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2 September 2016

Dear Sirs,

**PLANNING ACT 2008
APPLICATION FOR THE PROPOSED M4 MOTORWAY (JUNCTIONS 3 TO 12) (SMART
MOTORWAY) 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 who conducted an examination into the application made by your clients, the Highways Agency (now Highways England Company Limited), on 30 March 2015 for the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”). The Examining Authority comprised a panel of three examining inspectors, Wendy Burden, Lorna Walker and Dr Mike Ebert, referred to in this letter as “the Panel”. Highways England Company Limited is referred to in this letter as “the applicant”.
2. The examination of the application began on 3 September 2015 and was completed on 3 March 2016. The examination was conducted on the basis of written evidence submitted to the Panel and by a number of Issue Specific Hearings and Open Floor Hearings, a Compulsory Acquisition Hearing and a number of Site Inspections.
3. The Order would grant development consent for the improvement and alteration of 51 kilometres (32 miles) of the M4 Motorway between Junction 3 (Hayes) and Junction 12 (Theale) to upgrade it to a “smart motorway”, with the hard shoulder transformed into a permanent additional running lane and traffic flow moderated by the use of variable speed limits. The proposed development would include the replacement of overbridge structures, the extension of underbridge structures, changes to junctions and slip roads, the provision of new gantries and signs, and other infrastructure such as emergency refuge areas.
4. Enclosed with this letter is a copy of the Panel's report. The proposed development is described in section 2 of the report. The Panel's findings are set out in sections 4 to 8 of the report, and their overall conclusions and recommendation are in section 9 of the report.

Summary of the Panel's recommendations

5. The Panel recommended that the Order be made, in the form set out in Appendix D to the 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 ("the 2009 Regulations").

Secretary of State's consideration

7. The Secretary of State's consideration of the Panel's report is set out in the following paragraphs. Where not stated in this letter, the Secretary of State can be taken to agree with the Panel's conclusions as set out in the report. All paragraph references, unless otherwise stated, are to the Panel's report ("PR") and references to requirements are to those in Schedule 2 to the Order, as set out in Appendix D to the PR.

Legal and policy context

8. The Secretary of State notes that under section 104 of the 2008 Act he must decide this application in accordance with the designated National Policy Statement for National Networks ("NPSNN"), subject to certain exceptions which are not relevant in this case. He must also have regard among other things to any Local Impact Report submitted within the statutory timetable and any other matters that he thinks are both important and relevant to his decision (PR 3.2). He agrees with the Panel's assessment at PR 3.3-7 of the other legal and policy provisions that are relevant and important matters to be taken into account in deciding this application.

9. The Secretary of State confirms that, in considering this application, he has had regard to all the legislation and policy identified by the Panel, including the five Local Impact Reports referred to at PR 1.4.7 and all relevant development plan policies. As for the public sector equality duty referred to at PR 3.5.11-12, he has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010. He has concluded in the light of the Panel's findings and conclusions as detailed in the PR that the potential impacts of the proposed development are not likely to result in any significant differential impacts on any of the protected characteristics referred to in section 149.

Findings in relation to policy and factual issues

10. The Secretary of State agrees with the Panel that, in relation to the critical need to improve the existing national road network identified in paragraphs 2.2 and 2.22 of the NPSNN, the proposed development is in conformity with the NPSNN in that it would increase capacity, improve traffic flow and reduce journey times, thereby supporting economic development. He agrees also that the proposal for a smart motorway between Junctions 3 and 12 is in accordance with paragraph 2.23 of the NPSNN. The Secretary of State is therefore satisfied that, subject to considering the extent to which the proposed development conforms with the policies and protections set out in the NPSNN, the presumption at paragraph 4.2 of the NPSNN in favour of granting development consent for national

networks infrastructure projects is applicable to these proposals. He agrees also with the Panel, for the reasons given, that there has been an adequate assessment of alternatives and that no further consideration of alternative options is justified (PR 4.3.1-12, 4.4.14).

11. The Secretary of State agrees with the Panel that the environmental statement (“ES”) and the other environmental information submitted by the applicant during the Examination is adequate and meets the requirements of the 2009 Regulations (PR 1.1.7, 4.4.1-3). He confirms that, in coming to his decision to make the Order, he has taken into consideration all of the environmental information in accordance with regulation 3(2) of the 2009 Regulations. For the purposes of regulation 23(2)(d)(iii) of the 2009 Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of the proposed development are those specified in the requirements including the Construction Environmental Management Plan (“CEMP”) and the Handover Environmental Management Plan that would be secured by requirement 8 (PR 4.4.4-13).

12. The Secretary of State agrees with the Panel that, taking into account the applicant’s ES and Assessment of Implications on European Sites, and the views of Natural England (“NE”), the proposed development would not have a likely significant effect on any European site (PR 4.5). He is therefore satisfied that it is unnecessary for him to carry out an appropriate assessment under the Conservation of Habitats and Species Regulations 2010.

Traffic and transport

13. The Secretary of State has considered the Panel’s assessment of the impacts of the proposed development on traffic and transport at PR 5.2.1-90. Like the Panel, he accepts that the applicant has applied appropriate and recognised methodology to traffic forecasting and has consequently produced a reasonable assessment of future traffic flows at the strategic level to enable an assessment to be made of the additional capacity that would be provided by the project and its likely benefits for the national network (PR 5.2.91-92). He accepts further that there are inevitably various sources of uncertainty in the traffic forecasting, in particular those detailed at PR 5.2.35 which were acknowledged by the applicant; and that these have implications for the reliability of the assessment of the air quality impacts which uses the traffic forecasts as a base.

14. The Secretary of State agrees with the Panel that, in relation to impacts during construction, the local road networks would be adequately protected by the Construction Traffic Management Plan (“CTMP”). As for operational impacts, he notes the Panel’s conclusion that the local road networks would be likely to benefit from the additional capacity provided by the proposed development (PR 5.2.94-95). The Secretary of State notes that, in relation to Non-Motorised Users, there would be no permanent severance of public rights of way as a result of the project and that, during construction, temporary severance would be mitigated in a reasonable and proportionate manner through measures in the CEMP to minimise inconvenience (PR 5.2.97). He agrees also with the Panel that public transport considerations (including the implementation of Crossrail) have been taken into account within the traffic forecasting and modelling in an appropriate manner (PR 5.2.98).

Road safety

15. The Secretary of State has considered the road safety implications of the proposed development as discussed at PR 5.3.1-28, in particular the applicant’s choice of “all lane running” as opposed to “dynamic hard shoulder running” for the smart motorways

programme. The Secretary of State agrees with the Panel that, taking into account the Road Safety Audit for the proposed development and the evidence of the first 12 months' performance of all lane running on the M25, the proposals for the M4 would achieve a good level of safety which is greater than that achieved under existing conditions between Junctions 3 and 12. He therefore agrees that the proposed development complies with paragraph 4.60 of the NPSNN (PR 5.3.29).

16. The Secretary of State agrees also with the Panel that, taking into account the high level of safety that would be achieved by the proposed development – higher than that achieved under existing conditions between Junctions 3 and 12 - and the objective of the proposals to increase road capacity through the most cost-effective design, changing to a dynamic hard shoulder running scheme (PR 5.3.30) would not be justified. He notes in this regard that on 30 June 2016 the House of Commons Transport Committee published a report on All Lane Running¹ that recommended an immediate halt to the rollout of all lane running in the light of various safety concerns identified by the Committee. However, since the adoption All Lane Running schemes is consistent with the Government's policy for addressing the need for development of the Strategic Road Network ("SRN") in paragraph 2.23 of the NPSNN, and in view of the Panel's conclusions on the safety of this particular scheme, the Secretary of State considers that he should not refuse consent for the proposed development on safety grounds.

Noise and vibration

17. The Secretary of State has considered the Panel's assessment of the effect of the proposed development on noise and vibration at PR 5.4.1-49. With regard to the provision of noise barriers, he agrees with the Panel that the process detailed in the Enhanced Noise Mitigation Study has been applied consistently throughout the proposed development and notes that the applicant has sought to provide enhancement to the noise environment for residents along the length of the proposed development. Like the Panel, he accepts the applicant's case that there would not be sufficient further improvement to justify additional expenditure (PR 5.4.32).

18. The Secretary of State agrees with the Panel that the effects of construction noise would be adequately mitigated and controlled through requirement 21, the CEMP and by section 61 of the Control of Pollution Act 1974 (PR 5.4.33-36). As for working hours during construction including night-time working, he agrees also that the provisions of the CEMP and section 61 are sufficient to protect local residents (PR 5.4.37-40).

19. As regards operational noise, the Secretary of State notes that the applicant is proposing the use of low noise surfacing material on all lanes and slip roads to provide improvements to the noise environment. He agrees with the Panel that as the proposed development would bring vehicles in closer proximity to residential properties and community uses, the noise mitigation measures should be secured (through the requirements) as far as possible for the lifetime of the development with allowance for the use of an alternative material if justified (PR 5.4.41-43).

20. The Secretary of State agrees with the Panel's conclusion that there would, at minimum, be an overall minor improvement in the noise environment for the length of the proposed development as a result of the low noise surfacing and the provision of acoustic fencing. He is therefore satisfied that, in operation, the scheme would accord with

¹ <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmtrans/63/63.pdf>.

paragraphs 5.186-200 of the NPSNN (PR 5.4.50). He agrees further with the Panel that in order to ensure effective mitigation in the long term, the Panel's amendments to requirements 5 and 22 as to future resurfacing of the carriageway and the maintenance of acoustic barriers are justified in the particular circumstances of this case (PR 5.4.51-54).

Waste management

21. The Secretary of State agrees with the Panel that, taking into account the Site Waste Management Plan and the Materials Management Plan which would be secured through the CEMP and requirement 8, all necessary controls would be in place. He is therefore satisfied that in this regard the proposed development complies with paragraphs 5.37 to 5.45 of the NPSNN (PR 5.5.1-31).

Design

22. The Secretary of State has noted the Panel's assessment of design issues at PR 5.6.1-19. He agrees with the Panel for the reasons given that in relation to functionality, aesthetics, the use of technology and siting and design, the proposed development meets the requirements of the paragraphs 2.23 and 4.28-35 of the NPSNN as far as is reasonably practicable (PR 5.6.20-22).

Air quality and emissions

23. The Secretary of State has considered the applicant's assessment of air quality impacts as reported at PR 5.7.18-46. As regards the construction impacts of the proposed development, he agrees with the Panel that adequate mitigation would be achieved through the CEMP and the CTMP, secured through requirements 8 and 18, so as to minimise impacts on local communities (PR 5.7.100-101).

24. In relation to operational impacts, the applicant concluded that there would be no significant effect on air quality and that the proposed development would be at low risk of non-compliance with the EU Air Quality Directive (PR 5.7.40, 46). The Secretary of State notes the Panel's acceptance that the applicant had undertaken its assessment in accordance with published guidance and best practice. However, the Panel also accepted the concerns expressed in representations made on behalf of Slough Borough Council about the potential for uncertainty in the applicant's air quality baseline assessment. The Council was concerned that, in relation to the receptors in Slough most exposed to NO₂, even slight uncertainties in the projected levels in the 2022 opening year could cause exceedances of the air quality standards not forecast by the applicant (PR 5.7.49-53).

25. Given the importance of ambient air quality for the local authorities and residents where Air Quality Management Areas ("AQMAS") are located, the Secretary of State has given very careful consideration to this issue. He accepts firstly that the inevitable element of uncertainty inherent in traffic forecasting has the potential to affect the air quality assessment, which relies on the outcome of traffic modelling (PR 5.7.54-55). He accepts also that the continuing uncertainty about actual emission levels from Euro 6/VI diesel vehicles in real life driving conditions is another element of uncertainty in the applicant's air quality assessment which could justify a cautionary approach (PR 5.7.56-66).

26. The Secretary of State has noted the Panel's concerns that the definition of significance used in the applicant's air quality assessment may be out of date and may not represent a sufficiently precautionary approach in the light of the uncertainties referred to

above; and that as a result the proposed development may impact on the ability of local authorities to comply with the air quality objectives within the AQMAs affected by the proposed development (PR 5.7.67-78). He also shares the Panel's concern about the potential risk to the health of the high residential populations in areas through which the M4 passes and which have been declared AQMAs, should the effects of the proposed development exceed the applicant's forecast levels of NO₂ (PR 5.7.79-82)

27. The Secretary of State agrees with the Panel that, in the light of the uncertainties referred to above and the highly sensitive areas through which the M4 passes, it is appropriate to take a prudent and cautionary approach on this issue (PR 5.7.83-88). He agrees further for the reasons given by the Panel that a requirement should be included in the Order requiring the applicant to monitor the actual concentrations of NO₂ within the AQMAs and, if it is found that that the proposed development has materially worsened air quality, then a scheme of mitigation must be prepared in consultation with the relevant local authorities. He is satisfied that requirement 26 as recommended by the Panel is justified in the particular circumstances of this case (PR 5.7.89-99). The Secretary of State has concluded, like the Panel, that with the inclusion of requirement 26 in the Order the proposed development would satisfy the tests in paragraph 5.13 of the NPSNN, contribute to securing compliance with EU limit values in accordance with Defra's Air Quality Plan and help safeguard against any harmful impacts on human health (PR 5.7.105).

Water environment and flood risks

28. The Secretary of State has considered the Panel's assessment at PR 5.8.1-62 of the impacts of the proposed development on the water environment and flood risks. He agrees with the Panel that the Water Framework Directive Compliance Assessment carried out by the applicant is adequate and meets the tests set out at paragraphs 5.225-226 of the NPSNN. The Secretary of State notes that the applicant's final Flood Risk Assessment ("FRA") has been agreed by the Environment Agency ("EA") and he agrees with the Panel that in relation to fluvial flood risk the tests at paragraphs 5.98 and 5.109 of the NPSNN have been met. He agrees further with the Panel that, in accordance with the NPSNN, the applicant has carried out appropriate Sequential and Exception Tests which are reported in the FRA; the wider sustainability benefits to the community of the proposed development would outweigh any potential flood risk; and the compensation areas proposed for the loss of floodplain storage are adequate (PR 5.8.63-65).

29. The Secretary of State agrees with the Panel that the applicant's Drainage Strategy Report contains sufficient information to ensure that the drainage of the proposed development is adequate (PR 5.8.55). He is satisfied that the impacts on groundwater have been properly considered and agreed with South East Water and that sufficient mitigation has been secured through the Order. He therefore agrees with the Panel that the application meets the tests set out in paragraphs 5.224-227 of the NPSNN (PR 5.8.67). The Secretary of State agrees further with the Panel that the proposed mitigation measures to ensure the quality of the water environment including a pollution control plan are sufficient and secured by the CEMP under requirement 8. He is therefore satisfied that the test set out in paragraph 4.50 of the NPSNN is met (PR 5.8.68).

Biodiversity and ecological conservation

30. The Secretary of State has considered the Panel's assessment of the effects of the proposed development on biodiversity and ecological conservation at PR 5.9.1-82. With regard to designated sites, he agrees with the Panel that any impacts can be mitigated by

the measures described and secured in the Order (PR 5.9.8-16). He is satisfied also that the protection of habitats has been sufficiently addressed in the Order (PR 5.9.17-31).

31. The Secretary of State notes that the applicant has proposed various mitigation measures to protect fauna as detailed in the Table of Mitigation and that they would be secured through the Environmental Management Plan under requirement 7 and the CEMP under requirement 8. He agrees with the Panel that, taking into account the views of NE, those measures are satisfactory (PR 5.9.32-72). With regard to the need for European Protected Species (“EPS”) licences for bats and badgers referred to at PR 5.9.71, the applicant advised the Secretary of State on 15 July 2016 that an EPS licence was no longer required in relation to bats as it would be seeking to avoid works that could result in disturbance to bat roosts. The applicant advised also (and NE confirmed) that on 11 March 2016 NE had issued a Letter of No Impediment in relation to the draft badger mitigation licence application.

32. The Secretary of State agrees with the Panel’s overall conclusion that biodiversity and ecological conservation issues have been sufficiently considered by the applicant; that appropriate mitigation is secured through the Order; and that the applicant has taken the opportunity to provide some enhancement to biodiversity within the proposed development. He is therefore satisfied that the tests in paragraphs 5.3-4, 5.23-26, 5.36 and 5.187 of the NPSNN are met (PR 5.9.80-81).

Climate change adaptation and carbon emissions

33. The Secretary of State notes that climate change adaptation has been considered throughout the design of the proposed development and that the applicant’s FRA has provided a proper assessment of flood risk with mitigation measures which have been agreed with the EA. He is therefore satisfied that the applicant has sufficiently addressed climate change adaptation in line with paragraphs 4.36-47 of the NPSNN (PR 5.10.1-13).

34. The Secretary of State notes that the forecast increase in CO₂ emissions as a result of the proposed development is approximately 4 million tonnes over the 60 year appraisal period. This would comprise part of the anticipated small increase in CO₂ emissions over the next 10-15 years attributable to the strategic road building programme (which would be well below 0.1% of annual carbon emissions allowed in the fourth carbon budget) (PR 5.10.14-21). He therefore accepts that the proposed development would not affect the ability of the Government to meet its carbon reduction targets and that, in line with paragraph 5.18 of the NPSNN, the forecast increase in carbon emissions is not a reason to refuse development consent. (The DfT advice referred to at PR 5.10.19 has no impact on this conclusion.)

Health

35. The Secretary of State has considered the Panel’s assessment of the health impacts of the proposed development at PR 5.11.1-22. He agrees with the Panel that the proposed development would not have an impact on health as a result of increased noise or lighting. However, he shares the Panel’s concern about the possible air quality impacts on the health of the surrounding populations as discussed above. He accordingly agrees that, with the inclusion of requirement 26 (air quality monitoring and management), the proposed development would accord with the test set out in paragraph 4.82 in the NPSNN (PR 5.11.23-28).

Historic environment

36. The Secretary of State has considered the Panel's assessment at PR 5.12.1-29 of the effects of the proposed development on the historic environment. He agrees with the Panel that, taking into account the protection secured by relevant requirements, the character and appearance of historic assets would be preserved in accordance with regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and the proposed development would meet the tests set out in the NPSNN. However, the Secretary of State agrees also that improved provision of noise mitigation for Cranford Park would be desirable to enhance the noise environment of the Park and the setting of its listed buildings in accordance with paragraph 5.130 of the NPSNN. He accepts that this matter weighs to a limited extent against the proposed development (PR 5.12.30-31).

Landscape and visual impacts

37. The Secretary of State has noted the Panel's summary of the impacts of the proposed development at PR 5.13.15-29 and their assessment of the issues arising at PR 5.13.30-56. He agrees with the Panel that during construction the impact of the proposed development on the surrounding landscape would be likely to range from slight adverse to large adverse, with the main changes resulting from construction compounds and construction activities outside the Motorway boundary and the consequent loss of trees and other vegetation (PR 5.13.57). He agrees also with the Panel that, in operation, the proposed development would increase the dominance of the M4 within the surrounding landscape with effects ranging from neutral to moderate adverse (PR 5.13.58). However, like the Panel the Secretary of State considers that, taking into account the strong influence which the M4 currently has on its immediate surroundings and the quality of proposed landscaping and planting, the impact on the landscape is not so significant as to weigh against the proposed development (PR 5.13.59). He agrees further with the Panel that the effects of the proposed development on the North Wessex Downs Area of Outstanding Natural Beauty would be neutral and that the tests in paragraph 5.150 of the NPSNN are met (PR 5.13.60-61).

38. With regard to visual impacts during construction, the Secretary of State notes that there would be some moderate to large adverse impacts for some residential occupiers located close to construction compounds and sites. However, he agrees with the Panel that taking into account the CEMP the extent of visual impacts would be reasonable and proportionate (PR 5.13.62). As for operational impacts, the Secretary of State notes that there would be some moderate adverse visual impacts as a result of the siting of new gantries and the permanent use of the hard shoulder, but that over time some of these impacts would reduce as new vegetation matures. He agrees with the Panel that the moderate adverse impacts that may remain would be reasonable and proportionate to the proposed development and that the applicant's assessment of visual impacts meets the requirements of the paragraph 5.144 of the NPSNN (PR 5.13.63-64).

Pollution control and other environmental regulatory regimes

39. The Secretary of State agrees with the Panel's conclusion that all pollution and environmental impacts would be subject to control through the Order and the relevant pollution and environmental regulations, in accordance with paragraphs 4.48-56 of the NPSNN (PR 5.14).

Socio-economic impacts

40. The Secretary of State agrees with the Panel that the proposed development would provide more motorway capacity at an economically advantageous cost to the tax payer by comparison with alternatives, resulting in less congestion and shorter delays in accordance with Section 2 of the NPSNN. He notes that the economic benefits would include less wasted time and lower journey costs, while the social benefits would include more pleasant journeys and less stress. The Secretary of State agrees with the Panel that the proposed development would meet the aims of the NPSNN in terms of supporting social and economic activity (PR 5.15).

Combined and cumulative impacts

41. The Secretary of State notes that the applicant has amended the CEMP to specify actions that the contractor would undertake should the construction programmes for other major infrastructure projects such as HS2 interact with construction of the proposed development, so as to mitigate the in-combination effects. He notes also that the final version of the CTMP commits the contractor to establish, and consult with, the Traffic Management Working Group regarding traffic management issues. The Secretary of State agrees with the Panel that, taking these changes into account, the cumulative impacts of the proposed development and other concurrent developments have been properly considered in accordance with paragraphs 4.3-4 and 4.15-17 of the NPSNN (PR 5.16).

Impact on the Green Belt

42. The Secretary of State notes that part of the proposed development would lie within the Metropolitan Green Belt. He agrees with the Panel that in both construction and operation the proposed development would be inappropriate development. This is because the proposed development would harm two of the fundamental aims of the Green Belt, that is, to maintain openness (for example, as a result of the provision of construction compounds and new gantries and bridges) and to safeguard the countryside from encroachment (as a result of expanding the Motorway beyond its existing confines) (PR 5.17). He considers whether very special circumstances exist for consent to be granted (in accordance with paragraph 87 of the National Planning Policy Framework) in paragraph 44 below.

Overall conclusions on the case for development consent

43. The Secretary of State agrees with the Panel that the NPSNN provides the primary basis for making a decision on this application and that the proposed development would be in accordance with the strategic aims of the NPSNN (PR 6.1-2). He has, like the Panel, considered the compelling need for need for development of the national networks to which the proposed development would contribute against the generic impacts of these proposals referred to in paragraphs 13 to 42 of this letter and summarised by the Panel at PR 6.3-4.

44. The Secretary of State confirms that in determining this application he has had regard to all the matters specified in section 104 of the 2008 Act referred to at PR 6.5.1-2. He agrees with the Panel's overall conclusion that the benefits of the proposed development in terms of helping to deliver a well-functioning Strategic Road Network and supporting economic activity outweigh the identified harmful effects during construction and the limited adverse operational impacts, taking into account the mitigation measures that would be secured through the Order and other legislation (PR 6.5.3-9, 6.6.1). In relation specifically to the Green Belt, he agrees with the Panel that the identified harm is not significant in its

extent; that this harm and any other identified harm is outweighed by the benefits of the proposed development; and that there is no alternative means of delivering the objectives of the proposed development. He has therefore concluded, like the Panel, that very special circumstances exist such that development consent may be granted (PR 6.5.8, 6.6.2-3).

45. The Secretary of State agrees that, for all the reasons given by the Panel, development consent should be granted, subject to the changes which the Panel has incorporated in the Order at Appendix D to the PR, and to the further changes referred to in this letter (PR 6.6.5).

Compulsory acquisition and related matters

46. The Secretary of State has considered the compulsory acquisition powers sought by the applicant in accordance with sections 122, 123, 127, 131, 132 and 138 of the 2008 Act, the Human Rights Act 1998 and relevant guidance. In doing so, he has taken into account the cases of the applicant and the affected persons as set out at PR 7.4. In relation to specific objections, the Secretary of State agrees with the Panel's conclusions on the case for granting compulsory acquisition and temporary possession powers for the reasons given by the Panel at PR 7.4, subject to the following comments.

47. In relation to the objection by Bloor Homes Southern and Anita Thomas considered at PR 7.4.26-46, the Secretary of State has sought a response from the applicant to the final submission made by these objectors on the last day of the Examination (See PR 7.4.38, 41 and PR 9.2.1). The applicant informed the Secretary of State in its letter of 15 July 2016 that since the close of the Examination negotiations had continued between the parties on an agreement for the use of an alternative plot of land and a licence for use of this area for Construction Compound 5; and that the objectors had applied for planning permission for the alternative proposals on 1 July 2016. The alternative plot would in part lie outside the Order limits and would enable the objectors to pursue their own residential development of plot 18-02, which would be subject to temporary possession under the Order.

48. The Secretary of State has noted the progress that has been made on this issue as reported by the applicant, and the objector's recent advice that as of 31 August 2016 the agreement for licence for the alternative construction compound had not yet been signed. He encourages the applicant to continue to pursue a mutually satisfactory agreement with these objectors on the proposed alternative configuration for Construction Compound 5. He agrees, however, with the Panel that in the absence of a secure alternative to the use of plot 18-02 (which will depend on the conclusion of the proposed agreement and the grant of planning permission) the powers sought by the applicant in the Order in this regard are proportionate and justified in the public interest (PR 7.4.46).

49. In relation to the objection by Goodman Colnbrook (Jersey) Limited considered at PR 7.4.55-60, the Secretary of State notes that the appeal against refusal of outline planning permission for the Slough International Freight Exchange was refused on 12 July 2016. He agrees in any event with the Panel that the powers sought by the applicant over land in the possession of this objector are proportionate and justified in the public interest (PR 7.4.60).

Protection of interests of statutory undertakers

50. The Secretary of State agrees with the Panel that, subject to the comments below, the protective provisions in Schedule 9 to the Order as recommended by the Panel

effectively address issues relating to statutory undertakers' land and to the rights and apparatus of statutory undertakers (PR 7.5.1-20).

51. With regard to the protective provisions for the benefit of Network Rail ("NR") in Part 3 of Schedule 9 to the Order, NR advised the Secretary of State on 2 August 2016 about progress in its negotiations with the applicant on an agreement in relation to the transfer of land or interests in land belonging to NR. NR also restated its request that the protective provisions for NR should be in the form set out in its representation to the Examination on 26 February 2016 (REP8 -123). In its response on 3 August 2016 the applicant confirmed that it was not seeking unfettered powers in relation to NR's undertaking and that its position remained as set out in its response to NR's representation during the Examination (REP9-018). The Secretary of State is satisfied that Part 3 of Schedule 9 as recommended by the Panel adequately safeguards NR's interests in the circumstances of this case.

52. The Panel referred at PR 7.5.5-7 to the protective provisions for the benefit of the EA in Part 6 of Schedule 9 to the Order which had not been finally agreed at the close of the Examination. The applicant advised the Secretary of State in its letter of 16 July 2016 that the terms of those provisions had now been agreed with the EA. The Secretary of State is including the agreed provisions in the Order.

53. The Panel believed that the issues between the applicant and Thames Water ("TW") about access to the Slough Sewage Treatment Works and the Iver South sludge dewatering centre had been resolved on the basis of the protective provisions in Part 7 of Schedule 9 to the Order (PR 7.5.8). However, in representations dated 21 March 2016 after the Examination had closed, TW expressed continuing concern about the impacts of restricting access to the Slough Sewage Treatment Works in connection with the proposed development. The applicant advised the Secretary of State on 3 August 2016 that its position remained the same as at the end of the Examination and that there had been no further discussions with TW since the close of the Examination. The Secretary of State is satisfied that the protective provisions for TW recommended by the Panel strike an appropriate balance between protecting TW's access requirements and allowing for the delivery of the proposed development and notes that any dispute between the applicant and TW could be referred to arbitration.

54. The Panel concluded at PR 7.5.19 that the protective provisions for Heathrow Airport Limited ("HAL") in Part 9 of Schedule 9 to the Order should be in the form requested by HAL. In a letter to the Secretary of State on 12 August 2016 HAL maintained its objection to the applicant's version of these provisions which limited their scope to "any tunnel comprised in" HAL property. The Secretary of State has considered this representation and the applicant's response of 22 August 2016, but is satisfied that the form of these provisions recommended by the Panel is appropriate for the reasons given by the Panel.

55. On 25 August 2016, the applicant asked the Secretary of State to include in the Order protective provisions for the benefit of SSE Services plc and Southern Electric Power Distribution plc. The latter confirmed on 26 August 2016 the withdrawal of their objection on condition that the proposed provisions are included in the Order. These provisions are accordingly being inserted in Part 10 of Schedule 9 to the Order.

56. The Secretary of State is satisfied that, in the light of the foregoing, the requirements of sections 127 and 138 of the 2008 Act are satisfied as regards the inclusion of articles 31 and 32 in the Order as recommended by the Panel in relation to statutory undertakers' land, rights and apparatus.

Open space and common land

57. The Secretary of State agrees with the Panel that the following provisions of the 2008 Act are satisfied: section 131(4) in relation to the compulsory acquisition of registered common land (plots 10-01a and b); section 131(5) in relation to the temporary possession of registered common land (plot 20-03); and section 131(4B) in relation to the temporary possession of 28 plots of open space. He agrees that on this basis the Order is not subject to Special Parliamentary Procedure (PR 7.5.21-30, 7.6.16).

Crown land

58. The Panel noted at PR 7.5.32 that the appropriate Crown authority had not been identified in relation to certain plots of Crown land comprised in The Cut river in Berkshire that would be subject to the compulsory acquisition powers and other provisions in the Order. Since the close of the Examination, HM Treasury decided under section 227 of the 2008 Act on 20 July 2016 that the appropriate Crown authority in relation to that land for the purposes of section 135 of the 2008 Act is the Secretary of State for Environment, Food and Rural Affairs (“the SoS/EFRA”). The SoS/EFRA gave consent under section 135(1) and (2) of the 2008 Act on 4 August 2016 for the inclusion in the Order of all the provisions that would affect land or rights held by the SoS/EFRA.

Overall conclusions in respect of compulsory acquisition

59. The Secretary of State is, like the Panel, satisfied that the applicant has sought to minimise compulsory acquisition of land or rights wherever possible (PR 7.6.2). He agrees with the Panel that in relation to Human Rights Act considerations the compulsory acquisition and temporary possession of land is justified for the reasons given by the Panel (PR 7.6.6-8, 7.6.17). He agrees also that there are no reasonable practicable alternatives to the proposed development for which development consent is required; and that funding is available for the proposed development from within the Road Investment Strategy budget (7.6.9-11).

60. The Secretary of State agrees with the Panel that each plot to be acquired has been identified for a clear purpose; that all of the land in respect of which compulsory acquisition is sought is required for the development; and that there is a compelling case in the public interest for the compulsory acquisition of the land and rights sought for the proposed development (PR 7.6.12-14, PR 7.6.18).

Draft Order and related matters

61. The Secretary of State has considered the Panel’s assessment of the Order in section 8 of the PR. He is satisfied that, subject to the qualifications referred to in the following paragraphs, the Order set out at Appendix D to the PR is appropriate and acceptable for the purposes of the scheme. (References to article numbers in the following paragraphs are to the articles as numbered in Appendix D.)

62. The Secretary of State is making the following changes to the Order:

- in article 8(1) (consent to transfer benefit of Order) to insert a requirement for the Secretary of State’s consent;

- in article 22 (compulsory acquisition of rights) and elsewhere to remove the power to impose restrictive covenants and related provisions as he does not consider that it is appropriate to give such a general power over any of the Order land as defined in article 2(1) in the absence of a specific and clear justification for conferring such a wide-ranging power in the circumstances of the proposed development and without an indication of how the power would be used;
- to delete article 23 (power to override easements and other rights) as these provisions have now been superseded by sections 203 to 205 of the Housing and Planning Act 2016;
- to delete article 36 (restriction on executing works) which he does not consider to be necessary having regard to Highways England's general powers as highway authority for the Strategic Road Network;
- to delete article 37 (existing powers and duties of the undertaker) which he does not consider to be legally necessary;
- to delete article 48 (application of section 91(3A) and (3B) of the 1990 Act) which he considers to be beyond the powers of the 2008 Act and inappropriate in the circumstances of an Order under the 2008 Act;
- in Schedule 2, requirement 26 (air quality monitoring and management) to make some further drafting changes in the interests of enforceability and precision;
- in Schedule 9, Part 3 (for the protection of railway interests), paragraph 23, to delete the reference to article 23 referred to above and to insert a requirement that the undertaker must not exercise the powers conferred by section 203 (power to override easements and other rights) of the Housing and Planning Act 2016 in relation to any railway property without the consent of NR;
- in Schedule 9, Part 6 (for the protection of the Environment Agency), to make the agreed amendments referred to at paragraph 52 above; and
- to insert into Schedule 9 the additional protective provisions referred to at paragraph 55 above.

63. The Secretary of State is making a number of other minor textual amendments to the Order set out in Appendix D to the PR in the interests of clarity, consistency and precision. He considers that none of these changes, either individually or taken together, materially alter the effect of the Order.

Representations since examination

64. The Secretary of State has received various items of correspondence relating to this application since the examination closed, including those letters referred to in this letter. He does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the Panel's report.

Secretary of State's overall conclusions and decision

65. For all the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the proposed development. In relation to section 104 of the 2008 Act, he agrees with the Panel's conclusions as summarised at PR 9.1.1 and is satisfied that there is a compelling case in the public interest for the compulsory acquisition powers sought by the applicant (PR 9.1.2-4). He has therefore decided to accept the Panel's recommendation at PR 9.2 and is today making the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order, subject to the changes referred to at paragraphs 62 and 63 above. He is satisfied that none of these changes, nor the changes made to the application during the Examination referred to at PR 1.6.1-2, constitute a material change. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order as now proposed.

Challenge to decision

66. 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

67. 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 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 beginning with the day after the day on which 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 M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m4-junctions-3-to-12-smart-motorway/>.

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).