

# M42 Junction 6 Development Consent Order Scheme Number TR010027

## 8.49 Response to CPRE Letter dated 15 July 2019

Planning Act 2008

Rule 8 (1)(k)

The Infrastructure Planning (Examination Procedure) Rules 2010

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The Infrastructure Planning (Examination Procedure) Rules 2010

**M42 Junction 6**  
Development Consent Order 202[ ]

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## 1 Introduction

- 1.1.1 At the second Issue Specific Hearing (ISH) on the draft Development Consent Order (DCO) Mr Mark Sullivan representing Campaign to Protect Rural England (CPRE) Warwickshire challenged whether the application was legally sound on the basis that the Scheme was not connecting a trunk road to the motorway, the A45 having previously been detrunked.
- 1.1.2 Mr Sullivan was asked by the Examining Authority (ExA) to provide a written submission for Deadline 3 to articulate his reasoning and Highways England ('the Applicant') confirmed that it would provide a response to this letter by 12 August 2019 (Deadline 3A).
- 1.1.3 The purpose of this document is to set out the Applicant's response to the substantive points raised by Mr Sullivan in his document where the Applicant considers that it would be appropriate for the ExA to have a response to the point raised.
- 1.1.4 The Applicant has not sought to provide a response to all of the points raised by Mr Sullivan in his letter. For the avoidance of doubt, where the Applicant has chosen not to comment on an individual point raised by Mr Sullivan this is not an indication that the Applicant agrees with the point or comment raised or opinion expressed by CPRE or Mr Sullivan.

## 2 Response to CPRE Letter dated 15 July 2019

- 2.1.1 The Applicant has adopted the headings used by Mr Sullivan in his response.
- (1) Status of proposed Link Road between M42 (proposed) Junction 5A and A45 at The Clock Interchange**
- 2.1.2 Mr Sullivan states that the proposed link road would be a local authority road and that:
- "The Secretary of State for Transport does not have the power to build local roads, only roads that are part of the national system of routes for through traffic in England. This power is not altered by the Planning Act 2008, S.33 and S.38".*
- 2.1.3 Mr Sullivan's position appears, therefore, to be that the mainline link road should be authorised pursuant to the Highways Act 1980 (1980 Act) and not the Planning Act 2008 (PA 2008) as Solihull Metropolitan Borough Council will be the relevant highway authority for the link road and not the Secretary of State.
- 2.1.4 The Applicant is satisfied that the Scheme is a Nationally Significant Infrastructure Project within sections 14(1)(h) and 22(1)(a) of the 2008 Act (see paragraphs 2.5 to 2.8 of the Explanatory Memorandum [APP-016/Document 3.2]) and that the appropriate consenting mechanism is a DCO under the PA 2008. The link road when constructed will be wholly in England, the Applicant will be the highway authority by virtue of article 15(3), and the area of development exceeds the 12.5 hectare threshold set out in section 22(4)(b).

- 2.1.5 Paragraph 19 of Schedule 5 to the PA 2008 provides that a DCO may designate a highway as a trunk road. Article 15(3) of, and Part 2 of Schedule 3 to, the DCO [REP3-002/Document 3.1(a)] make it clear that the new mainline link road will be a trunk road (among other highways to be constructed under the DCO), and so the Applicant will be the highway authority for the road.
- 2.1.6 Once it is established that development consent is required for the development in question, the Secretary of State can no longer confirm or make any other order in relation to highway development. See section 33(4) of the PA 2008, in particular section 33(4)(a) and (b), which provides that orders under section 10 and section 14 of the 1980 Act cannot be made in relation to a highway whose construction, improvement or alteration requires to be authorised by a DCO.
- 2.1.7 The section 10(2) power to keep the national system of routes for through traffic under review, and designate trunk roads accordingly, is therefore explicitly subject to the PA 2008, as is plain from the words of subsection (2A) of section 10, which states in terms “*Subsection (2) is subject to section 33(4) of the Planning Act 2008...*”
- 2.1.8 For the reasons set out above the application must be considered in accordance with the PA 2008 and is not, and cannot, be considered under the 1980 Act.
- 2.1.9 In any event, the Applicant is not the Secretary of State (and as was the case when the Highways Agency promoted schemes under the 1980 Act), but a strategic highway company. Highways England, formerly the Highways Agency, is the government company charged with operating, maintaining and improving England’s motorways and major A roads.
- 2.1.10 Further, the Applicant does have the power to construct roads other than trunk roads or special roads, as may be seen from section 24 of the 1980 Act, which describes the notices it must give when doing so.
- 2.1.11 Nevertheless, the mainline link road is to be a trunk road, and is correctly being promoted under the PA 2008.

**(2) The provision of reasonably convenient routes where highways are stopped up**

- 2.1.12 Mr Sullivan states:  
*“S. 14 (6) of the 1980 Highways Act requires the Secretary of State for Transport to be satisfied that another reasonably convenient route is available before a highway is stopped up. While the procedures under S. 14 are not now used, this legal duty remains.”*
- 2.1.13 Section 14(1) of the 1980 Act gives a power to make an order to stop up roads that cross the route of a proposed new trunk road or classified road. As Mr Sullivan states, section 14(6) requires the Secretary of State to be “*satisfied that another reasonably convenient route is available or will be provided before the highway is stopped up*”.

2.1.14 However, and contrary to Mr Sullivan's claim, it is clear from reading the entirety of section 14 that this test does not apply to a stopping up under a DCO. First, section 14(1A) states that "*Subsection (1) is subject to section 33(4) of the Planning Act 2008...*" Section 33(4)(b) in turn provides that:

*"If development consent is required for the construction, improvement or alteration of a highway, none of the following may be made or confirmed in relation to the highway or in connection with the construction, improvement or alteration of the highway ... (b) an order under section 14 of [the 1980] Act."*

2.1.15 Further, section 14(6) begins with the words "*No order under this section authorising the stopping up of a highway...*" This confirms that the section 14(6) test *only* applies to a stopping up order under section 14(1). As section 14(1A) provides that a section 14(1) order cannot be made in relation to, or in connection with, a highway authorised by way of a DCO, this means that section 14(6) does not apply in relation to a stopping up under a DCO.

### **(3) Submission of alternatives or changes to the proposals**

2.1.16 At the third ISH on the need for the Scheme Mr Sullivan spoke at length stating that the ExA ought to consider alternative scheme designs during the examination.

2.1.17 As Mr Evans, on behalf of the Applicant, confirmed at the third ISH, alternatives to the scheme had been considered, and consulted upon, prior to application but that it was now for the ExA to consider the application that had been accepted, and was the subject of scrutiny, during the examination. This position was supported by the ExA. See paragraph 2.2.1 of the Written Submission of the Applicant's case at the third ISH on 2 July 2019 [REP3-016/Document 8.40].

2.1.18 In his letter of 15 July Mr Sullivan quotes from paragraph 111 of Government Guidance for the examination of applications for development consent (March 2015) stating that this confirms that interested parties may submit proposed changes to a proposal and that CPRE wishes to do so but that no process for doing this has yet been set out in the examination.

2.1.19 Mr Sullivan did not reproduce the entirety of paragraph 11 which states:

***"It is important for all parties to remember that it is for the applicant to decide whether or not to propose a change to a proposal during the examination. Other parties can highlight those areas where they think a proposal should be changed during their discussion with the applicant in the pre-application period and also in their written representations."*** (emphasis added)

#### **Relevant representation**

2.1.20 Mr Sullivan attached to his letter CPRE's relevant representation dated 23 March 2019.

2.1.21 The Applicant refers the ExA to its comments on said relevant representation [REP2-004 – Document 8.3a].