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Derek Parody
Highways England
c/o David Cox
Highways England
By email

Your Ref:
Our Ref: TR010025
Date: 27 June 2019

Dear Mr Parody

Planning Act 2008 – Section 89

Application by Highways England for an Order Granting Development Consent for the A303 Amesbury to Berwick Down

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

Thank you for your letter dated 21 June 2019 giving notice of Highways England's intention to submit a request to make changes to the application. It has been published on the National Infrastructure Planning website here:

<https://infrastructure.planninginspectorate.gov.uk/document/TR010025-001135>

The letter states that its purpose is to inform the Examining Authority (ExA) of the Applicant's intention to request "*a number proposed minor changes to the scheme*", satisfying Step 1 of the recommended procedure in the Planning Inspectorate's 'Advice Note 16: How to request a change that might be material' (AN16). Seven proposed changes to the application are described in the letter, and the Applicant indicates that a formalised change request will be submitted at Deadline 6 (26 July 2019) in the Examination Timetable.

Materiality of the proposed changes

In the Applicant's view the suite of proposed changes, considered both individually and collectively, would constitute a non-material change to the application. The changes should therefore be considered under the non-material change process set out in AN16 (paragraph 10 of the Applicant's letter).

However, it is ultimately for the ExA to decide whether 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 noted that the Applicant acknowledges that change reference 'NMC-06' may necessitate the Compulsory Acquisition of "*additional land*" as defined in The

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Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) (paragraph 42 etc of the Applicant's letter). Further, on the evidence currently before it the ExA cannot at this stage accept the Applicant's assertion that the proposed changes would not give rise to new or materially different likely significant effects (paragraph 15 of the Applicant's letter).

If the CA Regulations are engaged or new likely significant effects are identified, 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
- evidence 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. It is noted that the Applicant establishes in paragraphs 11 to 14 of its letters its intention to consult and the process that that consultation would follow. The scope of the consultation however is not finalised; it is "*currently being carefully considered by the Applicant*" (paragraph 13 of the Applicant's letter).

The ExA has decided that the consultation must engage all persons 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). The ExA agrees with the Applicant that newspaper and site notices should be posted.

When submitting the change request, it is recommended that the Applicant submits a statement (the 'non-statutory consultation report') 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 would be exercised. It is noted that if the CA Regulations are engaged 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 newspaper notices and 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 any consultation responses received.

If the ExA decides to accept the changes into the Examination (whether or not they are material), all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as the Examination progresses. In respect of written representations, please note that the ExA would add to timescales suggested in paragraph 17 of the Applicant's letter an opportunity for Interested Parties to make written submissions to the ExA about the 'non-statutory consultation report'. This opportunity will be included in any consequential amendments to the Examination Timetable, circa 13 September 2019.

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

The Applicant is asked to ensure that the change request which is intended to be submitted at Deadline 6 responds fully to the points made above and contains sufficient information to enable the ExA to prepare further questions as necessary.

If you have any questions about this correspondence, please contact the Case Team using the details provided in the header.

Yours sincerely

Wendy McKay

Wendy McKay
Lead Member of the Examining Authority

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