



**Written summary of oral submission on behalf of Classmaxi Limited
put at Issue Specific Hearing 9 held on 22nd August 2019**

**Deadline 8 submission
6th September 2019**

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

PINS Reference No. TR010025

Reference Nos. A303-AFP035 and 20019746

1. This note summarises the oral submissions made by Classmaxi Limited ("CML") at Issue Specific Hearing 9 held on 22nd August 2019 in relation to Highways England's ('HE') application for a Development Consent Order ('DCO') for the A303 Amesbury to Berwick Down project ("the DCO Scheme"). This Issue Specific Hearing considered, inter alia, HE's application for 8 proposed non-material changes to the DCO Scheme to be examined ('the Application').
2. This note does not purport to summarise the oral submissions of parties other than Classmaxi, and summaries of oral submissions made by other parties are only included where necessary in order to give context to CML's submissions.
3. At the outset, CML make no comments as to whether individually, cumulatively, or collectively the 8 proposed changes, which are the subject of the Application, are material or non-material in nature and/or whether there is sufficient time remaining in the Examination period, which is at an advanced stage, to properly and fairly consider HE's Application. These are quite properly matters for the Examining Authority to determine in its judgment.
4. However, CML do wish to make oral representations objecting, on both procedural and substantive grounds, to what HE has labelled in the Application as proposed Non Material Change 7 ('NMC-07').
5. NMC-07 concerns two proposed new private means of access, referenced PMA 41 and PMA 42. PMA 41 concerns a proposed new private means of vehicular access into the Earl's Farm Down Land from the proposed highway link between Allington Track and Equinox Drive. PMA 42 concerns a separate, and additional, proposed new private means of vehicular access into the Earl's Farm Down Land from the proposed AMES1 between Equinox Drive and Amesbury Road over plot no 10-21, the freehold interest of which is owned by the Amesbury Property Company on trust for CML.

Procedural Objections

6. Firstly, CML consider that HE's Application is premature, pre-empting and pre-determining the outcome of the non-statutory consultation exercise which is still ongoing. The Examining Authority's letter of 27 June 2019 explicitly stated that: *"in order to ensure fairness, appropriate and proportionate non-statutory consultation should be carried out **before** the change request is submitted"*. The Examining Authority also specified that the consultation period should be a minimum of 28 days.
7. Disregarding the Examining Authority's explicit requests, HE have gone ahead and made this Application on 5 August 2019 when the consultation period had only just opened let alone concluded (it runs from 26 July 2019 to 26 August 2019) and before affected persons would have had any or any adequate opportunity to consider and comment on the proposed changes.

8. CML consider that this is unfair. Whether a consultation exercise is statutory or, in the present case, non-statutory it must be conducted fairly. The 'Gunning Principles' establish that any public consultation exercise by a public body, to be fair, must be undertaken, among other things, while the proposals are at a formative stage and with an open mind. By going ahead and making this premature Application while the consultation period is still open and at a formative stage, CML consider that HE has already determined to go ahead with the proposed changes regardless of the outcome of the consultation.
9. Secondly, CML consider that the notices advertising NMC-07, copies of which are appended to HE's Application, are defective. The press notice, public notice, notice to consultees, and site notices only reference, in relation to NMC-07, an additional private means of access off the new link to the Allington Track (i.e. PMA 41). There is no reference in any of the requisite notices to a new private means of vehicular access from the proposed AMES1 between Equinox Drive and Amesbury Road (i.e. PMA 42). Accordingly, anybody inspecting/ considering these notices would have no idea that PMA 42 was proposed in addition to PMA 41.
10. Thirdly, CML consider that the Proposed Changes Consultation Booklet ('Consultation Booklet') is inaccurate and misleading. At paragraph 10.2.4 of the Consultation Booklet, it states that the proposed change (i.e. PMA 41 and PMA 42) has the support of the relevant landowner which incorrectly suggests to readers that the proposed change is uncontroversial. This is not the case. While the proposed change may have the support of the owner and occupier of the Earl's Down Field, it does not and never has had the support of CML over whose land PMA 41 and PMA 42 would cross.
11. For the above procedural reasons alone, CML ask the Examining Authority to decline to examine NMC-07.

Substantive Objections

12. If, which is not admitted, the significant procedural fairness issues with the Application are not determinative, then CML also strongly object to NMC-07 (and particularly the provision of PMA 42) substantively on its merits.
13. As set out in the Examining Authority's letter of 27 June 2019, the changes will be considered by the Examining Authority under the process set out in Advice Note 16. Among other things, paragraph 1.3 of Advice Note 16 states that the justification for making a change after an application has been considered must be robust and before such an application is made that the impact upon other interested parties must be considered.
14. Building on this, Figure 3 to Advice Note 16 goes on to set out the information that needs to be provided by a scheme promoter in such an application which includes, at sub- paragraph b, a statement setting out the rationale and 'pressing need' for making the change. Having considered HE's Application, CML does not accept that the justification is robust and/ or that there is any pressing need for NMC-07.

15. Specifically, HE's only rationale for proposing NMC-07 is that it responds to points raised by landowners or occupiers affected by the DCO Scheme and that these points could not be dealt with through accommodation works and/or through land and works agreements. In the event, no, or no adequate, pre-Application negotiations were undertaken by HE with CML to agree a mutually acceptable solution to provide new a vehicular means of access.
16. APC particularly objects to that part of NMC-07 which seeks to introduce an additional new Private Means of Access (PMA 42) from the diverted Byway AMES1 into Earls Farm Down land to the east of Byway AMES1. This is on the basis, among other things, that the introduction of PMA 42 across plot reference 10-21 cuts directly across the agreed Heads of Terms ('HoTs') of Agreement between CML, HE, and Wiltshire Council (as local highways authority) which provides, by agreement, for the construction of various works and the dedication, acceptance, and adoption of various ways in the vicinity of Allington Track and Equinox Drive which obviates the need for CML's land to be compulsorily acquired.
17. Indeed, Highway England's barrister confirmed to the Examining Authority at the Compulsory Acquisition Hearing ('CAH') on the 10th July that those HoTs were agreed. There was no mention of NMC-07 by Highways England, either at the CAH, or at an all parties round table meeting following the CAH, and all parties agreed, and indicated to the Examining Authority, that this tripartite agreement would be drawn up and submitted to the Examining Authority on or before 21 August 2019 in advance of the next round of issue specific hearings.
18. In reliance on agreement on the HoTs having been reached, CML have incurred significant time and expense in proactively drawing up the tripartite agreement with a view to hitting these agreed timescales. In the event, CML have been unable to hit this agreed timescale largely because of the NMC-07 application.
19. Contrary to the terms of Advice Note 16, CML does not consider that any or any adequate consideration was given by HE to the impact of NMC-07 on CML before bringing forward the Application. CML also questions and put HE to strict proof as to the need, let alone the 'pressing need', for two separate new private means of vehicular access into the same Earls Farm Down land.
20. If, which is not admitted, there is a pressing need for any additional private means of access, then CML consider that PMA 41 (which was included in the requisite notices) satisfies that need as, among other things, it has significantly less impact on the agreed HoTs than PMA 42 does and does not remove any land alongside the AMES1 diversion which will otherwise remain part of the landscape buffer along the eastern boundary of Solstice Park
21. Further, or alternatively if, which is not admitted, HE satisfactorily demonstrate that there is a robust justification and a pressing need for two new private means of access then CML sees no reason why it could not be located a short distance to the south where it would take access onto

that length of Byway AMES 1 which is not affected by any diversion (*and where the owner of Earls Farm Down land could in any event form a PMA off AMES 1 without the need for any planning permission*) and where it would not impact and/or delay early completion of the tripartite agreement which is now at a very advanced stage.

Conclusion and HE's responses to CML's representations

22. For the above procedural and substantive reasons, CML requests that the Examining Authority declines to examine proposed change NMC-07.
23. CML reserves its rights to supplement these representations further for the purposes of the Examination in the event that the Examining Authority decides to examine proposed change NMC-07.
24. In response to Classmaxi's procedural submission, **Reuben Taylor QC, on behalf of HE**, disputed CMLs objection in relation to the fairness of the consultation submitting that that any decision by HE to take forward the proposed non-material changes would only be made after the consultation had closed. On that basis, Mr Taylor did not accept that there was any breach of the Gunning Principles.
25. As to CMLs oral representations in relation to the alleged defective notices, **Mr Taylor**, indicated that HE were not in a position to respond to these representations orally at the hearing but HE would do so in writing. **Mr Taylor** also asserted that because CML understood the nature of the proposed changes consulted on that could be no question of any unfairness having been caused to CML/APC.
26. In response to Classmaxi's substantive objections, **Tim Harper, on behalf of HE** stated that while there was an existing private means of access into the Earl's Down Land immediately to the south of the Barrows that it would be difficult, in HE's opinion, to maintain this existing access as a result of the alterations proposed by the DCO scheme which include the closure of AMES1 and the provision of the Allington Track Diversion. In HE's opinion, it would be difficult to turn into this existing access from the Allington Track Diversion. Accordingly, it was necessary, in HE's opinion, to bring forward the PMA 41 limb of NMC-07. As to the PMA 42 limb of NMC-07, **Mr Harper** indicated that this would only be suitable for agricultural access.