



The Planning Inspectorate

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Jon Barnard
Suffolk County Council

Your Ref:

Our Ref: TR010023

Date: 24 January 2019

Dear Mr Barnard

Planning Act 2008 – Section 89

Application by Suffolk County Council for an Order Granting Development Consent for the Lake Lothing Third Crossing

Notice by Applicant of intention to submit a request for changes to the application

Thank you for your letter dated 15 January 2019 giving notice of Suffolk County Council's intention to submit a request for changes to the application. It has been published on the National Infrastructure Planning website here:

<https://infrastructure.planninginspectorate.gov.uk/document/TR010023-000787>

The letter purports to be notification of a change request in accordance with Step 1 of the recommended procedure in the Planning Inspectorate's 'Advice Note 16: How to request a change that might be material' (AN16). The letter describes eight proposed changes to the scheme and indicates that a change request will be submitted at Deadline 4 in the Examination Timetable (29 January 2019). The Applicant seeks confirmation from the Examining Authority (ExA) that if consultation is required, such consultation would necessarily continue to involve only those Affected Persons and Interested Parties who would be likely to be directly affected by the proposed changes.

Materiality of the proposed changes

In the Applicant's view the proposed changes are not material. It is ultimately for the ExA to decide whether or not a proposed change is material and the ExA does not at this stage have sufficient information to reach a view as to materiality. It is however noted that the changes may necessitate the Compulsory Acquisition of "additional land" as defined in The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) and may give rise to new or materially different likely significant effects. On receipt of the change request at Deadline 4, if this is the case,

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such factors may lead the ExA to conclude that the changes taken together are material. This means that before accepting the material changes for examination, the ExA will need to have:

- the information identified in paragraphs (a) to (d) in Figure 3 of AN16;
- if landowner consent is not received and the CA Regulations are engaged, the information prescribed by Regulation 5 of the CA Regulations and clarification that the procedural requirements of the CA Regulations can be met within the remaining statutory six month Examination stage; and
- confirmation that any new environmental effects have been adequately assessed and subject to publicity and that any consultation bodies have been consulted (see paragraph (f) of Figure 3 of AN16).

Consultation

Whether or not the proposed changes are material the ExA considers that, in order to ensure fairness, appropriate and proportionate non-statutory consultation should be carried out before the change request is submitted.

The ExA has decided that the consultation must engage all those person identified in the Planning Act 2008 under section 42 (a) to (d) who would be affected by the proposed changes (giving a minimum of 28 days), including any section 42 persons **not** originally consulted on the application but who may now be affected by the proposed changes. The Applicant should also consider whether or not persons not already participating in the Examination (and not falling within section 42) might need an opportunity to comment (such as persons living or commercial entities operating outside the Order limits) and whether or not any newspaper notices or site notices are necessary to inform these persons about the proposed changes.

When submitting the change request it is recommended that the Applicant submits a statement which:

- lists the persons (affected by the changes) under section 42 (a) to (d) who have been consulted (identifying any new persons ie those who were consulted in relation to the proposed change but **not** in relation to the original application);
- identifies (within the above list) those section 42 (d) persons who are "*affected persons*", meaning those persons over whose land Compulsory Acquisition powers will be exercised. It is noted that if the procedure under the CA Regulations is to be followed the Applicant will also need to submit a request for additional land and identify the additional Affected Persons;
- provides justification as to why any person under section 42 (a) to (d) is not affected by the proposed changes and has not therefore been consulted;
- provides copies of any newspaper notices or site notices or justification as to why such general publicity is not required to ensure fairness, using case law as necessary to support the Applicant's position; and
- appends as an annex comprising any consultation responses received.

If the ExA decides to accept the changes (whether or not material) into the Examination, all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as the Examination progresses. Nonetheless, if the ExA is not satisfied with the extent of non-statutory consultation undertaken by the Applicant the ExA may request that further non-statutory consultation is carried out to safeguard the interests of and/ or inform those potentially impacted by the changes who are not already involved in the Examination.

Next steps

Without prejudice to any view as to the materiality or merits of the proposed changes to the application, the ExA wishes to make effective use of the forthcoming Accompanied Site Inspection and hearings to understand more about the nature of the changes and the impacts. The Applicant is asked to ensure therefore that the change request which is intended to be submitted at Deadline 4 responds fully to the points made above and contains sufficient information to enable the ExA to draft hearing agendas and if necessary prepare further questions.

Yours sincerely

David Morgan

David Morgan
Lead member of the Examining Authority

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