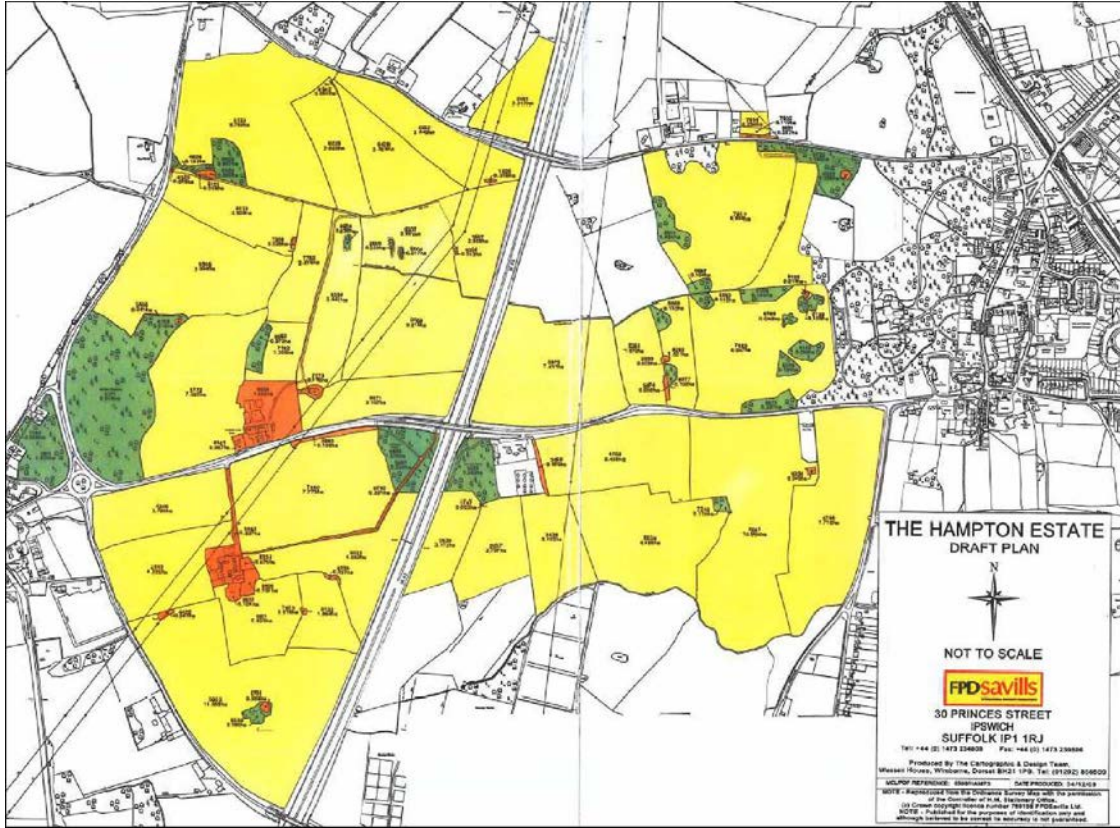


APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING DEVELOPMENT



CONSENT FOR THE M42 JUNCTION 6 IMPROVEMENT

THE GOOCH ESTATE

WRITTEN SUMMARY OF ORAL SUBMISSIONS

PINS REFERENCE: TR010027



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1. INTRODUCTION

1.1 Sir Major Timothy Gooch Will Trust - Hampton Estate (the "Gooch Estate") made oral representation to the Examining Authority ("ExA") at Issue Specific Hearing 1 relating to draft Development Consent Order ("DCO") on 22 June 2019 in respect of Highways England ("HE") DCO application for the M42 Junction 6 Improvement.

1.2 This submission is made on behalf of the Gooch Estate. It provides a summary of the Gooch Estate's oral submissions at Issue Specific Hearing 1

2. SUMMARY OF GOOCH ESTATE'S ORAL SUBMISSION AT ISSUE SPECIFIC HEARING 1

2.1 The Gooch Estate has concerns regarding the content of some of the DCO provisions, the extent of the proposed land acquisition and the way in which the Scheme would impact on its land interests and operations, both during construction and after completion of the Scheme.

2.2 The Gooch Estate's key concerns, which fall into four main categories, are set out in detail in their written representations.

2.3 At the Hearing the Gooch Estate raised a number of points relating to the DCO which are set out below.

3. Q1.4 GENERAL: 'GUILLOTINE' PROVISIONS

3.1 Several individual articles (such as Articles 16, 20, 21 and 23) make provision for deemed consent to be granted if a consultee does not respond within a certain period.

3.2 The Gooch Estate set out its concern with these guillotine provisions. For example, Article 16 (Temporary stopping up and restriction of use of streets) authorises the undertaker to "temporarily stop up, alter or divert or restrict the use of any street" following consultation with the street authority (16(5)(a)), however, by Article 16(8) if the street authority "fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent".

3.3 The Gooch Estate farms Land in the vicinity of the Scheme and explained its particular concern with ongoing access to its Land during the construction period (which will be lengthy) in light of the guillotine provisions. The provisions have no geographic or time limits and confer a very broad power on HE to stop up streets which may affect the Gooch Estate's ability to access its land. It is essential that the exercise of such powers is properly scrutinised. The Gooch Estate is concerned that streets could be stopped up without scrutiny from the street authority. Concern was

also expressed regarding the broad power under paragraph 13, Part 2, Schedule 2 of the DCO (Applications made under requirements) that “where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement... the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks”. Pursuant to paragraph 13(2) of the same Schedule, if the Secretary of State does not determine an application within the period, “the Secretary of State is taken to have granted **all parts** of the application (**without any condition or qualification** at the end of that period)” (emphasis added). There are a significant number of matters that will require the consent, agreement or approval of the Secretary of State, particularly given the scant details of the Scheme design at this stage. It is essential that proper scrutiny is given to those matters. The Gooch Estate is troubled by the possibility of deemed approvals, without any due consideration from any third party and no right of appeal.

- 3.4 The Gooch Estate submitted that if the Secretary of State is under considerable pressure an 8 week period may not provide sufficient time to consider and undertake the necessary consultation to fully understand the impact of a proposal or application under paragraph 13, Part 2, Schedule 2. This could result in non-determination with no proper scrutiny. This does not afford any protection to any affected persons.
- 3.5 At the hearing the representative from Warwickshire County Council provided a practical example of consultation delays and the difficulties they can cause.
- 3.6 HE confirmed at the hearing that they will put forward a detailed process and/or explanation in relation to Secretary of State approval and guillotine provisions.

4. **Q4 LIMITS OF DEVIATION – ARTICLE 6**

- 4.1 Article 6(1) enables the undertaker to deviate, to certain maximum limitations, laterally and vertically from the works plans and engineering drawings and sections “except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse adverse environmental effects from the reported in the environmental statement”.
- 4.2 The Applicant was asked to justify this level of flexibility in the context of this DCO.
- 4.3 The Gooch Estate raised the concern that the ‘guillotine’ provisions at paragraph 13, Part 2 of Schedule 2 would also apply to any request made to the Secretary of State to disapply the maximum limits of deviation. The effect is that the Secretary of State

may be deemed to approve exceedances of the limits of deviation without any assessment of the environmental or operational impacts of doing so.

4.4 Paragraph 13(1)(c) creates a deemed refusal following non-determination of an application by the Secretary of State but only if HE is of the view that it would likely give rise to materially new or materially worse environmental effects. However, Article 6(1) requires the undertaker to satisfy the Secretary of State that the proposed deviation would not give rise to any materially new or materially worse environmental effects from those reported in the environmental statement. The Gooch Estate submitted that that the 'guillotine' provision at Schedule 2 may circumvent the Secretary of State's ability to satisfy himself regarding the environmental effects of the proposal.

4.5 The Gooch Estate submitted that these provisions should be excluded from the DCO so that the normal Planning Act provisions for amending a DCO apply.

5. **Q9 STREET WORKS - ARTICLE 12**

5.1 Article 12(1) permits the undertaker to "enter on so much of any of the streets as are within the Order limits" to undertake works. The Gooch Estate reiterated its concern about the impact this wide power could have on its ability to access its Land. There are streets outside of the Works Plans but inside the Order limits which provide essential access to farmland owned and farmed by the Gooch Estate.

5.2 The Gooch Estate do not consider this wide power to be reasonable or necessary. They requested a list setting out where the works are likely to be required and are necessary. Where proposed works are likely to affect access to the Gooch Estate's Land, provision should be made for alternative access and this should be secured through the DCO.

6. **Q12 TEMPORARY STOPPING UP AND RESTRICTION OF USE OF STREETS – ARTICLE 13**

6.1 The Gooch Estate expressed the same concern with this Article and the need for vehicular access to be afforded by provision of alternative vehicular access. This should be secured through the DCO.

7. **Q17 AUTHORITY TO SURVEY AND INVESTIGATE LAND – ARTICLE 17**

7.1 Article 23 permits the undertaker to enter on any land within the Order limits or adjacent to, but outside the Order limits to undertake surveys and investigation of land.

7.2 This is a broad power with potentially wide geographic limitations and the ability for significant works to be undertaken on that land, including making excavations, trial

holes etc. There is no time limit on the exercise of the power which is of considerable concern to the Gooch Estate, given the potential impact on its land, and surprising, given that 18 months' worth of extensive investigations and surveys have already been completed on the Gooch Estate land.

7.3 The Gooch Estate owns a significant amount of land "adjacent" to the Order limits and considers that the powers to undertake surveys and investigations outside of the Order limits are onerous and unjustified such that they should be removed. Alternatively with regard to land outside of the Order Limits, the Gooch Estate requests a stipulation that justification is provided for surveys/investigations as they cannot understand what surveys are necessary.

7.4 Although the Gooch Estate considers these broad powers unnecessary if they were found to be necessary it would request that they are modified to be time limited. It is unjust to have these powers hanging over a third party landowner.

8. **Q28 AUTHORISE DEVELOPMENT – FURTHER DEVELOPMENT WITHIN THE ORDER LIMITS - SCHEDULE 1**

8.1 Works 1 - 76 in Schedule 1 provide details of extensive works and operations that will be undertaken. The Gooch Estate echoed the ExA's comments that the additional works listed at paragraphs (a) to (o) are extensive and require justification. The Gooch Estate submitted that these provisions are extremely broad, allowing anything to be carried out within the Order limits. Such works could impact on the Gooch Estate's operations and no consultation would be undertaken prior to the works commencing. There would be no protection for the Gooch Estate to prevent interference with their land.