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To the Applicant and Affected Persons

Your Ref:

Our Ref: TR010026

Date: 1 July 2019

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Dear Sir/ Madam

## **The Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17**

### **Application by Highways England for an Order Granting Development Consent for the A30 Chiverton to Carland Cross Scheme**

#### **Request for Further Information**

I am writing under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) to provide procedural decisions and request further information, as appropriate. This relates to the Applicant's responses to the further written questions and the request for amendments submitted under the covering letter of 18 June 2019 [REP5-001], referring also to those indicated under the covering letters of 24 April 2019 [REP3-001] and 19 March 2019 [REP2-001], as set out above.

#### **Request for further information**

In relation to the Applicant's response to 2.5.1 a) it is noted that this wording has apparently been included in every previously made HE/Highways Agency DCO. However, the drafting of this DCO appears to provide a wide power to create undefined new rights in the land listed in Schedule 7.

Article 26(1) does not appear to limit the scope of rights that may be created over the plots identified in Schedule 7 because article 23(1) allows the undertaker to "acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development, or is required as replacement land." This then refers back to article 33(8) which prevents the compulsory acquisition (CA) EXCEPT that the undertaker is not to be precluded from "(a) acquiring new rights over any part of that land under article 26 (compulsory acquisition of rights)...". This appears to lead to a circular argument providing the undertaker with a power to

create undefined new rights in the land within Schedule 7 that are not tied to the purposes for which temporary possession of the land can be taken.

You will be aware that the ExA needs to consider whether CA is justified in relation to the CA tests in respect of each of the affected plots. S.122 of the Planning Act 2008 (PA08) requires the ExA to be satisfied that the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to, the development and that there is a compelling case in the public interest for CA. The provision of 'flexibility' to the Applicant would need to be justified by reference to these matters.

**Q3.5.1 to the Applicant** Please clarify the intention of the articles, or provide an alternative way forward, by Deadline 6.

**Q3.5.2 to the Applicant** If you seek to continue with the DCO as drafted please set out justification for the CA sought over these specific plots with reference to the tests in s.122 PA08 and the PA08 Guidance related to procedures for the CA of land by Deadline 6.

**Q3.5.3 – Directed to all persons with interests in the plots in Schedule 7**  
Taking account of the above matters please provide any further representations you may have in relation to the CA proposed by the Applicant over land in which you have an interest by **Thursday 4 July 2019**, being Deadline 6.

In response to Q 2.5.3 it is indicated that plots 8/2h, 8/2j, 8/2k, 8/2d, 8/2e and 8/2f, listed in Schedule 7, are for temporary possession only. However, this appears to contradict the response to 2.5.1, as discussed above, in potentially providing to CA as yet undefined new rights in the land in Schedule 7.

**Q3.5.4 to the Applicant** Please clarify your intention in relation to these plots by Deadline 6.

**Q3.5.5 to the Applicant** Please update Table 1-1, List of all objections to the granting of compulsory acquisition powers [REP2-023] by Deadline 6.

### **Procedural decisions regarding change requests and request for further information**

#### **a. ScottishPower Renewables**

It is understood that the requested amendments comprise:

- The addition of a private access lane for wind farm abnormal load vehicles only, to the south of the realigned existing A30 to join into the northern roundabout of Carland Cross as shown on Sheet 8 of the General Arrangement and Section Plans (Document Reference 2.6(A)).
- The addition of a private access lane across the northern roundabout of Carland Cross junction for wind farm abnormal load vehicles only, as shown on Sheet 8 of the General Arrangement and Section Plans (Document Reference 2.6(A)).
- Minor changes to the horizontal and vertical alignment of access lanes to the wind farm to improve access for abnormal load vehicles, shown as HA551502-



The ExA is satisfied that the amendments do not require any new land beyond the Order limits; do not affect any new parties; and do not require any change to the type of CA sought. The ExA is satisfied that there is no need for additional publicity and consultation on this matter and that acceptance of the non-material amendment into the examination process at this stage allows anyone who wishes to make comment to do so.

The ExA therefore accepts the request for non-material amendments as set out above.

#### **b. A39 Bridleway Crossing**

It is understood that the requested amendments comprise:

- The re-designation of a footway/cycleway to and from the crossing of the A38 to the status of bridleway, including the crossing of the A39. This would be achieved through extension of the proposed Reference UU (PR14) bridleway.
- The addition of holding areas for horses on either side of the existing crossing, and within the existing refuge island.
- The altered documents would be as listed in Table 4 of 8.9 Response To Hearing Action Points - ISH 2 On Draft DCO [REP3-019].

The ExA is satisfied that the amendments do not require any new land beyond the Order limits; do not affect any new parties; and do not require any change to the type of CA sought. The ExA is satisfied that there is no need for additional publicity and consultation on this matter and that acceptance of the non-material amendment into the examination process at this stage allows anyone who wishes to make comment to do so.

The ExA therefore accepts the request for non-material amendments as set out above.

#### **c. Bridleway VV realignment**

It is understood that the requested amendments comprise:

- The realignment of Bridleway VV to the north of its previous proposed position from a point around Chainage 13+850 to Carland Cross to run along the northern boundary of the vegetation to be retained, the Toyota Garage and the Carland Cross services station, turning south adjacent to the southern roundabout of the proposed Carland Cross junction.
- The proposed realignment would meet the existing highway at the junction of Carland Cross and the entrance to the service station access road, opposite the proposed Bridleway UU, and include a holding area for horses at this location.

- The area no longer required for Bridleway VV would be retained for the proposed private means of access for the benefit of Treventon Farm (PMA 24), as shown on Sheet 8 of the Rights of Way and Access Plans (Document Reference 2.5(C)).
- The altered documents would be as listed in Table 1-2 of 8.24 Request for Non-Material Amendments to the Draft DCO [REP5-023].

The ExA is satisfied that the amendments have been consulted and agreed; and, would not require any new land beyond the Order limits. The ExA is satisfied that there is no need for additional publicity and consultation on this matter and that acceptance of the non-material amendment into the examination process at this stage allows anyone who wishes to make comment to do so.

The ExA therefore accepts the request for non-material amendments as set out above.

### **Request for further information**

At face value, the remaining proposed changes appear to be non-material, such that they would not constitute a different project for which a new application would be required. However, guidance on the materiality of proposed changes to a scheme in the Planning Inspectorate's Advice Note (AN) 16 sets out that where the request would require additional CA powers, e.g., for new plots of land and/or interests this is a consideration in determining materiality.

You will be aware that "Additional land" is set out in Regulation 2 of The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 to mean "land which it is proposed shall be subject to compulsory acquisition and which was not identified in the book of reference submitted with the application as land" and that "Land" has the same meaning as in s.159 of the PA08, which sets out that it includes any interest in or right over land.

In relation to the other amendment requests, as set out below, the further information referred to above is requested and the ExA does not accept the request for non-material amendments:

#### **d. Everything Everywhere ("EE") Telecommunications Mast**

#### **e. Pennycomequick**

#### **f. Elevated viewing area and footpath to open space land**

It is noted that updates to status on the situation for requests for consent will be provided at Deadline 6.

It is also noted that in response to question 2.3.1 b) the Applicant does not consider that there is sufficient time remaining within the examination timetable to allow the requirements of the CA Regulations to be fulfilled before the close of the examination.

**Q3.3.1 to the Applicant** Is it intended to receive the necessary consents so as to negate the CA regulations procedures?

**Q3.3.2 to the Applicant** Bearing in mind that the ExA would still need time to examine the changes before the end of the examination, please indicate when you anticipate receiving and submitting the necessary consents.

If the necessary consents were not received in sufficient time then the examination and report would relate to the DCO as submitted.

**Q3.3.3 to the Applicant** Please indicate, for each of those amendments identified above, what particular issues might arise if the DCO were to continue without those amendments.

The ExA is unable to consider the change request until evidence is provided that all persons with an interest in the additional land consent, or an application is made in accordance with Regulation 5 of the CA Regs.

Thank you for your continued assistance in this process.

Yours faithfully

*Heidi Cruickshank*

**Examining Inspector**

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