



Department for Transport

Highways England
Bridge House
1 Walnut Tree Close
Guilford
GU1 4LZ

Natasha Kopala
HEAD OF TWA ORDERS UNIT
DEPARTMENT FOR TRANSPORT
ZONE 1/14 -18
GREAT MINSTER HOUSE
33 HORSEFERRY ROAD
LONDON
SW1P 4DR

DIRECT LINE: 020 7944 3196
transportandworksact@dft.gov.uk

Web Site: www.gov.uk/dft

12 September 2018

Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A19/A184 TESTO'S JUNCTION ALTERATION 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 dated 21 June 2018 of the Examining Authority ("ExA"), Rynd Smith, who conducted an examination into the application made by Highways England ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 as amended ("the 2008 Act") for the A19/A184 Testo's Junction Alteration ("the Development").
- late representation received by the Secretary of State following the close of the
- examination; and
- responses to further consultation undertaken by the Secretary of State in respect of the application.

2. The application was accepted for examination on 10 August 2017 and the examination was completed on 26 March 2018. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of meetings held in the location of the Development. The ExA also undertook 1 accompanied and 2 unaccompanied site inspections.

3. The Order as applied for would grant development consent for upgrading the existing at-grade A19/A184 Testo's Junction in South Tyneside to a grade-separated configuration with embankments and a single flyover bridge or underbridges carrying the A19 mainline across the roundabout intersection. It would incorporate providing new parallel frontage link roads between the Testo's Junction and the existing Downhill Lane Junction to the south; widening the existing roundabout at Testo's Junction to accommodate the combination of

new connector roads (slips) and frontage roads; accommodation and diversion of pedestrian, cycle and bridleway routes, including the removal of an existing bridleway overbridge and reconfiguration of highway drainage works.

4. As set out at paragraph 2.1.3 of the ExA's report ("ER"), with regard to the two potential options for the carriage of the A19 mainline over the existing Testo's intersection, Option 1 consists of the formation of a fill embankment across the roundabout, with two underbridges, one for each side of the roundabout and Option 2 consists of the construction of a single flyover bridge across the roundabout. The ExA set out that these are not intended as alternatives in the sense that the Order would provide for one or the other. It is rather that the Applicant is intending to reserve maximum design and construction flexibility into the post approval stage to ensure there is flexibility to adopt which ever proves to be the best design option. Whilst the Secretary of State notes that these two options are referred to variously in the application documents, (ER 2.1.3 Footnote 12), for the purposes of this letter, they will be referred to as Option 1 and Option 2.

5. Published alongside this letter on the Planning Inspectorate's website is a copy of the ER of Findings and Conclusions and Recommendation to the Secretary of State as amended by the Errata Sheet (Ref TR010020) of corrections produced by the Planning Inspectorate and agreed by the ExA. The main features of the proposal and the site are set out in Chapter 2 of the ER. The ExA's findings and conclusions are set out in Chapters 4 to 7; the ExA's views on the Development Consent Order and related matters are contained in Chapter 8; and the ExA's conclusions and recommendation are in Chapter 9 of the ER.

Summary of the ExA's Recommendations

6. The principal issues considered during the examination on which the ExA has reached conclusions on the case for development consent are set out in the ER under the following broad headings:

- Legal and Policy Context, including the relevant National Policy Statements, European, and Local planning policy (Chapter 3);
- Finding and Conclusions in relation to the planning issues (Chapter 4) which includes consideration of: transportation and traffic; other strategic projects and proposals; air quality and related emissions; biodiversity, ecology and natural environment; electricity and other utility infrastructure; historic environment; landscape and visual impact; noise and vibration; social, economic and land-use effects; water environment; and other matters;
- Findings and Conclusions in relation to Habitats Regulations Assessment (Chapter 5);
- The Case for Development Consent (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and
- Draft Development Consent Order and Related Matters (Chapter 8).

7. For the reasons set out in the Summary of Findings and Conclusion (Chapter 9), the ExA recommended that the Order be made, in the form set out in Appendix D to the Report.

Summary of Secretary of State's Decision

8. **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") – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Assessment) Regulations 2017.

Secretary of State's consideration

9. The Secretary of State's consideration of the ER and all other material considerations are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendation as set out in the ER, and the reasons for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations. All paragraph references, unless otherwise stated, are to the ER and references to "requirements" are to those in Schedule 2 to the Order as recommended by the ExA at Appendix D to the ER.

10. The Secretary of State notes that the ExA set out that in considering the recommendation to grant development consent, the Secretary of State may wish to satisfy himself on the following point (ER 9.3.1):

- a consultation on the content of a revised air quality plan has been published and consultation with the parties upon it may be beneficial.

11. The matters relating to air quality are set out at paragraphs 23 to 28 of this decision letter.

Legal and policy context

12. The Secretary of State accepts the ExA's recommendation regarding the statutory basis of the Development, and so for the purposes of section 22 of the 2008 Act the application consists of an 'alteration' rather than an 'improvement' (ER 8.4.10), for the reasons set out in ER 8.4.9. The Secretary of State is content that the Development qualifies as a Nationally Significant Infrastructure Project under sections 14(1)(h) and 22(1)(b), 22(3)(a) (b) and (c) and 22(4) of the 2008 Act.

13. The Secretary of State has noted that there were changes made to the application documents before and during the examination (ER 2.3). The ExA's consideration of these changes is set out at ER 3.11. The Secretary of State agrees with the ExA that the changes do not constitute a significant change to the application (ER 3.11.3). The Secretary of State is also satisfied that, taking into account the minor drafting changes to the Order recommended by the ExA and discussed later in this letter, the Development has not changed to the point where it is a different application. The Secretary of State is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order in the form recommended with modifications.

14. As noted by the ExA, under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant National Policy Statements (“NPS”), which in this case is the National Networks National Policy Statement (“NNNPS”), subject to certain exceptions set out in section 104(5) to (8) of the 2008 Act, which are not relevant in this case. The Secretary of State notes that the development will affect electricity network infrastructure at West Boldon but agrees with the ExA that NPS EN-5 (the NPS for Electricity Networks Infrastructure) is not a relevant consideration in relation to this application (ER 4.4.8 (last bullet)). The Secretary of State also agrees with the ExA’s assessment of the legislation and policy that are relevant and important considerations in relation to this application as set out in Chapter 3 of the ER.

15. The Secretary of State has had regard to the Local Impact Report (“LIR”) submitted by South Tyneside Council (“STC”) (ER 4.3), the Development Plan (ER 3.10), environmental information as defined in regulation 3(2) of the 2009 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken into consideration any matters that are not relevant to the decision.

16. The Secretary of State notes that at the time of the Examination the Ministry of Housing, Communities and Local Government (“MHCLG”) were consulting on a revised version of the National Planning Policy Framework (“NPPF”) (ER 3.8.3) The Secretary of State notes that the ExA considered that the NPPF consultation did not propose any material amendment to the policy context for this application that needed to be taken into account (ER 3.8.4). The ExA further reflected on the possibility that policies could be included in the revised NPPF that are not addressed in the ER and noted that in such circumstances the Secretary of State would need to consider if consultation with the Applicant and Interested Parties on any NPPF changes is necessary (ER 3.8.5).

17. Since the close of Examination MHCLG published the final revised version of the NPPF on 24 July 2018. The Secretary of State does not consider there are any revised NPPF policies that have a bearing on the strategic highways that are required to be taken into account in addition to the policy matters already addressed by the ExA. The Secretary of State therefore concludes that he is content that further consultation is not necessary.

18. The Secretary of State agrees with the ExA in being satisfied that the Environmental Statement (“ES”), together with the other environmental information submitted by the Applicant during the Examination, was adequate and that it meets the requirements under the 2009 Regulations (ER 4.8.21). The Secretary of State 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 Development are those secured in the requirements including the Construction Environmental Management Plan (“CEMP”) that would be secured by requirement 4 (ER 4.8.12-4.8.13)

19. The Secretary of State notes the ExA’s consideration of the issue around ‘precedent’ at section 4.7 of the ER and agrees with the approach and conclusions taken by the ExA on this matter.

Findings and Conclusions in relation to the Planning Issues (ER Chapter 4)

Transport and Traffic (ER Section 4.10)

20. The Secretary of State has considered the ExA's assessment of the impacts of the development on transport and traffic. The Secretary of State notes that concerns were raised about the possible interactions between the construction stages of the Development with the proposed Downhill Lane Junction and the A1 Birtley to Coalhouse projects. The Secretary of State notes that the Applicant has offered to take the views of key local stakeholders including the local authorities and major employers into account, to ensure that traffic disruptions due to works across multiple projects are kept to a minimum. The Secretary of State agrees with the ExA that the mechanisms proposed by the Applicant to achieve this (through the Construction Traffic Management Plan ("CTMP")), with a formal requirement to consult STC secured at requirement 10, are sufficient to address these concerns and that no additional measures are required (ER 4.10.24).

21. Overall, the Secretary of State notes that there were no objections to the transportation and traffic case and that key stakeholders view the achievement of transport and traffic benefits of the Development as being significant (ER 4.10.23). The Secretary of State accepts the ExA's conclusions that while the transport and traffic effects of the Development during construction will be negative; the CTMP, secured by requirement 10, will help minimise this; and that the transport and traffic effects of the Development during operation will be positive (ER 4.10.27).

Other Strategic Projects and Proposals (ER Section 4.11)

22. The Secretary of State notes that consideration was given to the relationship between the Development and a strategic highway project to upgrade A19 Downhill Lane junction ("DLJ"), the International Advanced Manufacturing Park project and a strategic highway proposal by the Applicant to upgrade the A1 Birtley to Coalhouse section (ER 2.5 and ER 4.11). The Secretary of State agrees with the ExA that the inter-relationship between these projects has been adequately characterised for environmental impact assessment and Habitats Regulations assessment purposes and there are no significant adverse cumulative effects between the Development and these schemes (ER 2.5.6 and 4.11.15).

Air Quality and Related Emissions (ER Section 4.12)

23. The Secretary of State notes that the ES concluded that no sensitive receptors are predicted to experience an exceedance of relevant air quality objectives and that the majority of receptors are predicted to experience a negligible change in concentration and would remain below the relevant limit values for ambient air quality as set out in the Air Quality Directive ("AQD") (ER 4.12.5). The Secretary of State recognises that this conclusion takes account of the Air Quality Management Area ("AQMA") at Leam Lane/Lindisfarne Roundabout (ER 4.12.6). Although operational air quality and emissions were not raised as an adverse consideration in submissions, they were considered at the Examination, to satisfy the ExA that relevant policy tests in the NNNPS and the relevant limit values established in the ADQ would be met (ER 4.12.27).

24. The UK's position in relation to compliance with the AQD is discussed in ER 3.3.11-3.3.16. As set out in these paragraphs, following a successful legal challenge by ClientEarth, a revised air quality plan for Nitrogen Dioxide ("NO₂"), "UK Plan for Tackling Nitrogen Dioxide concentrations", was published on 26 July 2017 ("AQP 2017"). The Secretary of State notes that the ExA considered that although the AQP 2017 contains a Zone Plan for Tyneside, that it may need to be amended as a consequence of the High Court judgment in a further successful challenge by ClientEarth¹ ("ClientEarth No. 3 judgment"), which requires the production of a supplement to the AQP 2017 ensuring necessary information and feasible compliance measures are in place (ER 3.3.14 and ER 4.12.29).

25. The Secretary of State notes the conclusions and recommendation at ER 3.3.15, 4.12.29, 4.12.32, 4.12.35, 6.2.1, 9.3.1 in relation to this supplement. This highlights the fact that the Department for Environment, Food and Rural Affairs and DfT published a consultation entitled: 'Supplement to the UK plan for tackling roadside NO₂ concentrations' on 29 May 2018, after the closure of the examination, and so was not therefore considered by the ExA. Having reviewed the consultation document, the Secretary of State notes that it is a consultation on potential measures for inclusion in the supplement, as distinct from the supplement itself. Whilst the AQP 2017 supplement has not yet been published, the Secretary of State is content that there is nothing in the consultation document that would materially alter the consideration or conclusions set out by the ExA or the Secretary of State's consideration of the application and that consultation on this document was not necessary.

26. The Secretary of State notes that the ExA asked questions to the Applicant and STC regarding the effects on the AQMA in light of the ClientEarth No. 3 judgment. The Applicant concluded that the ClientEarth No. 3 judgment would not affect the assessment of conclusions provided for the Development as the assessment had shown that the Development would not affect the ability of the local authority to achieve compliance with the air quality targets (ER 4.12.30) and STC agreed with this assessment (ER 4.12.31). The Applicant highlighted that Option 1 and Option 2 did not affect any of the air quality conclusions in the ES (ER 4.12.10). Based on the currently available evidence, the Secretary of State agrees with the ExA's conclusion that the relevant AQD limit values will continue to be met in the operational phase of the Development and that there are no other local or regional operational air quality impacts that require mitigation to be secured through the Order (ER 4.12.35 (fourth bullet)). The Secretary of State is content that in relation to air quality, consenting the Development would be compliant with the NPSNN.

27. The Secretary of State notes that the ExA agrees with the Applicant and STC that fugitive dust during construction has the most potential adverse air quality impact on sensitive receptors but agrees with the ExA that the combination of measures secured in the Order (requirements 4 and 10) would mitigate fugitive dust emissions to an acceptable level (ER 4.12.24-26).

28. The Secretary of State notes the potential overlap in the construction phase of the Development and DLJ and that the Applicant proposes to make some joint use of construction facilities (ER 4.12.21). The ExA considered the extent to which this might lead

¹ ClientEarth v SoS for Environment, Food and Rural Affairs, SoS for Transport and Welsh Ministers [2018] EWHC 315 (Admin).

to cumulative effects not assessed in the ES in terms of both fugitive dust and light emissions but was content that the proposed joint use will not materially change any of the conclusions in the ES (ER 4.12.22 and ER 4.12.35 (fifth bullet)). The Secretary of State has no reason to disagree with this conclusion.

Biodiversity and Ecological Conservation (ER Section 4.13)

29. The Secretary of State notes the ExA is satisfied that the Applicant has undertaken a thorough and rigorous characterisation of the natural environment and geological assets affected by the Development, both directly and indirectly. He also notes that the significance of those assets and the significance of effects upon them have been consistently assessed and mitigation measures designed where necessary (ER 4.13.35). The Secretary of State notes that the Applicant identified that there would be an indirect effect on West Farm Meadow Site of Special Scientific Interest but that the ExA considered that this could be effectively mitigated (ER 4.13.7-8, 4.13.36). The Secretary of State also notes that measures have been taken to manage direct impacts on Mount Pleasant Marsh, Boldon Lake and River Don Local Wildlife Sites and that there will be no significant residual impacts over time (ER 4.13.37). The Secretary of State agrees with ExA that the mitigation measures set out in the Register of Environmental Actions and Commitments (“REAC”), the Outline Construction Environmental Management Plan (“oCEMP”) and secured in the Order are adequate to ensure that NPSNN and development plan policy for the natural and geological environment are met (ER 4.13.41).

Landscape and visual impacts (ER Section 4.16)

30. The Secretary of State notes that there were no Relevant Representations or Written Representations made in relation to this matter (ER 4.16.11). With regard to construction, the Applicant acknowledged that the Development will lead to adverse landscape and visual impacts which would predominately be caused by the loss of vegetation on and around the Testo’s Junction and along the A19 corridor to the north and south, including on the western side of Mount Pleasant Marsh Local Wildlife Site and associated trees loss (including some with Tree Preservation Orders) (ER 4.16.3-4).

31, The ExA concluded that there will be a series of adverse landscape and visual impacts due to construction which, when taken together amount to a substantial impact. The Secretary of State notes the ExA’s consideration of this matter at ER 4.16.20-21 and agrees with the ExA that whilst measures will be put in place to manage these impacts, there is a limit to the extent to which any major construction programme can be delivered without residual adverse effects; that the proposed mitigation is appropriate; and that the NPSNN has been complied with.

32. With regard to operation, the ExA concluded that the impacts would move from adverse to neutral over time as landscape planting matured (ER 4.16.22). In considering this, the ExA found that, the mitigation measures contained in the oCEMP and shown on the Illustrative Environmental Masterplan are appropriate, acknowledging that requirement 5 secures the preparation of a landscape scheme prior to commencement that must reflect the mitigation measures in the REAC and be based on the Environmental Masterplan (ER 4.16.23). The Secretary of State agrees with the ExA’s amendment to requirement 5 as set out at ER 4.16.24 and ER 8.7.1 in Table 2 and is content that mitigation measures are appropriately secured.

33. The Secretary of State notes that the Applicant concluded that the landscape and visual effects of Option 1 and Option 2 lead to only the most limited of differences (ER 4.16.10). The Secretary of State accepts this and agrees with the ExA's conclusions that the Development will lead to adverse landscape and visual impacts in terms of construction and operation, but this effect is justifiable, mitigated appropriately and so is policy compliant, and initially adverse impacts during operation will trend towards neutrality as landscape mitigation matures (ER 4.16.25).

Noise and vibration (ER Section 4.17)

34. The Secretary of State notes the updates to Chapter 12 of the ES as set out at ER 4.17.2. The ExA set out that the STC raised concerns at the prospect for adverse noise and vibration effects on nearby residential receptors in construction, but considered that the CEMP and REAC proposals are sufficient to address those concerns (ER 4.17.15).

35. The Secretary of State notes the ExA agreed that noise and vibration impacts of construction will be appropriately mitigated by way of the CEMP secured by requirement 4 and requirement 10 which is relevant to the management of construction vehicle traffic noise (ER 4.17.24-25). The Secretary of State also notes that consideration was given to the cumulative effects in relation to the Development and DLJ which is also anticipated to be constructed within the proposed construction period of the Development but that the ExA was content that there would be no material change in the overall noise impacts experienced by sensitive receptors and that there was no need for mitigation in the CEMP to be altered (ER 4.17.21). The Secretary of State agrees with the ExA's conclusions that the Development will lead to adverse impacts in terms of construction noise and vibration but that this is justifiable, mitigated appropriately and is policy compliant (ER 4.17.28).

36. With regard to operational noise, the Applicant highlighted that reductions in operational noise are predicted for large numbers of properties close to the existing A19 due to Low Noise Road Surfacing (ER 4.17.12). The Secretary of State notes that STC sought 6 months post construction noise monitoring of the improved junction but agrees with the ExA that where evidence is provided of positive operational noise effects, post construction noise monitoring is not required (ER 4.17.27). The Secretary of State also notes that the Applicant considered that for both Option 1 and 2, there would be beneficial impacts in the short term and neutral impact in the future (ER 4.17.13). The Secretary of State agrees with the ExA's conclusion that design improvements will mean that the operational effects of noise on surrounding sensitive receptors will on balance be positive (ER 4.17.28).

Social, Economic and Land-Use Effects (ER Section 4.18)

37. The Secretary of State notes that Gateshead Council expressed concerns that relevant drawings do not show signal controls where the new Public Right of Way network will cross vehicular connections to the new A19 mainline. Whilst the ExA noted that the Applicant had provided assurances that the intention was that all such crossings would comply with the Design Manual for Roads and Bridges' safety requirements, and would be signalised, the ExA recommended that the Secretary of State might request the Applicant to prepare and submit a new Revision 1 of the Streets, Rights of Way and Access Plans to show this (ER 4.18.69-70). The Secretary of State agreed with that recommendation and

revised plans were provided by the Applicant on 8 August 2018, following the request from the Secretary of State of 25 July 2018. The Secretary of State notes that following a request for comments on the revised plans issued on 10 August 2018 none were received from any party including Gateshead Council. The Secretary of State is content that the revised plan addresses the concerns raised by Gateshead Council.

38. The Secretary of State notes that the Development is located in the Green Belt (ER 4.18.27) but for the reasons set out at ER 4.18.77-4.18.82, the Secretary of State agrees with the ExA that the Development will not harm openness and is not an inappropriate development on Green Belt land for which a very special circumstances case would need to be considered (ER 4.18.84).

39. The Secretary of State notes the ExA's consideration of other Social, economic and land-use effects in ER Section 4.18 and agrees with the ExA's conclusions that on balance, the social, economic and land-use effects of the Development are substantially positive, due to the substantial enhanced connectivity and economic development benefits, which significantly outweigh an unavoidable adverse impact on agriculture (ER 4.18.84).

Water Environment (ER Section 4.19)

40. The Secretary of State notes the ExA considered that the Applicant provided and effectively responded to data on flood risk and the Development is policy compliant in flood risk terms (ER 4.19.22).

41. The Secretary of State also notes that the initial concerns raised by the Environment Agency ("EA") that the cumulative drainage impacts of the Development together with DLJ on the River Don catchment would lead to a breach of the Water Framework Directive ("WFD") were appropriately addressed to give reassurance to the EA (ER 4.19.20). The ExA concluded that the subsequent work on cumulative effects demonstrated that WFD compliance will be achieved and noted the mitigation measures secured by way of requirements 4, 6 and 8 in the Order (ER4.19.24-4.19.29).

42. The Secretary of State notes the Development will replace the existing A19 drainage system and result in an improvement in the operational effects compared with the effects of the existing drainage arrangements (ER 4.9.30).

43. The Secretary of State is content, for the reasons reported by the ExA, that the impacts on flood risk and discharges from the Development to the River Don are policy compliant; and the water environment effects of the Development are positive overall (ER 4.19.31).

Findings and Conclusions in relation to Habitats Regulations Assessment (ER Chapter 5)

44. The Secretary of State for Transport is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), which transpose the Habitats Directive (92/43/EC) into UK law, for transport applications submitted under the 2008 Act. The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats

Regulations. If likely significant effects cannot be ruled out, then an appropriate assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives or imperative reasons for overriding public interest apply.

45. The Convention on Wetlands of International Importance 1972 provides for the listing of wetlands of international importance. These sites are called Ramsar sites. UK Government policy is to afford Ramsar sites in the UK the same protection as European sites and for the purposes of the ER and this letter, are referred to as European sites.

46. The Secretary of State has considered the ExA's assessment on this matter at Chapter 5 of the ER and in particular of the likely significant effects of the Development on three European sites (Northumbria Coast Ramsar Site and Northumbria Coast Special Protection Area and Durham Coast Special Area of Conservation) within a 30km radius of the site boundary (ER 5.2.2). The Secretary of State notes that the ExA concluded that, taking into account the views of Natural England, sufficient information had been provided by the Applicant to allow the Secretary of State to conclude that the Development would have no likely significant effects on any European sites or their qualifying features (ER 5.3.1) and that this conclusion is not reliant on any mitigation measures. The Secretary of State agrees with this conclusion and is satisfied that it is not necessary to carry out an Appropriate Assessment under regulation 63(1) of the Habitats Regulations (ER 5.4.1).

Overall Conclusion on the case for development consent (ER Chapter 6)

47. The Secretary of State notes the ExA's conclusion at ER 9.2.1 and that in reaching the overall conclusions for the granting of development consent that the ExA has had regard to the NNNPS, the NPPF, the LIR and all other matters which the ExA considers to be both important and relevant. The Secretary of State considers that there is a compelling need for the proposed development and agrees with the ExA that it would assist in delivering a well-functioning Strategic Road Network and to meeting network need identified in the NNNPS and in regional and local strategies (ER 6.2.4 and 6.2.6). The ExA noted that during construction there would be some harmful effects, in particular in terms of noise, air quality, landscape and visual impact, but that many of these would be temporary and all are mitigated as far as possible through controls secured in the Order. All harmful effects are within the scope envisaged in the NNNPS as still being policy compliant (ER 6.2.5).

48. The ExA concludes at ER 6.3.4 that development consent should be granted and that consent applies to both Option 1 and 2 proposals, as in all material respects the options are no different in impact terms. The Secretary of State is satisfied that the Order enables the two options approach set out in ER 2.1.3 through requirements 3 and 4. This sets out that the development must be designed in detail and carried out in accordance with the preliminary development design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State.

49. The ExA concluded that the strategic benefits of the Development addressing existing and predicted congestion at a key intersection, improving user experience of the

A19 corridor and enhancing connectivity and economic benefits in the region, are such that they would outweigh the impacts identified in relation to the construction and operation of the Development (ER 6.3.1). The Secretary of State agrees for all the reasons given by the ExA, and set out in this letter, that development consent should be granted subject to the changes which the ExA has incorporated in the Order at Appendix D to the ER and to the further changes referred to in paragraph 60 of this letter (ER 6.3.4).

50. After having regard to the comments set out in Chapter 4 of the ER the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with NNNPS which sets out that there is a critical need to improve the existing national road network identified in paragraph 2.2 and 2.22 of the NNNPS. The Secretary of State shares the ExA's conclusion that the Development conforms with the NNNPS and that compliance of the Development has been examined against policy detail and tests applicable to individual planning issues (ER 4.4.8).

Compulsory Acquisition and related matters (ER Chapter 7)

51. The Secretary of State notes the ExA's consideration of compulsory acquisition and related matters at Chapter 7 and agrees with the ExA that the proposed development satisfies the tests in section 122(2) and (3) of the 2008 Act, namely that the land proposed to be compulsorily acquired is needed for the development to which the development consent relates, and that there is a compelling case in the public interest to acquire the land for the Development, outweighing the private loss that would be suffered by affected persons (ER 7.7.6-7.7.10). The Secretary of State agrees with the ExA that there are no preferred alternatives to the Development or to the compulsory acquisition or temporary possession elements in it. The Secretary of State shares the ExA's view that funding will be available and adequate (ER 7.7.11).

52. Whilst there is a limited overlap of the land requirement for the DLJ scheme (should it proceed) and the Development, the Secretary of State is content that the same extent of land would be required even if the DLJ development did not proceed (ER 7.6.23 and ER 7.7.5).

53. The Secretary of State notes the ExA's consideration in relation to section 135 of the 2008 Act at ER 7.6.51-7.6.55 and 7.7.12 and is content that that compulsory acquisition and temporary possession powers sought do not affect Crown Land and that Crown consent is therefore not necessary. The Secretary of State is also content that whilst the Development will affect both land and apparatus of statutory undertakers capable of being within the meaning of section 127 of the 2008 Act, there was only one objection from a statutory undertaker that has now been withdrawn; there is no National Trust Land that engages section 130 of the 2008 Act; and there is no common, open space or related land that engages sections 131 or 132 of the 2008 Act.

54. The Secretary of State notes that ExA's consideration of those provisions of the Human Rights Act 1998 which are relevant to this application for development consent (ER 7.6.63 – 7.6.65). Like the ExA, the Secretary of State is satisfied that any interference with human rights is lawful, proportionate and is necessary in the interests of the economic wellbeing of the country. Those affected by compulsory acquisition have had a fair and public hearing of their objections which have been included in the ExA's consideration and ER to the Secretary of State.

55. In conclusion, the Secretary of State is content that it is appropriate to grant the compulsory acquisition and temporary possession powers sought in the Order, for the reasons summarised by the ExA at ER 7.7.11.

General Considerations

Equalities Act 2010

56. The Secretary of State has had regard to the public sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not (section 149(1) of the Equality Act 2010). The Secretary of State has concluded in light of the ExA's findings and conclusions as set out at ER 9.2.5 that the Development is not likely to result in any significant differential impacts on any of the protected characteristics referred to in section 149(7). On that basis there is no breach of the public sector equality duty.

Natural Environment and Rural Communities Act 2006

57. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Community Act 2006 ("the 2006 Act") has to have regard to conserving biodiversity and in particular to the United Nations Environmental Programme on Biological Diversity of 1992 when making a decision on whether to grant development consent. The Secretary of State notes that the ExA has had regard to the 2006 Act and biodiversity duty in the relevant sections of Chapters 4 and 5 of the Report. In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

Secretary of State's overall conclusions and decision

58. For all the reasons set out in this letter and the ER, the Secretary of State considers that there is a clear justification for authorising the Development. The Secretary of State has therefore decided to accept the ExA's recommendation at 9.3.2 and grant development consent, subject to the changes to the Order referred to in paragraph 60. The Secretary of State is satisfied that none of these changes 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.

Modifications to the Order by the Secretary of State

59. The Secretary of State has considered the ExA's assessment of the Order in Chapter 8 of the ER and the amendments requested by the Applicant on 5 April 2018. He is satisfied that, subject to the qualifications referred to in the following paragraphs, the Order set out at Appendix D is appropriate and acceptable for the purposes of the scheme.

60. The changes to the Order are:

- in the preamble in the paragraph citing the powers relied upon, a reference has been inserted to paragraph 23 of Schedule 5 to the Planning Act 2008 as this provision would appear to be needed for article 11.

- article 9(7) has been slightly reworked;
- article 15(2)(iii) – the references to “inspection”, “alteration”, “repair” and “removal” have been removed because these matters are already included in the definition of “maintain” in article 2(1). The reference in the same provision to the “Telecommunications Act” and the “Telecommunications Code” have been updated in line with the changes made by the Digital Economy Act 2017 now being in force;
- article 23(4) has been amended to include a reference to Schedule 2A;
- article 26(4) to (10) has been slightly reworked;
- article 27 – a new paragraph (3) has been inserted;
- article 36(1) has been slightly amended to refer to the columns in Schedule 8 and the whole article has been moved and placed immediately after article 34 (felling or lopping of trees and removal of hedgerows) so that matters relating to trees is together;
- Schedule 1 – the word ‘approximately’ has been removed by virtue of article 2(3);
- Schedule 6 has been amended to reflect changes made by the Housing and Planning Act 2016.
- a number of minor and other textual amendments to the Order set out in Appendix D to the ER in the interests of clarity, consistency and precision.

Challenge to decision

61. 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

62. 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 2009 Regulations.

Yours faithfully,

Natasha Kopala

Annex

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 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 A19/184 Testo's Junction Alteration Order 2018 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-a184-testos-junction-improvement/>

These notes are provided for guidance only. A person who thinks they 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 (020 7947 6655)