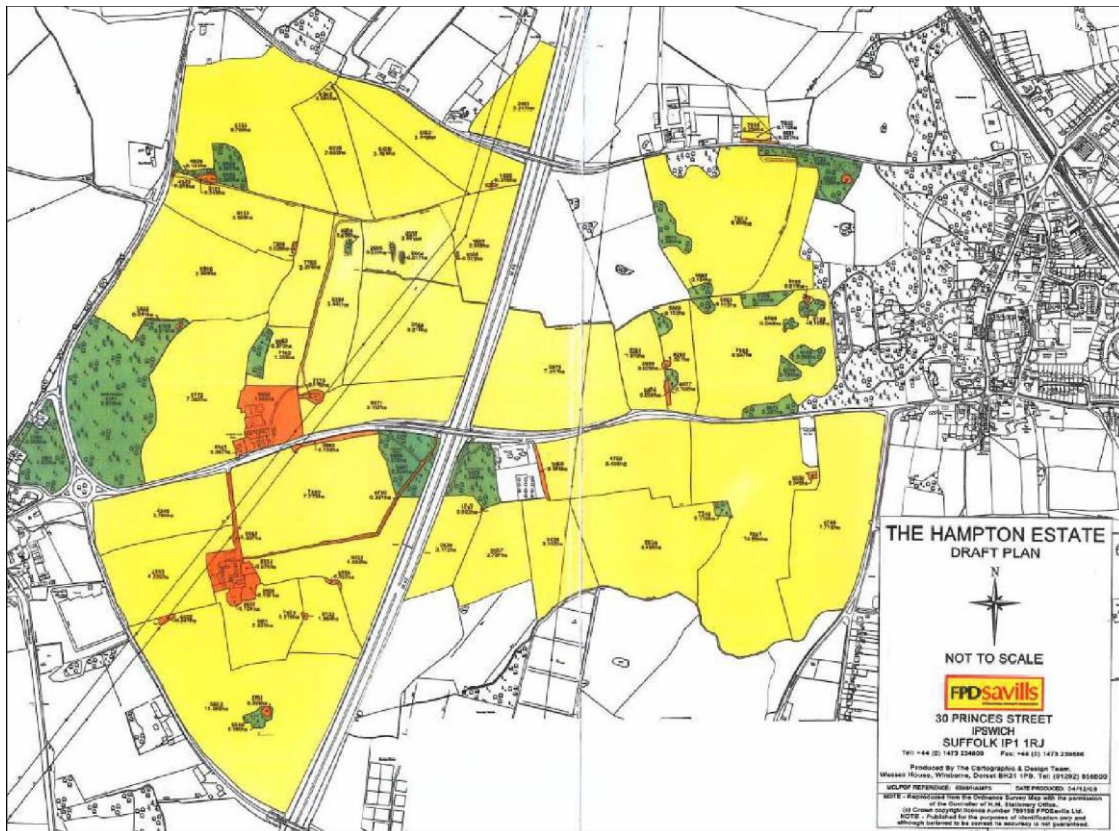


APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING DEVELOPMENT



CONSENT FOR THE M42 JUNCTION 6 IMPROVEMENT

THE GOOCH ESTATE

WRITTEN SUMMARY OF ORAL SUBMISSIONS

ISSUE SPECIFIC HEARING 4

21 AUGUST 2019

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 4 relating to content of the draft Development Consent Order on 21 August 2019 in respect of Highways England ("HE") Development Consent Order application ("DCO") 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 4.

2. SUMMARY OF GOOCH ESTATE'S ORAL SUBMISSION AT ISSUE SPECIFIC HEARING 4

2.1 The Gooch Estate has concerns regarding the content of some of the DCO provisions in respect of how they would affect the Gooch Estates landholding. These were also set out in its written submissions and oral submissions at Issue Specific Hearing 1 ("DCO1").

2.2 The Gooch Estate has raised concerns in respect of the following DCO items:

2.2.1 DCO item 3: Guillotine Provisions (Article 16 and paragraph 13, Part 2, Schedule 2)

2.2.2 DCO item 4: Article 12 (street works); and

2.2.3 DCO item 7: Article 23 (authority to survey and investigate land)

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

3. DCO ITEM 3: 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 ExA suggested additional wording "the Applicant shall specify a decision but if a decision is not made within 28 days the application shall be deemed to be granted and if a decision cannot be made in that time that it may be appropriate to request additional information or to notify the Applicant that consent is refused thereby potentially instigating the provisions of Article 47 which relate to arbitration". The Gooch Estate welcomed this additional wording as it provides a sensible safeguard and there is no harm to the HE in including it. It reminds all parties involved of the

consequences of not responding within the relevant time period. However this alone would not overcome the Gooch Estate's concerns.

4. At DCO1 the Gooch Estate expressed particular concern with Article 16 and paragraph 13, Part 2, Schedule 2
5. 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". The Gooch Estate is very concerned with the powers to temporarily stop up streets without scrutiny of the street authority or by any other body to ensure that interests of third parties are appropriately protected. The Gooch Estate needs to ensure that access is maintained to its land during the construction period.
6. Paragraph 13, Part 2, Schedule 2 (Applications made under requirements) states that "where an application has been made to the Secretary of State ("SofS") 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). This provides HE with a very broad power and applies to any consent or approval by SofS (eg. detailed design; outline environmental management plan, landscaping and other requirements in Schedule 2).
 - 6.1 The Gooch Estate's particular concern with Paragraph 13 again relates to access. Traffic management will require the approval of the SofS (requirement 10 in Schedule 2). If the SofS does not approve the traffic management plan within 8 weeks, it will be deemed to be approved. It is therefore possible for a traffic management plan that could potentially have adverse effects on the Gooch Estate's access rights (and other members of the public) be granted by default. The Gooch Estate submitted that it is not appropriate that these applications could be deemed to be approved without further scrutiny by an independent third party. This does not afford any protection to any affected persons.
7. The Gooch Estate submitted that if HE can guarantee that access to its land will be maintained at all times; either the existing accesses or alternative ones provided by HE (as HE suggests in point 12 of Appendix A to its Written Submissions following Issue Specific Hearing 2 on the DCO), then the Gooch Estate could withdraw its

objection to the guillotine provisions because ensuring continued access is a vital objective for the Gooch Estate.

8. As per the ExA's subsequent question (in the DCO agenda), the Gooch Estate submitted that it would like to know the mechanism envisaged by HE to ensure that access is maintained where streets are temporarily stopped up or subject to works that impede access along its normal routes.
9. The Gooch Estate is content that this mechanism could be secured by way of an agreement, but not on the basis that it would first have to withdraw all of its objections on other matters (such as compulsory acquisition, in respect of which the Gooch Estate outlined its concerns at the Compulsory Acquisition Hearing on 20 August). HE and the Gooch Estate are currently in discussions regarding this agreement.
10. Effectively the Gooch Estate's concerns about the guillotine provisions will be addressed if HE can confirm, as it suggested in Appendix A that access to the Gooch Estate's land will be maintained at all times.
11. **DCO ITEM 4: ARTICLE 12 - STREET WORKS**
12. As suggested by the ExA and Solihull MBC, the Gooch Estate would welcome the addition that the streets to be subject to works are listed in a schedule to the DCO.
13. As above, if HE can confirm that it will agree to ensure that alternative access is provided where existing access routes would be prevented through street works, the Gooch Estate would be content to withdraw its objection to Article 12.
14. **DCO ITEM 7: ARTICLE 23 – AUTHORITY TO SURVEY AND INVESTIGATE LAND**
15. The Gooch Estate raised concerns at DCO1 that Article 23 (permission for 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) is a very broad power. There are no temporal or geographic limitations and it is not clear what "adjacent" means. The Gooch Estate owns a significant amount of land that could be said to be 'adjacent' to the order limits. The Gooch Estate has already been subject to 18 months of surveys across its land so queried why further surveys are required? It questioned whether this suggested that the ES is currently inadequate?
16. HE, following DCO1, stated in its response that it would be necessary to carry out surveys outside of the order limits when a precautionary approach is not reasonable or sufficient. However, the Gooch Estate submitted that if HE has already examined the realistic worst case and provided mitigation on that precautionary basis, why

would more ecological surveys be required? The Gooch Estate requested a temporal limitation be included relating to the relevant work in question.

17. The Gooch Estate also submitted that 14 days' notice is not sufficient. The power is to come onto the land, dig trenches, boreholes and leave equipment. The Gooch Estate requested 2 months' notice.
18. ExA suggested a compromise by way of two different notice periods for different surveys. HE suggested this may be wrapped up in discussions in respect of an agreement with the Gooch Estate.
19. Gooch Estate submitted that even if notice periods can be agreed between the parties, concern will still remain with the scope of the power. The Gooch Estate suggested that the DCO is amended so that this power is only triggered if it has been required of HE to carry out extra surveys by a statutory body. Additional wording is required to provide Gooch Estate with protection.
20. **DCO ITEM 18: SCHEDULE 11 – CERTIFIED PLANS**
21. The Gooch Estate previously raised concern that it would like the CEMP included in the list of documents, so that it has an indication of construction methods and impact. It is common procedure for HE schemes to include an outline CEMP as a certified document. The Gooch Estate argued that this goes to its main concerns of access which is why the Gooch Estate requires some indication and certification of the CEMP. However, if agreement can be reached with HE that access will be maintained at all times, then the Gooch Estate feels less strongly about the need for the CEMP to be certified.
22. HE confirmed that this would form part of the agreement discussions with the Gooch Estate.
23. **REVIEW OF ACTIONS ARISING**
24. It was agreed that discussions between the Gooch Estate and HE will take place with the aim that agreement regarding the guillotine provisions and triggers for entering land and surveys could be reached and documented.