inn will be in a position where it will have to revise terms relating to mitigation into protective provisions and request that the examining authority place these on the face of the Order, which would render them subject to section 161 of the Planning Act 2008.

To: The Planning Inspectorate
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Page: 12



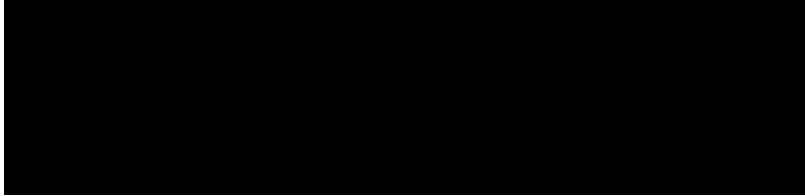
6.7 Please let us know if you have any queries in relation to this response. We look forward to working with Highways England and its legal advisers on the Option and Impact Mitigation Deed over coming weeks and months.

To:
Date:
Page:



The Planning Inspectorate
29 November 2018
11

Yours faithfully



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