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Howard Bassford
DLA Piper for the Highways Agency
By email

Your Ref:

Our Ref: TR010019

Date: 27 April 2015

Dear Mr Bassford

Planning Act 2008 (as amended) – Section 51

Application by the Highways Agency for an Order granting development consent for the M4 Junction 3 to 12 Smart Motorway

Advice following issue of decision to accept the application for examination

On 27 April 2015 the Secretary of State decided to accept the above application for examination.

This letter comprises advice to the applicant provided under section 51 of the Planning Act 2008 (PA2008). The applicant should pay close attention to its content, and consider carefully how appropriate action might be taken in response.

S 42(1)(d)

In response to our request for all consultation responses [you provided information to the Planning Inspectorate on 22 April 2015](#) to explain the discrepancies between the Consultation Report and the Book of Reference. This largely addresses the questions raised by paragraphs 49 to 52 of the DCLG's PA2008: guidance on the pre-application process.

While the information suggests that the applicant has complied with its pre-application duties under the PA2008, it also raises further questions which indicate that you should take a precautionary approach to s56 notification. In particular, it is unclear whether the below listed assertions from your response document exclude the possibility of an interest in land:

- Running rights;
- Shared frontage;

- Line thickness being an erroneous trigger; and
- Impossibility of owning the land on the mainline of the M4.

To ensure that all those with a potential interest in the land have the opportunity to make their views on the application known, we strongly advise you to either include them in your s56 notification or otherwise draw their attention to the relevant representation period. This should highlight the opportunities to become involved in the examination of the application. In particular, it should explain the process by which they may make relevant representations during the advertised period.

We suggest any revised Book of Reference that you prepare in the light of this advice be made available to the Planning Inspectorate to inform the initial assessment of the preliminary issues ahead of the Preliminary Meeting, or be submitted to the Preliminary Meeting if this is not possible. Any relevant changes will also need to be reflected in your s59 certificate.

Section 42(1)(a) persons prescribed

As the published section 55 checklist sets out, it appears, on the basis of the information provided by the applicant, that the below listed potentially relevant bodies have not been consulted at the pre-application stage:

- Chilterns Conservation Board;
- NHS England (London office);
- NHS England South Thames Valley Area Team;
- West Middlesex University Hospital NHS Trust; and
- Utility Assets Limited.

Unless there is a good reason in each case why the applicant considers that these bodies are not relevant to the proposed development, the applicant is advised to include these bodies, or their appropriate successors, in the notification process of the accepted application or otherwise draw their attention to the relevant representation period (as above).

I trust that this advice is useful to you and aids your preparation for examination of the scheme. If you have any questions about the content of this letter, please do not hesitate to contact me using the details provided.

Yours sincerely

Richard Price

Richard Price
Case Manager

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.