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Dear Sirs,

16 July 2020

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A19 DOWNHILL LANE JUNCTION 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 17 April 2020 of the Examining Authority (“the ExA”), Kevin Gleeson BA MCD MRTPI, 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 Downhill Land Junction Scheme (“the Proposed Development”).
2. The application was accepted for examination on 22 February 2019 and the examination was concluded on 17 January 2020. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of meetings held near the location of the Proposed Development. The ExA also undertook two unaccompanied and one accompanied site inspections.
3. The Order as applied for would grant development consent for:
 - the construction of a new bridge spanning the A19 south of the existing junction bridge. The new bridge and the existing bridge will be used to form a grade separated roundabout junction layout above the A19;
 - the realignment of the existing northbound and southbound A19 slip roads to tie in with the new roundabout layout. The slip roads north of the junction will serve as link roads between Downhill Lane Junction and the proposed Testo’s junction. The slip roads south of the junction will continue to provide direct access to and from the A19;
 - the realignment of the A1290, Downhill Lane (West), Downhill Lane (East) and Washington Road (East) local roads to suit the new junction layout; and
 - the construction of a segregated non-motorised user facility featuring a dedicated overbridge for walkers, cyclists, horse riders and wheelchair users to the south of the junction (ER 1.1.2).

4. The Secretary of State is content that the proposals qualify as a Nationally Significant Infrastructure Project (“NSIP”) under sections 14(1)(h), 22(1)(b), 22(3)(a), (b) and (c) and 22(4) of the 2008 Act.
5. Published with this letter on the Planning Inspectorate’s website is a copy of the ExA’s report. The main features of the Proposed Development and the Development site and setting are described in Chapter 2 of the ExA’s Report. The ExA’s findings and conclusions are set out in Chapters 4-7; the ExA’s views on the DCO and related matters are contained in Chapter 8; and the ExA’s conclusions and recommendation are in Chapter 9 of the ExA’s Report.

Summary of the ExA’s Recommendation

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 ExA’s Report under the following broad headings:
 - Legal and Policy Context (Chapter 3);
 - Findings and Conclusions in relation to the planning issues (Chapter 4) which includes consideration of: the need for the proposed development; transportation and traffic; other strategic projects and proposals; air quality and emissions; biodiversity, ecology and natural environment; landscape and visual effects; noise and vibration; water environment; economic and social effects; historic environment; and other considerations.
 - Findings and Conclusions in relation to Habitats Regulations Assessment (Chapter 5);
 - Conclusions on 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 Conclusions and Recommendation (Chapter 9), the ExA recommended that the Order be made, in the form set out in Appendix D to the ExA’s 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 the 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

9. The Secretary of State’s consideration of the ExA’s Report, 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 recommendations, as set out in the ExA’s Report, 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

ExA's Report and references to "requirements" are to those stated in Schedule 2 to the DCO as recommended by the ExA at Appendix D to the ExA's Report.

Legal and Policy Context

10. As noted by the ExA, under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with the designated National Networks National Policy Statement ("NNNPS") subject to exceptions set out section 104(4) to (8) of the 2008 Act, which are not triggered in this case. The Secretary of State has also had regard to the joint Local Impact Report submitted by South Tyneside Council ("STC") and Sunderland City Council ("SCC") that showed the councils' stated position to be that they "welcome this development which will significantly improve traffic flows at this key junction, relieving congestion and improving accessibility to and from the IAMP [International Advanced Manufacturing Park] and supporting access to new economic development in accordance with national and local planning policy" (ER 4.3.4).
11. The Secretary of State notes the ExA's assessment of the legal and policy context that applies to the consideration of this application as set out in Chapter 3 of the ExA's report.
12. The Secretary of State notes that changes to application documents, including the wording of the draft Development Order ("dDCO") were submitted between the acceptance of the application and the start of the Examination and during the Examination (ER 2.3.1). The Secretary of State notes the ExA's conclusion that the changes to the application, primarily consisting of technical revisions to the DCO as applied for, have not resulted in any material change to that which was applied for (ER 3.12.3). The Secretary of State is satisfied that, taking into account the further minor drafting changes to the DCO recommended by the ExA, the Proposed Development has not changed to the point where it is a different application. The Secretary of State is therefore satisfied that he would have the power of section 114 of the 2008 Act to make the Order in the form recommended with modifications.
13. 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, has provided an adequate assessment of the environmental effects of the Proposed Development and that it meets the requirements of the 2009 Regulations (ER 4.7.13).

Findings and Conclusions in relation to the Planning Issues

The need for the proposed development

14. The Secretary of State notes the key objectives for improvements at Downhill Lane junction proposed by the Applicant included: improve journey times on this route of strategic national importance; improve safety by reducing accident rates due to providing a safer highway configuration and by providing significant additional capacity for existing and anticipated growth in traffic; facilitate future economic growth by providing an integral part of the infrastructure required to facilitate the planned strategic economic growth of the surrounding area; and improve provision for walkers, cyclists and other non-motorised users ("NMU") as the new NMU route would provide a greater degree of separation between vehicles and NMU traffic (ER 4.9.7).

15. The ExA considered whether demand management measures would address the peak hour traffic flows which the Proposed Development was intended to address (ER 4.9.12). The Secretary of State notes there is considerable support from interested parties, including the local authorities, for the Proposed Development (ER 4.9.10), and notes the Applicant's position that the Proposed Development is necessary to support plans for IAMP and without it further local growth in the area would be constrained (ER 4.9.14 – 4.9.15). The ExA concluded that action is required to relieve the existing pressures on Downhill Lane junction, particularly at peak hours (ER 4.9.20) and that there is a need for highway improvements at Downhill Lane Junction (ER 4.9.22). The Secretary of State agrees.

Transportation and Traffic

16. The Secretary of State notes the results of the Transport Assessment undertaken by the Applicant as set out at ER 4.10.6 to 4.10.34 and the Applicant's summary of the Transport Assessment ("TA") set out at ER 4.10.34. The Secretary of State notes that no representations were made which raised concerns with the transport and traffic case for the Proposed Development (ER 4.10.35), and that both STC and SCC consider the achievement of the transport and traffic benefits of the Proposed Development as being of significant importance (ER 4.10.44).

17. The Secretary of State notes that the only element of concern raised by Interested Parties related to the possible interactions between the construction stages of the Proposed Development with the Testo's scheme, which is authorised by the A19/A184 Testo's Junction Alteration Development Consent Order 2018 ("the Testo's DCO"). The Secretary of State notes that the Councils attend the Traffic Management Forum where the Applicant intends to co-ordinate construction across both schemes to ensure that traffic disruption is minimised (ER 4.10.45).

18. The Secretary of State agrees with the ExA that although the transport and traffic effects of the Proposed Development during construction will be negative, all reasonable steps to minimise these have been taken by the Applicant and a Construction Traffic Management Plan is secured in requirement 10 of the dDCO (ER 4.10.47). The Secretary of State agrees with the ExA that the transport and traffic effects of the Proposed Development during operation would be strongly positive (ER 4.10.47).

Other Strategic Projects and Proposals

19. The Secretary of State accepts the ExA's conclusion that all relevant interrelationships between the Proposed Development and the Testo's scheme have been considered, to the extent that these are known, and no significant adverse cumulative effects have arisen (ER 4.11.17). The Secretary of State notes that the Proposed Development is programmed for construction to overlap in part with the Testo's scheme and so it would be possible for the Proposed Development to share the use of the Testo's main site compound (ER 7.6.14). It is further noted that the potential use of the Testo's scheme construction compound as part of the construction of the Proposed Development would not lead to any significant cumulative impacts (ER 6.2.15).

20. The Secretary of State also agrees that all relevant interrelationships between the Proposed Development and IAMP ONE and IAMP TWO have been considered, to the extent that these are known, and no significant adverse cumulative effects have arisen

(ER 4.11.18). Furthermore, the Secretary of State accepts that there are no significant interrelationships between the Proposed Development and the A1 Birtley to Coalhouse Improvement Scheme and agrees that no significant interrelationships between the Proposed Development and other development or highway projects have been identified and so no significant adverse cumulative effects have arisen. The Secretary of State also notes that the NNNPS policy requirements in relation to cumulative and in combination assessments for Environmental Impact Assessment (“EIA”) purposes have been met (ER 4.11.18).

Air Quality and Emissions

21. The Secretary of State notes that the Applicant’s air quality assessment identified a number of receptors which would be directly affected by fugitive dust during construction but that with best practice measures secured through the Construction Environmental Management Plan (“CEMP”), the Applicant predicted there would be no significant effects on air quality during the construction phase (ER 4.12.14). The CEMP is secured through requirement 4 in the DCO and the outline CEMP makes provision for dust control through a Dust Noise and Nuisance Management Plan which will be further developed for the approved CEMP. The Secretary of State agrees that the measures proposed in these plans will mitigate fugitive dust emissions to an acceptable level (ER 4.12.30).
22. The Secretary of State notes that the assessment of operational impacts identified no exceedance of the air quality objectives for any of the modelled receptors (ER 4.12.15) and that the Applicant did not consider that the Proposed Development would affect the UK’s ability to comply with the Air Quality Directive¹ and overall would not lead to significant local air quality effects (ER 4.12.17). In light of these findings the ExA concluded that the Proposed Development would comply with the air quality sections of the NNNPS (ER 4.12.32); the Secretary of State agrees.
23. The Secretary of State notes that the regional assessment results show small increases in NO_x, CO₂ and PM₁₀ emissions as a result of the Proposed Development and that the increase in greenhouse gas emissions has been included in the Benefit Cost Ratio (ER 4.12.18). The approved CEMP is intended to consider methods to reduce the impact of energy use in construction (ER 4.12.19). The ExA noted that the Secretary of State may wish to consider whether the Proposed Development would have a material impact on the UK Government meeting its increased carbon reduction target in light of the amendments to the Climate Change Act 2008 made by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (ER 4.12.5). The Secretary of State agrees with the ExA’s conclusion that in terms of the regional air quality impacts, the small increases in emissions that were identified are unlikely to have a material impact on the ability of the Government to meet its carbon reduction targets (ER 4.12.34) and does not consider that the change in the carbon target alters this conclusion.
24. As such, the Secretary of State agrees with the ExA that the impact on air quality and emissions by the Proposed Development would be neutral (ER 4.12.36).

¹ Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe

Biodiversity, Ecology and the Natural Environment

25. The Secretary of State notes that the Proposed Development would result in some loss of habitats which currently provide connectivity and dispersal routes for species, and that wildlife would be at risk of disturbance, direct mortality and pollution, in addition to fragmentation and severance of their habitat (ER 4.13.33). The Secretary of State notes that the adverse effects of the Proposed Development would be mitigated through: the replacement of lost habitat; timing of construction works to avoid the most sensitive times of year; relocation/displacement of relevant protected species before the start of works where they have potential to be impacted; landscape planting; and pollution control measures to prevent damage to habitats (ER 4.13.34). Whilst there would be no net gain in terms of habitat creation, the Secretary of State notes that Natural England (“NE”) acknowledged that a net gain in the quality of habitats would be achieved (ER 4.13.34). The Secretary of State accepts that construction phase mitigation measures would be secured by the Register of Environmental Actions and Commitments (“REAC”), the CEMP and through requirements set out in the DCO (ER 4.13.35). The Secretary of State notes that short-term construction effects would cease at the end of the construction period, and that during operation, following mitigation implementation, there would be no residual significant effects (ER 4.13.36). The Secretary of State agrees with the ExA that there would be limited harm to biodiversity and an adverse effect overall which weighs against the benefits of the Proposed Development (ER 4.13.37).

Landscape and Visual Effects

26. The Secretary of State notes that landscape and visual effects would be predominantly caused by loss of vegetation on and around the Downhill Lane junction and along the adjoining roads of Downhill Lane, Washington Road and the A1290. The Secretary of State further notes that these substantial adverse impacts would occur as a result of construction activities, and can be managed through appropriate construction and management measures, particularly in relation to the siting of soil and materials stockpiles, screening and lighting design in the construction compound but as with any major construction programme, residual adverse effects would result (ER 4.14.28). The Secretary of State notes that the ExA considers that the mitigation measures in the CEMP and shown on the Environmental Masterplan are appropriate (ER 4.14.30). The Secretary of State therefore agrees with the ExA that although the Proposed Development would result in adverse landscape impacts, this harm would be minimised by reasonable mitigation and so is compliant with the NNNPS. The Secretary of State agrees that there would also be adverse visual impacts but the effects would be minimised through appropriate design and landscaping. The Secretary of State agrees that as mitigation measures mature the initially adverse impacts during operation will reduce leading to a neutral impact (ER 4.14.31).

Noise and Vibration

27. The Secretary of State notes that by the opening year the vast majority of receptors were predicted to experience negligible reductions in noise with a much smaller number of receptors predicted to experience negligible noise increases (ER 4.15.8). In the design year no receptors were predicted to experience perceptible noise decreases in the long term (4.15.9). The ExA considered that the overall effect of the Proposed Development would be neutral (ER 4.15.33).

28. The Secretary of State notes the Councils' concern that during the construction phase a number of properties would experience adverse noise impacts (ER 4.15.20). The ExA concluded that during the construction phase, noise and vibration impacts will be appropriately mitigated through the operation of the CEMP (secured through requirement 4) although it is still possible that some residents would experience significant noise for short durations (ER 4.15.28). The Secretary of State notes that STC and SCC have endorsed the Applicant's mitigation measures for noise and vibration matters through the Statement of Common Ground ("SoCG") (ER 4.15.30).
29. The Secretary of State agrees with the ExA's conclusion that there would be adverse impacts in terms of construction noise and vibration but these would be mitigated as far as possible and so the Proposed Development complies with the NNNPS, and that the operational effects on surrounding sensitive receptors will on balance be neutral (ER 4.15.34).

Water Environment

30. The Secretary of State notes that the Proposed Development is located in Flood Zone 1, although the northern section is located adjacent to Flood Zones 2 and 3. The Applicant considered that the Sequential test was passed because the improvement works would be to an existing road and therefore cannot be located in an area of lower flood risk, and no application of the sequential test was required (ER 4.16.14). The Secretary of State notes that the Applicant has demonstrated that the Proposed Development is policy compliant in flood risk terms both during construction and operation, and has demonstrated how an allowance has been made for climate change within the design (ER 4.16.34).
31. The Secretary of State notes that the Proposed Development would replace elements of the existing A19 drainage system with a new system, designed to apply Sustainable Drainage System and that this new system would improve the operational effects of the Proposed Development and therefore has a positive impact (ER 4.16.33). The ExA concluded that during construction there would be no adverse effects on water quality (ER 4.16.35), with measures to control the risk of pollution during construction being implemented through the CEMP which would include a surface water management plan (ER 4.16.18). The ExA found that all effects on surface water quality would be neutral to moderate beneficial during operation (ER 4.15.35).
32. The Secretary of State notes that the Water Framework Directive² ("WFD") assessment has shown that the Proposed Development is compliant under the WFD, and that cumulative effects with other strategic projects will not undermine that compliance (ER 4.16.36).
33. Taking these matters into account, the Secretary of State agrees with the ExA that, following improvements to the existing drainage system, the effects of the Proposed Development on the water environment would be positive overall (ER 4.16.41).

² Council Directive 2000/60/EC (as amended) establishing a framework for Community action in the field of water policy

Economic and Social Effects

34. The Secretary of State notes that STC and SCC have strongly reinforced the case made by the Applicant that the Proposed Development will provide substantial support for the economic development of the local area and the region, and that evidence from the IAMP indicates that the Proposed Development will positively reinforce the case for major employment development there, contributing to enhanced economic wellbeing of the local area and the region (ER 4.17.40).
35. The Secretary of State notes that the Proposed Development would result in a permanent loss of 5.83ha of Grade 3b agricultural land and that this loss is unavoidable (ER 4.17.18). The temporary loss of agricultural land during construction would be much greater but the Secretary of State agrees with the ExA that the extent of the temporary loss has been justified (ER 4.17.41). It is further noted that the Soil Management Plan, forming part of the CEMP would provide for the sustainable use of soil resources thereby minimising damage to agricultural land and supporting the effective return to agricultural use of land temporarily acquired (ER 4.17.42).
36. The Secretary of State notes that the Proposed Development will create a new NMU route connecting Bridleway B46 with the A1290 to the west of Downhill Lane junction whilst providing a greater separation of vehicles and NMU traffic (ER 4.17.25). The application also proposes to amend the Testo's DCO, as the Testo's scheme NMU proposals would potentially put users at greater risk because they would not complement the NMU facilities proposed under the Proposed Development (ER 4.17.27). The Secretary of State agrees with the ExA that following the implementation of the Proposed Development, Public Right of Way ("PRoW") and NMUs users would experience a significant long-term beneficial effect as a result of improved connectivity, improved safety and improved environmental conditions (ER 4.17.45).
37. The Proposed Development is located within the Green Belt. The Secretary of State notes the Applicant's planning statement that the Green Belt is intended, amongst other things, to preserve the openness of land and prevent settlements merging and that there is a general presumption not to develop in the Green Belt unless other overriding reasons justify development (ER 4.17.28). The Secretary of State notes that the Applicant considered that the Proposed Development was not inappropriate development in the Green Belt for the reasons set out in ER 4.17.29. The Secretary of State further notes there were no representations suggesting that the Proposed Development was inappropriate development in the Green Belt or that it was contrary to the Green Belt policy (ER 4.17.37). The Secretary of State agrees with the ExA's analysis that the Proposed Development, in addition to its strategic importance in transportation and economic development terms, can be considered as a form of "local transport which can demonstrate a requirement for a Green Belt location" (ER 4.17.47). On this basis, the Secretary of State agrees that the Proposed Development is not inappropriate development in the Green Belt as it leaves the openness of the Green Belt unharmed and broadly reinforces the Green Belt purposes; consequently it is not necessary for the Secretary of State to consider "*very special circumstances*" (ER 4.17.49).
38. The Secretary of State agrees with the ExA that with overall neutral effects, the substantial economic benefits arising from the Proposed Development together with the major improvements to the PRoW and NMU network, significantly outweigh the adverse impact on agriculture (ER 4.17.52).

Historic Environment

39. The Secretary of State notes that paragraphs 5.120 to 5.142 of the NNNPS stipulate that, in determining applications, the Secretary of State is required to seek to identify and assess the particular significance of any heritage assets that may be affected by the Proposed Development (ER 4.18.1).
40. The Secretary of State notes that direct effects on four archaeological sites have been identified but none of these are considered to be significant and therefore no mitigation is proposed beyond measures set out in the CEMP and REAC (ER 4.18.14) and that there would be no other cultural heritage related effects from the construction or operation of the Proposed Development (ER 4.18.15). The Secretary of State agrees with the ExA that, on the basis of the evidence presented and with the proposed mitigation secured through the dDCO, all impacts have been adequately addressed in a manner which complies with the historic environment sections of the NNNPS and that the effects of the Proposed Development on the historic environment would be neutral (ER 4.18.16).
41. As required by regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA and Secretary of State has had regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess.

Other Considerations

42. The Secretary of State notes that in the SoCG between the Applicant and the Environment Agency ("EA") it was agreed that the application adequately assessed the potential for land contamination, and should any unsuspected contamination be discovered during construction requirement 6 in the dDCO would ensure that it is dealt with in a satisfactory manner (ER 4.19.4).
43. The Secretary of State notes that the effects of material resources and waste management are considered by the STC and SCC to be neutral (ER 4.19.9) and that the SoCG between the Applicant and the EA raised no issues in respect of material resources or waste management provisions (ER 4.19.10). Furthermore, the Secretary of State notes that no IP's raised concerns about material resources or waste (ER 4.9.11). The Secretary of State notes that there were no concerns raised in representations (ER 4.9.12) with regard to human health and agrees with the ExA that the Proposed Development does not give rise to material adverse effects on human health (ER 4.9.13).

Findings and Conclusions in Relation to Habitats Regulations Assessment

44. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017, the Secretary of State is required 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 Site³. The Proposed Development is not directly connected with or necessary to the management of any European Site. The Secretary of State must therefore

³ The term "European Site" in the ExA's Report and in this decision letter includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and candidate SACs (cSACs), Special Protection Areas (SPAs), possible SACs (pSACs), potential SPAs (pSPAs), Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above.

undertake an appropriate assessment (“AA”) if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects, cannot be ruled out.

45. In order to establish whether there is likely to be a significant effect on any European Site, the Secretary of State must consider whether such significant effects can be ruled out. If not, 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 a European Site, unless there are no feasible alternatives or imperative reasons for overruling public interest apply.
46. The Secretary of State notes that the Applicant provided a Habitats Regulations Assessment (“HRA”) Report with its DCO application which confirmed that the nearest European and/or Ramsar designations are located to the east of Downhill Lane junction, all approximately 6.5km distant. These being:
- Northumbria Coast Ramsar Site;
 - Northumbria Special Protection Area (“SPA”); and
 - Durham Coast Special Area of Conservation (“SAC”) (ER 5.3.2).
47. The Applicant concluded that the combination of the localised nature of the works and its construction, together with the relative distance between the Proposed Development and the European and Ramsar sites, provides no pathway directly, or by way of emissions for any potential adverse, or otherwise, effects upon the qualifying features of the designated European or Ramsar sites (ER 5.3.9). For this reason, the Applicant concluded that an AA was not required (ER 5.3.10). The Secretary of State also notes that an SoCG signed by NE indicated agreement that no European Designated sites or Ramsar wetland sites located within the vicinity of the proposed Development would be affected by the application (ER 5.3.13), and that no HRA relevant issues were raised by any other Interested Parties (5.3.14).

Secretary of State’s HRA Conclusion

48. The Secretary of State, having considered all relevant evidence, agrees with the ExA that there are no Likely Significant Effects of the Proposed Development on any European Sites or their qualifying features (ER 5.4.1). As such, the Secretary of State agrees with the ExA’s conclusion that the Proposed Development can proceed without an AA being undertaken by the Secretary of State (ER 5.5.1).

Conclusion on the Case for Development Consent

49. The Secretary of State notes that paragraph 4.2 of the NNNPS advises that, subject to the provisions of section 104 of the 2008 Act, the starting point for the determination of an application for a National Networks NSIP is a presumption in favour of development (ER 6.3.1). The Secretary of State notes that there is strong policy support for schemes which will deliver improvements to the Strategic Road Network and agrees that the Proposed Development would deliver such benefits resulting in a strongly positive effect. It is also noted that the Proposed Development would have substantial economic benefits and would result in a considerably improved PRoW network for NMUs, as well as having a positive effect on the water environment (ER 6.3.3).

50. The Secretary of State agrees with the ExA that although there would be potential adverse impacts due to the Proposed Development, all harmful effects are within the scope envisaged in the relevant NPS as still being policy compliant (ER 6.3.4). As such, the Secretary of State agrees that the benefits of the Proposed Development are such that they outweigh the potential adverse impacts in relation to the construction and operation of the Proposed Development (ER 6.3.7). Additionally, the Secretary of State agrees that no HRA effects have been identified and there is no reason for HRA matters to prevent the making of this Order (ER 6.3.9). The Secretary of State agrees with the ExA that the Proposed Development is acceptable, and that development consent should be granted (ER 6.3.10).

Compulsory Acquisition and Related Matters

51. The Secretary of State notes that sections 122 and 123 of the 2008 Act set out the purposes for which Compulsory Acquisition (“CA”) may be authorised and agrees with the ExA that the legal interests in all the plots of land included in the revised Book of Reference (“BoR”) and shown on the Land Plans would be required for the Proposed Development with respect to both CA and TP powers. The Secretary of State agrees that in relation to CA, the land to be taken is no more than is reasonably required and the proposed land-take is proportionate (ER 7.7.1) and that the public benefit in delivering the Proposed Development would outweigh the private loss (ER 7.7.2). The Secretary of State notes the ExA’s consideration of the overlap of both land requirement and delivery timing between the Proposed Development and the Testo’s scheme, and supports the ExA’s conclusion that the proposed shared use of some land subject to TP for activities relevant to both projects is very limited and provides the potential for efficiency in the delivery of the Proposed Development (ER 7.7.3).

52. The Secretary of State agrees with the ExA that in relation to section 122(3) of the 2008 Act, there is a compelling case in the public interest for the Proposed Development to be delivered for the reasons set out at ER 7.7.4.

53. The Secretary of State notes that in respect of sections 127 and 138 of the 2008 Act, the Proposed Development will not result in any outstanding issues regarding the land and apparatus of statutory undertakers and that no statutory undertaker raised an issue with the proposed protective provisions (ER 7.7.5). Furthermore, the Secretary of State notes that 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 (ER 7.7.6). The Secretary of State understands that in relation to section 135 of the 2008 Act, land recorded in the BoR as in the ownership of the Crown Estate has been confirmed by the Crown Estate Commissions as being held in escheat, therefore it is not part of the Crown Estate and cannot be Crown Land for the purposes of the Act (ER 7.7.7).

54. The Secretary of State agrees with the ExA that the CA powers sought by the Applicant are justified and should be granted as there is a compelling case in the public interest for land and interests to be compulsorily acquired and therefore the proposal would comply with the 2008 Act (ER 7.7.8). Furthermore, the Secretary of State agrees that any interference with human rights arising from the implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest and that compensation would be available in respect of any quantifiable loss; and as such there is no disproportionate or unjustified interference

with human rights so as to conflict with the provisions of the Human Rights Act 1998 (ER 7.7.9).

General Considerations

Equality Act 2010

55. The Secretary of State has had regard to the public sector equality duty set out in section 149(1) of the Equality Act 2010 and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not share it. The Secretary of State has concluded in light of the ExA's findings and conclusions that the Proposed 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

56. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 ("the 2006 Act) must have regard to the purpose of the conservation of biodiversity and must in particular have regard 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 Chapter 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.

Draft Development Consent Order and Related Matters

57. The Secretary of State has considered the ExA's assessment of the dDCo in Chapter 8 of the Report and has noted the ExA recommended the removal of article 29(9)(a). The ExA concluded that the article as originally drafted imposed a burden of undefined new rights on affected parties consulted on the basis that the Applicant only intends to take temporary possession of land, which would not be in line with the tests in section 122 of the 2008 Act. The ExA found that it has not been adequately demonstrated that the undefined new rights were required for the Proposed Development and therefore the ExA was not convinced there was a compelling case in the public interest for these new rights. The ExA took into account the Applicant's general comment that sub-paragraph (b) would also need to be removed (ER 8.4.24 and 8.4.26). The Secretary of State is satisfied with the amended article 29(9).

58. The Secretary of State notes that the ExA amended the title of Schedule 8 to the correct name of the Testo's Order (ER 8.5.1) and is content with this amendment.

59. The Secretary of State is content that, subject to the matters set out in this letter and the additional changes made as detailed in the paragraph below, the DCO as set out in Appendix D to the Report is appropriate and acceptable for the purposes of the Proposed Development.

60. The modifications which the Secretary of State has decided to make to the dDCO are as follows (references to article numbers, paragraphs and requirements in this paragraph are to the same as numbered in the DCO as made):

- In article 2, the definition of “the tribunal” has been removed as the term is only used in article 43 (arbitration). The term has now been set out in full in article 43 (arbitration).
- In article 35(5), the definition of “hedgerow” has been reworked.
- In Schedule 1, the references to “approximately” have been removed because of the provisions contained in article 2(3).
- In Schedule 2, paragraph 1, the reference to the “Conservation of Habitats and Species Regulations 2010” has been changed to the “Conservation of Habitats and Species Regulations 2017” and the references to regulations 40 and 44 have been changed to 42 and 46, respectively.
- In Schedule 9, where required, references to the relevant provision in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 have been inserted.

Secretary of State’s overall conclusions and decision

61. For all the reasons set out in this letter and the ExA’s Report, the Secretary of State considers that there is a clear justification for authorising the Proposed Development. The Secretary of State has therefore decided to accept the ExA’s recommendation at ER 9.3.1 and grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitute a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

Challenge to decision

62. The circumstances in which the Secretary of State’s decision may be challenged are set out in the note attached at Annex A to this letter.

Publicity for decision

63. 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

**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 Downhill Lane Junction Development Consent Order (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/a19-downhill-lane-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)