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Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED M42 JUNCTION 6 ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
 - the report dated 21 February 2020 of the Examining Authority (“ExA”), led by two Examining Inspectors, David Cullingford and Richard Jones, who conducted an examination into the application made by your clients, Highways England (“the Applicant”) for the M42 Junction 6 Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 (“the 2008 Act”);
 - the late representations received by the Secretary of State following the close of the Examination; and
 - the responses to the further consultation undertaken by the Secretary of State in respect of the application.
2. The application was accepted for examination on 30 January 2019 and the examination was begun on 21 May 2019 and was completed on 21 November 2019. The examination was conducted on the basis of written and oral submissions submitted to the ExA and by a series of meetings held in Solihull. The ExA also undertook one accompanied site inspection carried out over two days, and two unaccompanied site inspections.
3. The DCO as applied for would grant development consent for the construction, operation and maintenance of a new junction on the M42 approximately 1.8km south of the existing Junction 6 (referred to as M42 Junction 5A). The proposals include new road infrastructure and works to the existing road network, including a new 2.4km long dual carriageway link road between M42 Junction 5A and the Clock Interchange, with a free flow slip road to the A45 Coventry Road Westbound; capacity and junction improvements at the Clock Interchange; new free flow links between the A45 eastbound and M42 Northbound and from the M42 southbound to the A45 eastbound at Junction 6; the realignment and

modification of several local roads; modifications to the location and spacing of emergency refuge areas, overhead gantries and message signing along the M42 motorway; modifications and improvements to the local public rights of way (“PRoW”), footbridges and private accesses; and the reconfiguring of the Warwickshire Gaelic Athletic Association (“WGAA”) sports facility at Páirc na hÉirean (“the Proposed Development”). The Proposed Development is located predominantly within the administrative boundary of Solihull Metropolitan Borough Council (“SMBC”), but also within the administrative boundaries of Warwickshire County Council (“WCC”) and North Warwickshire Borough Council (“NWBC”).

4. In addition, the DCO would contain compulsory acquisition powers in relation to land and rights that would be required for the purposes of the Proposed Development.
5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The main features of the proposal and the site are set out in Chapter 2 of the ExA’s Report, the ExA’s findings and conclusions are set out in Chapters 5 to 8, and the ExA’s overall conclusions and recommendation are in Chapter 10.

Summary of the ExA’s Report

6. The principal issues considered during the examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA’s Report under the following broad headings:
 - Legal and Policy Context (Chapter 3);
 - Findings and Conclusions in relation to planning issues (which covers: need: roads, tracks and traffic; cultural heritage; air quality; biodiversity, ecology and the natural environment; landscape and visual impact; green belt; population and health; geology and soils; materials and waste; road drainage and the water environment; noise and vibration; climate; the relationship of the Proposed Development to other projects; and utilities and other operators) (Chapter 5);
 - Findings and conclusions in relation to Habitats Regulations Assessment (Chapter 6);
 - Conclusion on the case for Development Consent (Chapter 7);
 - Compulsory Acquisition and Related Matters (Chapter 8); and
 - Draft Development Consent Order and Related Matters (Chapter 9).
7. For the reasons set out in the Summary of Findings and Conclusions (Chapter 10) of the ExA’s Report, the ExA recommends that the DCO be made, as set out in Appendix D to the ExA’s Report.
8. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an order granting development consent for the proposals in the application.** This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and

regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

Secretary of State's Consideration of the Application

9. The Secretary of State's consideration of the ExA's Report and all other material considerations, including the further representations received after the close of the ExA's examination in response to the Secretary of State's consultation letter of 7 April 2020, are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendation as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations. All “ER” references are to the specified paragraph or section in the ExA's Report and references to “requirements” are to those in Schedule 2 to the DCO as recommended by the ExA at Appendix D to the ExA's Report.

Legal and Policy Context

10. The Secretary of State notes that under section 104 of the 2008 Act he must decide the application in accordance with the National Policy Statement for National Networks (“NNNPS”) designated in January 2015, subject to certain exceptions which are not relevant in this case. The Secretary of State notes that he must also have regard to any local impact reports (“LIRs”), any matters prescribed in relation to development of the description to which the application relates and any other matters which the Secretary of State thinks are both important and relevant to the decision. The Secretary of State notes the ExA's assessment of other legislation and policy and agrees these are relevant and important matters to be considered in deciding this application, including the LIRs from SMBC and WCC, in partnership with NWBC referred to at ER 3.10.2 and ER 4.3; and all relevant development plan policies noted at ER 3.11 and ER 4.5.
11. It is the view of the Secretary of State that the requirements of the 2017 Regulations have been fully met by the environmental statement (“ES”). He confirms that, in coming to his decision to make the DCO, he has taken into consideration all the environmental information as defined in regulation 3 (1) of the 2017 Regulations.
12. The Secretary of State notes that there is a presumption in favour of granting development consent for national networks nationally significant infrastructure projects that fall within the need for infrastructure established in the NNNPS (ER.5.2.1).
13. The Secretary of State notes that the Road Investment Strategy (“RIS”) outlines the Government's strategic vision for the Strategic Road Network (“SRN”) to 2040 (ER 3.4.1), and in which the comprehensive upgrade of the M42 Junction 6 is identified to allow better movement of traffic on and off the A45, to support access to Birmingham airport and to prepare capacity for the new HS2 station (ER 3.4.2).

Need: Roads, Tracks, and Traffic

14. The Secretary of State notes that Junction 6 on the M42 motorway is one of the busiest junctions on the SRN, with long queues and very low levels of service during peak hours (ER 5.2.92). The Secretary of State notes that without the improvements proposed as part of this Proposed Development several projects included in the Government's Growth Strategy and developed through UK Central and Solihull Urban Growth Company will be in jeopardy through failure to provide the connectivity needed (ER 4.7.2).
15. The Secretary of State further notes that analysis undertaken by the Applicant demonstrates that doing nothing would exacerbate problems of safety and congestion, leading to unacceptable service levels sufficient to curtail connectivity and stifle development. The Secretary of State therefore agrees with the ExA that the Proposed Development accords with Government policy to meet the country's long-term needs, supporting a prosperous and competitive economy (ER 5.2.92).
16. The Secretary of State notes that the Proposed Development will accommodate the forecast traffic generally in free-flow conditions and with spare capacity at all junctions (ER 5.2.100 2nd bullet), but that the traffic assessments undertaken for 2041 do not accommodate all the potential jobs envisaged in the various planning documents (ER 5.2.96). The Secretary of State is satisfied that the Proposed Development provides a foundation for the additional road infrastructure that may be required should all the jobs envisaged in local plans and programmes materialise (ER 5.2.100 3rd bullet).
17. The Secretary of State notes the concerns raised that the design of junction 5A is an unnecessary impediment to the free flow of traffic if there are only to be south facing slips (ER 5.2.53). The Secretary of State notes the ExA's view that while there are some disadvantages to the design in comparison to a free-flow design, the advantage of the design is that it embodies inherent flexibility allowing access to the SRN to accommodate future local and regional growth (ER 5.2.58 and ER 5.2.95), and the Secretary of State has no reason to disagree with that conclusion.
18. The Secretary of State notes that the ARCADY modelling results of the roundabouts in the Proposed Development generally show that they will operate within capacity in 2041 (ER 5.2.32). However, the Secretary of State notes that the new Bickenhill roundabout is not modelled in ARCADY. The Secretary of State further notes that the priority is with traffic entering the roundabout from Catherine-de-Barnes Lane, therefore it is likely that sufficient gaps in that dominant flow are created to allow traffic from Bickenhill to enter the roundabout (ER 5.2.34). To be satisfied on this matter the Secretary of State asked the Applicant to undertake an ARCADY assessment on Bickenhill roundabout in his letter dated 7 April 2020. The Applicant provided further clarity in their response to the Secretary of State, noting that the Bickenhill roundabout had been modelled using ARCADY and highlighted the results. The Secretary of State is therefore satisfied on this matter.

Realigned Catherine-de-Barnes Lane

19. The Secretary of State notes that to avoid the possibility of encouraging 'through traffic' from the northern overbridge down St Peter's Lane and into Bickenhill Village, the ExA suggested that the priority might be altered by making the realigned Catherine-de-Barnes Lane rather than St Peter's Lane the 'major' road (ER 5.2.74). The Secretary of State notes that this option, along with others, was considered by the Applicant in collaboration with SMBC but was rejected because, amongst other reasons, the tight bend on Catherine-de-Barnes Lane in crossing the north overbridge would require a reduction in design standards (ER 5.2.77).
20. The Secretary of State has considered the listed defects of the proposed layout at ER 5.2.77 and notes that given the limited traffic and local function of Catherine-de-Barnes Lane once the mainline link road is operational, the ExA consider that those defects would actually serve as traffic calming features rather than road hazards (ER 5.2.78).
21. The Secretary of State notes that the ExA considers there are advantages to altering the priority and making realigned Catherine-de-Barnes Lane the major road. However, given that the Applicant and Local Highways Authority are not content with the ExA's suggestion, the Secretary of State does not agree with the ExA's recommendation to include the new Requirement 15 requiring the preparation of a suitable scheme to be proposed (ER 5.2.78) and has amended the recommended DCO accordingly.

Public Rights of Way

22. The Secretary of State notes the requirements in the NNNPS that appropriate mitigation is provided to address the adverse effects on trails, tracks and public rights of way (ER 5.2.79). The Secretary of State notes that the Proposed Development will sever several public rights of way and that the ExA found that, whilst the links are maintained, they are without exception longer, less convenient and less pleasant (ER 5.2.81). The ExA therefore concluded that the approach to the provision of footpaths and NMU links fails to accord with the requirement of the NNNPS (ER 5.2.91). The Secretary of State notes the ExA concluded that, despite suggesting the provision of two routes to redress the balance and the willingness of SMBC and the Applicant to explore the possibility of delivering them, the failure to promote sustainable transport in the form of attractive NMU routes is a negative consideration (final bullet point ER 5.2.100). The Secretary of State encourages the Applicant, working with SMBC, to continue to explore the possibility of delivering additional routes. In the absence of these being secured through the DCO, the Secretary of State agrees with the ExA that this is a negative consideration.

Cultural heritage

23. The Secretary of State notes that the NNNPS requires him to, when considering the impact of a Proposed Development on the significance of a designated

heritage asset, give great weight to the asset's conservation. Furthermore, he notes that regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires that the decision maker must have regard to the desirability of preserving listed buildings or their setting; conservation areas and the desirability of preserving or enhancing the character or appearance of that area; and the desirability of preserving the scheduled monument or its setting (ER 5.3.2).

24. The Secretary of State notes that the Proposed Development would not directly affect any listed buildings but would impact on the setting of four listed buildings (ER 5.3.140), and would neither preserve nor enhance the character or appearance of Bickenhill and Hampton in Arden Conservation areas (ER 5.3.143). The ExA found that the harm to these conservation areas is less than substantial (ER 5.3.144) but that the Applicant has not identified any enhancement measures as required by the NNNPS (ER 5.3.147). Consequently, the ExA found that the harm to designated heritage assets weighs negatively against the Order being made. The Secretary of State agrees.

Air Quality

25. The Secretary of State notes the ExA's finding that the Proposed Development should not give rise to significant air quality construction effects and no additional mitigation should be required (ER 5.4.10). The Secretary of State notes that the operational effects are negligible in the areas to the north, south and east of the Proposed Development (ER 5.4.38). The Secretary of State notes the concerns raised by some residents in Bickenhill regarding increased pollution close to their homes (ER 5.4.29), and the concern raised that the new roundabout adjacent to the Birmingham Dogs Home on Catherine de Barnes Lane will increase pollution at Four Winds (ER 5.4.32) but notes the ExA's findings that the Proposed Development is likely to have no significant effects on the air quality at these locations (ER 5.4.31 and ER 5.4.35). The Secretary of State therefore notes and agrees with the ExA that the Proposed Development is likely to have no significant effect on air quality and in overall terms the tests in NNNPS paragraphs 5.10 to 5.15 are met. The Secretary of State is therefore satisfied with the ExA's conclusion that the effect on air quality would be a neutral consideration (ER 5.4.39).
26. The Secretary of State notes that the A45 from the Clock Interchange to M42 Junction 6 is subject to two Ministerial Directions relating to air quality and there is a concern that insufficient information may be available within the DCO (ER 5.4.23). The Secretary of State notes that the Applicant confirmed that the Proposed Development will not give rise to new significant air quality effects, nor substantially worsen air quality in the Air Quality Management Area. Furthermore, the Secretary of State notes that Applicant has agreed in the Statement of Common Grounds with SMBC to provide links to baseline data to facilitate the necessary monitoring by SMBC (ER 5.4.24). The Secretary of State further notes that as a matter separate to the DCO, the Applicant is to provide baseline traffic data and assumptions relating to construction traffic around Junction 6 to feed into SMBC's own traffic model for this stretch of the A45 to enable it to discharge its own requirements for managing air quality effects in accordance with the Ministerial Directions (ER 5.4.24). The Secretary of State

therefore notes and agree with the ExA that appropriate provisions are made outside of the DCO to enable SMBC to respond effectively to the Ministerial Directions (ER 5.4.25).

Green Belt

27. The Secretary of State notes that paragraph 5.178 of the NNNPS sets out that inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances (ER 7.2.12).
28. The Secretary of State notes that the majority of the Order limits is contained entirely within Green Belt land, as identified by the Solihull Local Plan (ER 5.7.4). The Secretary of State further notes that given the nature of the works, the ExA consider that the Proposed Development would constitute a major engineering operation, which the National Planning Policy Framework (“NPPF”) paragraph 146 states would not be inappropriate, provided that it would preserve the openness of the Green Belt and would not conflict with the purpose of including land within it (ER 5.7.7). The Secretary of State notes at ER 5.7.8 what the Proposed Development would include and agrees with the ExA that whilst these would clearly constitute major engineering works, their scale and land-take would not preserve the openness of the Green Belt (ER 5.7.9).
29. The Secretary of State notes the ExA consider that the associated above ground permanent development, such as bridges (pedestrian and vehicular), roundabouts, free flow links and overhead gantries would constitute new building works in their own right. The Secretary of State notes that these works do not fall within any of the exceptions listed in paragraph 145 of the NPPF as not inappropriate in the Green Belt (ER 5.7.10). The Secretary of State further notes the extent and prominent physical presence of the works stretch beyond the confines of the existing road layout into a largely countryside setting and agrees with the ExA that the Proposed Development would fail to preserve the openness of the Green Belt (ER 5.7.10) and therefore the operation of the Proposed Development would amount to inappropriate development in the Green Belt (ER 5.7.11).
30. The Secretary of State notes that the construction compounds would also constitute inappropriate development in regards to paragraph 145 of the NPPF (ER 5.7.13) but as the construction compounds would not be permanent, the Secretary of State agrees with the ExA that their effect on the openness of the Green Belt would be confined to the length of time each construction compound is required in connection with the construction of the Proposed Development (ER 7.2.33). Furthermore, the Secretary of State notes that the Applicant acknowledges that the proposed development would amount to inappropriate development as defined in the NNNPS (ER 5.7.17), but considers that very special circumstances exist which outweigh the harm caused to the Green Belt (ER 5.7.19).
31. The Secretary of State notes that paragraph 5.171 of the NNNPS recognises that “linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land” (ER 7.2.29). Taking this into account,

the Secretary of State further notes that that the Proposed Development forms part of the RIS and that Government funding has been allocated to it. The Secretary of State agrees with the ExA that there is therefore an identified national need for the Proposed Development and given that Junction 6 is located within the Green Belt, there implies an acknowledgement of there being an impact upon the same (ER 7.2.31).

32. The Secretary of State notes that a balancing exercise has to be undertaken to establish whether very special circumstances exist to justify development in the Green Belt, and whether the Proposed Development accords with the NNNPS and the NPPF (ER 7.2.27).
33. The Secretary of State notes the considerations of the ExA set out at 7.2.20 to 7.2.42 and agrees with the ExA's conclusions that the material considerations weighing in favour of the Proposed Development clearly outweigh the potential harm to the Green Belt such that very special circumstances exist to justify the development within the Green Belt in accordance with the NNNPS and the NPPF (ER 7.2.42).

Population and Health

Páirc na hÉireann

34. The Secretary of State notes that Páirc na hÉireann is recognised as a regionally important community facility that hosts Warwickshire Gaelic football and hurling matches. It is acknowledged that there is a local and regional need for the facility. (ER 5.8.65). The Secretary of State notes that the Applicant had originally intended to relocate the facility in its entirety but concluded that compulsory acquisition of land to provide for the relocation of the facility could not be justified and has since pursued various options for the reconfiguration of the pitches at Páirc na hÉireann (ER 5.8.66).
35. The Secretary of State notes that the Applicant has proposed a "Proportionate Reconfiguration" in the DCO (ER 5.8.66) but that what is proposed is unacceptable to both WGAA and Sport England (ER 5.8.67). The Secretary of State also notes that the ExA asked the Applicant to continue discussions with WGAA; and as a result, the Applicant and WGAA have pursued the opportunity to develop a "legacy" scheme which is to be pursued in the context of a separate planning permission (ER 5.8.68).
36. The Secretary of State requested an update from the relevant parties on the status of the legacy agreement in his letter dated 7 April 2020. The WGAA advised in their response to the Secretary of State dated 21 April 2020 that they do not consider there are any substantive matters still to be agreed; it only remains to finalise the form of the agreements. The Applicant's response to the Secretary of State also dated 21 April 2020 confirmed this position.
37. However, the Secretary of State notes the ExA is unable to place reliance on the legacy scheme in reaching its recommendation as it is not secured by the DCO (ER 5.8.71). The Secretary of State notes the advanced state of the legal

agreement between the Applicant and WGAA and encourages both parties to finalise agreements at the earliest opportunity. In the absence of such an agreement, the Secretary of State agrees with the ExA that the shortcomings of the 'Proportionate Reconfiguration' approach within the DCO represents a residual and harmful impact on Páirc na hÉireann and is therefore a negative consideration.

Attenuation tank and access

38. The Secretary of State notes that the ExA asked the Applicant to review the position of the proposed attenuation tank and access (Work No.35) into land beside Church Farm and the ménage and to provide information on possible alternatives. The Secretary of State notes that the ExA considers that once the permanent realignment of Catherine-de-Barnes Lane is in place, the arrangement proposed perpetuates a potential intrusion of vehicles behind Church Farm and the metalled access would visually impact an otherwise quiet rural aspect within this village street (ER 5.8.91).
39. The Secretary of State notes that the Applicant has discounted the suggestion to relocate the tank and access to land south of St Peter's Lane, noting that there are no significant environmental impacts associated with the attenuation tank being located to the north of St Peter's Lane and that the metalled access behind Church Farm is required to serve agricultural land, and to undertake maintenance of the Severn Trent aqueduct (ER 5.8.92). The Secretary of State notes that the ExA disagrees with the Applicant and considers that the environmental effects of their original proposal would be intrusive, especially in relation to the use of the ménage at Church Farm (ER 5.8.93).
40. The Secretary of State notes and agrees with the ExA that locating the attenuation tank to the south of St Peter's Lane has the advantage of positioning it on a roadside rather than introducing it to an otherwise secluded area. Similarly, the Secretary of State notes that locating the tank to the land south of St Peter's Lane would maintain the rural character of this entrance into the village. The Secretary of State agrees with the ExA's relocation of the attenuation tank and has included the proposed new requirement in the DCO (ER 5.8.93).

Agriculture

41. The Secretary of State notes there are 125.1 hectares of agricultural land within the Order limits, of which 103.4 hectares have been surveyed where access was granted through prior negotiation. The Secretary of State notes that of the surveyed area, a total of 21.4 hectares has been identified as Grade 3a, which is classified as Best and Most Versatile ("BMV") agricultural land, and the remaining 82 hectares of surveyed land is Subgrade 3b. The classification of the land not surveyed (21.7ha) is not known (ER 5.8.18).
42. The Secretary of State agrees with the ExA that the Applicant is unable to conclude that a maximum area of 21.4 hectares of Grade 3a BMV agricultural land is lost, as the classification of the unsurveyed 21.7 hectares is not known (ER 5.8.53). The Secretary of State notes the Applicant's approach is to assume

that this unsurveyed land is Grade 3a, therefore the unsurveyed 21.7 hectares should have been added to the 21.4 hectares to give a total of 43.1 hectares of Grade 3a agricultural land lost to the Proposed Development (ER 5.8.53).

43. The ExA concludes that the loss of over 40 hectares of BMV agricultural land constitutes a significant adverse effect, contrary to NNNPS paragraph 5.168 which states that applicants should seek to use areas of poor quality land in preference to that of higher quality. The Secretary of State agrees that this weighs negatively against the Order being made (ER 7.2.13).

Materials and Waste

44. The Secretary of State notes that the construction of the Proposed Development is expected to generate approximately 99,532 tonnes of non-hazardous construction and demolition waste (ER 5.10.19). The Secretary of State notes the ExA's conclusion that the material assets and waste arising from the construction of the Proposed Development would be able to be properly managed and that all necessary controls would be in place through the recommended DCO and that the Proposed Development would therefore comply with paragraphs 5.39 to 5.45 of the NNNPS (ER 5.10.32). The Secretary of State sees no reason to disagree.
45. The Secretary of State notes that the Outline Site Wide Management Plan ("Outline SWMP") sets out measures that would be undertaken during construction to mitigate effects in relation to material assets and waste (ER 5.10.10). The Secretary of State notes the Outline SWMP sets out the measures that would be undertaken during construction to mitigate effects relating to material assets and waste. It includes a performance target to recover at least 70% (by weight) of non-hazardous construction and demolition waste (ER 5.10.10 and ER 5.10.28). In view of the Applicant's anticipated 94.7% recovery rate outlined in the Environmental Statement (Table 11.8), the Secretary of State agrees with the ExA that there is an opportunity to raise the target of 70% in the Outline SWMP to improve the environmental outcome (ER 5.10.23) and that the target should be raised to 85% (ER 5.10.29). The Applicant in their letter dated 21st April confirmed that a target of 85% was acceptable and therefore the Secretary of State requires the Applicant to increase the target to 85% in the Outline SWMP.
46. The Secretary of State agrees with the ExA that there would be merit to the appointed contractor undertaking a post-scheme evaluation of the performance against the assessment conclusions, as offered by the Applicant, and to present the findings in the Handover Environmental Management Plan ("HEMP"). The Secretary of State notes that Requirement 4 specifies that the HEMP must be made available in an electronic form and viewable by members of the public. The Secretary of State agrees this would ensure appropriate transparency and accountability. The Secretary of State further notes that in combination with the reporting and auditing procedures already contained within the Outline SWMP, this would also adequately address the ExA's question (WQ2 2.5.3) in relation to monitoring of the targets (ER 5.10.24).

47. The Secretary of State therefore agrees with the ExA and requires the Applicant to amend the Outline SWMP to include a post-scheme evaluation of performance against the assessment conclusions, and for the findings to be presented in the HEMP and delivered through Requirement 4 (ER 5.10.30).

Climate

48. The Secretary of State notes the ExA's conclusion that the effects of the Proposed Development on climate and its resilience to climate change, as well as the impacts from climate change combined with the Proposed Development on surrounding environment and receptors, has been adequately addressed and has been considered by the Applicant in accordance with paragraphs 4.36 to 4.47 of the NNNPS (ER 5.13.44).
49. The Secretary of State notes that in accordance with paragraph 5.17 of NNNPS the Applicant has provided evidence of the carbon impact of the project and an assessment against the Government's carbon budgets (ER 5.13.45 and ER 7.2.18). The Secretary of State notes that the Climate Change Act 2008 (2050 Target Amendment) Order 2019 came into force on 27 June 2019, amending the 2050 greenhouse gas emissions reduction target from at least 80% to at least 100% (ER 5.13.39). As this change came into force during the examination, the Secretary of State notes that it was not addressed in the Applicant's assessment.
50. The Secretary of State notes that the Applicant's assessment identified that the emissions arising as a result of Proposed Development represent less than 0.006% of the total emissions in any five-year UK carbon budget during which they arise (ER 5.13.39). It is noted that the Applicant provided an assessment against the Government's carbon budgets and the assessment concluded that the greenhouse gas emissions impact of the Proposed Development would not have a material impact on the UK Government meeting its carbon reduction targets. The Secretary of State notes, even taking into account the increase in the UK Government's carbon reduction target for 2050, which came into force during the course of the examination, the ExA found no reason to disagree with the Applicant's conclusions; the Secretary of State agrees (ER 5.13.45 and ER 7.2.18).

Landscape and Visual Impact

51. The Secretary of State notes that the Proposed Development would introduce street lighting into locations which currently have little or limited lighting (ER 5.6.82). The Secretary of State further notes that paragraph 3.5.137 of Chapter 3 of the ES states that consideration has been given in the lighting design to minimise the potential for it to intrude into existing night time views (ER 5.6.90).
52. The Secretary of State notes the Applicant's position regarding the control of street lighting, and that such controls are set out in the register of environmental actions and commitments ("REAC") and the construction environmental management plan ("CEMP"); under requirement 4 of the recommended DCO the CEMP must reflect the mitigation measures set out within the REAC. The Secretary of State accepts the ExA's conclusion that safeguards would be in

place to reasonably restrict lighting locations and to ensure energy efficient lighting (ER 5.6.91).

53. However, the Secretary of State notes that the measures to mitigate light pollution set out in paragraph 7.1.3 of the Lighting Technical Note do not form part of the outline environmental management plan (“OEMP”) /REAC, and as such are not controlled by requirement 4 of the DCO (ER 5.6.92). The Secretary of State agrees with the ExA that street lighting should be controlled to minimise harm to landscape character and minimise visual impact on the occupiers of properties most likely to be affected and therefore requires the Applicant to update the OEMP/REAC to include the measures set out in paragraph 7.1.3 of the Lighting Technical Note (ER 5.6.94).
54. The Secretary of State notes the ExA’s conclusion that the Applicant has assessed the likely landscape and visual impacts of the Proposed Development and the Proposed Development has been designed to avoid or minimise harm to the landscape, providing reasonable mitigation where possible and appropriate (ER 5.6.101). The Secretary of State notes that despite the design development applied and the proposed mitigation, the Proposed Development would result in significant adverse effects on landscape character and visual amenity both in construction and in operation (ER 5.6.102). The Secretary of State agrees with the ExA that these impacts weigh negatively against the Proposed Development (ER 5.6.109).

Biodiversity, ecology and the natural environment

55. The Secretary of State notes that the ExA is satisfied that the Applicant has taken measures to ensure protected species are protected from the adverse effects of the Proposed Development (ER 5.5.62).
56. The Secretary of State notes that the Proposed Development would lead to a moderate adverse impact on ancient woodland at Aspbury’s Copse due to the loss of 0.46ha of ancient woodland (ER 5.5.39). The Secretary of State notes paragraph 5.32 of the NNNPS which states that the Secretary of State should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats, including ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss (ER 5.5.63). The Secretary of State notes the discussion at the examination concerning the acceptable compensation ratio for the loss of ancient woodland (ER 5.5.51-ER 5.5.58). The Secretary of State notes the ExA’s conclusion that the loss of ancient woodland weighs against the Order being made, and the proposed replanting ratio does not significantly lessen the weight against the Order being made (ER 5.5.68). The Secretary of State agrees that the harm to ancient woodland weighs against the Order being made but considers that the national need for, and benefit of the development in that location, outweigh the loss.

Habitats Regulations Assessment

57. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site designated under the Habitats Regulations¹. The Proposed Development is not directly connected with or necessary to the management of any European Site. The Secretary of State must therefore undertake an appropriate assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects cannot be ruled out. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a European Site, unless there are no feasible alternatives or imperative reasons of overriding public interest apply.
58. The Secretary of State has considered the ExA’s assessment at Chapter 6 of the ExA’s Report of the likely significant effects of the Proposed Development. The Applicant identified four European Sites located within 30 kilometres of the Proposed Development: Ensor’s Pool Special Area of Conservation (“SAC”); Fens Pools SAC; Cannock Extension Canal SAC; and River Mease SAC (ER 6.2.3). The Secretary of State notes that the Proposed Development is not connected with or necessary to the management for nature conservation of any of the European Sites considered within the Applicant’s assessment (ER 6.3.1). The Secretary of State notes that the ExA, having considered the relevant evidence, is satisfied that the Proposed Development would have no adverse effect, either alone or in-combination with other plans or projects, on any European site or its qualifying features, a view which is confirmed by Natural England (ER 6.4.9), and therefore it is not necessary to carry out an appropriate assessment (ER 6.6.2). The Secretary of State agrees with this assessment.

Conclusion on the case for Development Consent

59. The Secretary of State notes that in reaching its conclusions on the case for the Proposed Development, the ExA has had regard to the NNNPS, the NPPF the LIRs and all other matters which it considers both important and relevant to the Secretary of State’s decision, including the concerns and objections raised by those who made submissions on the application (ER 7.2.21).
60. The Secretary of State notes the Government’s strong policy support for schemes that seek to deliver a well-functioning SRN and that the Proposed Development would help to deliver this policy. It accords with Government policy to deliver national networks that meet the country’s long-term needs, supporting a prosperous and competitive economy and, as an improvement at Junction 6 on the M42, it does so as paragraphs 2.23 – 2.27 of the NNNPS prescribes (ER 7.2.23). The Secretary of State notes that the improvement to the road network

¹ The term “European Site” in the ER and in this decision letter covers Sites of Community Importance, Special Areas of Conservation (“SACs”), candidate SACs, Special Protection Areas (“SPAs”); and under UK policy potential SPAs and listed Ramsar sites.

likely to be achieved by the Proposed Development is a strong positive consideration in favour of the order being made (ER 7.2.25). The Secretary of State notes and agrees with the ExA that substantial weight should be given to the identified benefits of the Proposed Development in relation to the SRN and the significant supporting role in economic terms (ER 7.2.43). The Secretary of State further notes that should all jobs envisaged in local plans and programmes materialise, additional road infrastructure will be required and agrees that the Proposed Development provides the foundation for that additional infrastructure being stage 2 in a 4-stage programme (ER 7.2.7).

61. The Secretary of State notes the ExA's consideration set out at 7.2.20 to 7.2.42 and agrees with the ExA that the material considerations weighing in favour of the Proposed Development outweigh the potential harm to the Green Belt and the other identified harms. He therefore agrees with the ExA that very special circumstances exist to justify the development within the Green Belt in accordance with the NNNPS and the NPPF (ER 7.2.42).
62. The Secretary of State agrees with the ExA that the strategic benefits of the Proposed Development are such that they outweigh the impacts identified (ER 7.2.44). The Secretary of State therefore agrees with the ExA that the development consent should be granted (ER 7.2.47).

Compulsory Acquisition and Related Matters

63. The Secretary of State has considered the compulsory acquisition ("CA") powers sought by the Applicant in accordance with sections 122, 123 and 127 of the 2008 Act, the Human Rights Act 1998 and relevant guidance.
64. The Secretary of State notes the ExA's consideration of CA and temporary possession ("TP") related matters at Chapter 8 of the ExA's Report.

Crown land

65. The Secretary of State notes the issues on Crown Land that were not resolved at the close of the examination, due to uncertainty over progress on the Transfer Agreement regarding Highways England becoming a company rather than an executive agency, and in relation to land that may become Crown land when HS2 Limited acquires or takes possession of the land (ER 8.12.9). The Secretary of State requested an update from DfT Estates and the Applicant on this matter in his letter dated 7 April 2020.
66. The Secretary of State notes from DfT Estates letter dated 20 May 2020 that DfT Group Property, on behalf of the Secretary of State, have conducted a search of their records, and to their knowledge none of the land that is subject to the DCO can be considered Crown Land at the point of decision. The Secretary of State is therefore satisfied on the point of uncertainty regarding the Transfer Agreement.
67. In relation to land that may become Crown Land when HS2 Limited acquires or takes possession of the land, the Secretary of State further notes that DfT

Estates letter dated 20 May 2020, confirms that although the Department is in occupation of two land parcels (WK11176 and WM122448) the titles have not been acquired. The Secretary of State is satisfied that these land parcels are not to be considered as Crown Land at the time of decision.

Gooch Estate

68. The Secretary of State notes Gooch Estate's remaining concerns at the close of the examination and that discussions were ongoing between the Applicant and Gooch Estate regarding the acquisition of land (ER 8.8.28). In his letter dated 7 April 2020, the Secretary of State requested an update on whether an agreement had been reached in respect of the appropriate rights the Applicant might acquire as an alternative to freehold ownership of the Gooch Estate's land and the appropriate proportion of the "teardrop land" that should be used for habitat creation in order to provide adequate mitigation for the proposed losses of grassland and scrub.
69. The Secretary of State notes Gooch Estate's email dated 17 April 2020 that discussions have continued between the Applicant and Gooch Estate, and that heads of terms have been agreed subject to one point on access where Gooch Estate is awaiting a response from the Applicant. The Secretary of State further notes from the Applicant's letter dated 21 April that the agreement is still to be executed. The Secretary of State notes that, despite the fact that discussions were continuing at the end of the examination, the ExA was satisfied that the request for CA powers in respect of the Gooch Estate was justified (ER 8.8.31). The Secretary of State notes (and echoes) the ExA's statement that the progress being demonstrated at the close of the examination on potential agreements is welcomed (ER 8.8.30), and agrees that the request for CA powers in respect of the Gooch Estates and the provisions in the DCO for notice and compensation are justified (ER 8.8.31).

Cadent Gas

70. The Secretary of State notes that Cadent Gas are the Statutory Undertaker of gas distribution for the area of the Proposed Development and have apparatus that may be affected by the Proposed Development (ER 8.9.1). Cadent Gas objected to the impact of the CA and TP on their land and rights. However, the Secretary of State notes Cadent Gas' post examination correspondence advises that an agreement has been reached and their objection is withdrawn, subject to various matters set out in that letter dated 22 November 2019. The Secretary of State notes that these matters have been considered by the ExA at ER 5.15.8 to 5.15.9 and ER 9.2.186 to 9.2.187. The Secretary of State agrees with the ExA's analysis and accordingly has not made amendments to the protective provisions within the ExA's recommended DCO.

Conclusion on Compulsory Acquisition

71. The Secretary of State agrees with the ExA that the CA powers sought by the Applicant are justified as there is a compelling case in the public interest for land and interests to be compulsorily acquired. The Secretary of State is therefore

satisfied that the Proposed Development would comply with section 122 (2) and (3) of the 2008 Act (ER 8.12.6).

Protective Provisions

Esso Petroleum Company Limited (“Esso”)

72. The Secretary of State notes that the Applicant and Esso have been in discussions to address Esso’s concerns regarding the impact of the Proposed Development on its pipeline. The Secretary of State notes from the Applicant’s letter dated 21 April 2020 that the Applicant had received comments from Esso on 7 November 2019, to which the Applicant responded with a revised mark-up of the agreement the following week. The Secretary of State notes that the Applicant has received no further substantive correspondence from Esso. The Secretary of State also did not receive a response from Esso in relation to his letter dated 7 April 2020 seeking comments on the status of this agreement.
73. In absence of any response from Esso, the Secretary of State has been unable to consider any further concerns Esso may have. The Secretary of State notes that the Applicant considers in its letter 21 April 2020 that Esso’s concerns can be addressed in an agreement and the Applicant welcomes further engagement from Esso to complete the agreement. The Secretary of State encourages Esso to work with Applicant to reach an agreement.

NEC Limited (“NEC”)

74. The Secretary of State notes from the NEC’s letter dated 7 April 2020 that the Formal Agreement had not been shared or signed and that the Applicant had advised on 23 March 2020 that a draft would be shared. The Secretary of State notes from the Applicant’s letter dated 21 April 2020 that the Statement of Common Ground between Highways England and the NEC has been agreed and signed. The Secretary of State further notes that the Heads of Terms have also been agreed, but the Formal Agreement has been updated to address the NEC’s current use as a Nightingale hospital during the coronavirus emergency. The Secretary of State agrees with the ExA that, notwithstanding the NEC and the Applicant reaching an agreement, the impact of the CA on the NEC is a proportionate interference in their rights, which is justified by the public interest in the delivery of the Proposed Development (ER 8.8.7).

Western Power Distribution (West Midlands) PLC (“WPD”)

75. The Secretary of State notes that discussions have been ongoing between the Applicant and WPD regarding WPD’s concerns about the protective provisions (ER 5.15.14). The Secretary of State notes in their representation dated 28 March 2019 that WPD consider that the protective provisions to be unacceptable and that the CA powers proposed would result in serious detriment to their undertaking, and that this position is unchanged in their letter dated 20 April 2020. The Applicant in their response dated 21 April 2020 indicated their view that adequate protection for WPD’s assets are included within the protective

provisions and therefore they consider that an interference caused (if at all) will not be a serious detriment to WPD carrying on its undertaking.

76. The Secretary of State is satisfied that Part 1 of Schedule 12, which is based on the standard protective provisions approved by the Secretary of State on other schemes, safeguards WPD's interests in the circumstances of this case. The Secretary of State notes that an agreement is still being negotiated between the parties and further notes that paragraph 1(1) of Schedule 12 provides that the standard provisions can be overridden if the Applicant and WPD agree in writing to do so.

Late Representations (outside formal consultation)

77. Since the close of the Examination the Secretary of State has received a number of late representations, all of which are published on the Planning Inspectorate's website.
78. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the ExA's report.

Modifications to the Order by the Secretary of State

79. The following modifications have been made to the Order:
- in article 2(1), the definition of "the Tribunal" has been removed as the only reference to this term is in article 47, which has been amended.
 - in article 21(8)(a), the reference to the "Homes and Communities Agency" as this Agency was replaced by "Homes England" in January 2018.
 - in article 22(3), the second reference to "building" has been replaced with "land".
 - in article 23(3), the reference to "or delayed" has been removed as consent is deemed to be granted under paragraph (6).
 - in article 33(3)(a), the wording following "Schedule 10" to the end has been removed as being unnecessary since the acquisition under article 27 is different from taking possession of land under paragraph (1)(a)(i).
 - in article 34(6), the wording from "but the undertaker" to the end has been removed as being unnecessary. The word "restore" means to return something to an earlier or original condition rather than to improve.
 - in Schedule 1, the inclusion of the word "approximately" is redundant by virtue of the wording in article 2(4).
 - in Schedule 2, the requirement altering the priority of the Catherine-de-Barnes land and St Peter's Lane has been removed as the Secretary of State does not agree with the view expressed by the ExA.

Secretary of State's overall conclusion and decision

80. For all the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the Proposed Development and has therefore decided to accept the ExA's recommendation at section 10.3 of the ExA's Report and is today making the M42 Junction 6 Order, subject to the changes referred to above. The Secretary of State is satisfied that none of these changes constitute a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

Challenge to decision

81. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

82. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Susan Anderson

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The M42 Junction 6 Development Consent Order 2020 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m42-junction-6-improvement/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).