



Meeting note

Project name	M25 Junction 28 improvements
File reference	TR010029
Status	Final
Author	The Planning Inspectorate (the Inspectorate)
Date	16 April 2020
Meeting with	Highways England (The Applicant)
Venue	Teleconference
Meeting objectives	Draft Documents feedback review and project update
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Draft Documents

The Inspectorate reviewed the following draft documents provided to the Inspectorate on 24 January 2020:

- Draft Development Consent Order
- Explanatory Memorandum
- Sample of Land Plans
- Sample of Work Plans
- Consultation Report
- Book of Reference

A brief discussion of the Inspectorate's comments on the draft documents was held. There were no other matters arising. Detailed comments are provided in the Table below.

Project update

The Applicant spoke about supplementary consultation it had undertaken which had finished in December 2019. The Applicant noted the numbers of responses received to this consultation and in response to a query from The Inspectorate noting responses from the host relevant authorities, the Fire Brigade and the Forestry Commission. The Applicant confirmed that whilst Natural England (NE) had not formally responded to this round of consultation, the Applicant had shared the mitigation proposals with NE to review.

The discussion noted the identification and approach to any special category land within the red land boundary. The Applicant confirmed that the relevant application documents would clearly explain the situation in respect of any special category land.

The Applicant provided an overview of the on-going discussions with key stakeholders noting the engagement with Cadent gas in respect of the diversion of the gas main and with the land interests associated with the golf course. The Applicant explained that it was working with Cadent Gas so seek to ensure that the golf course could remain in use during any construction work on the pipeline diversion and to explore potential options to provide mitigation to any impact on the golf course.

The Applicant said it had undertaken sensitivity testing to see if the update to the Design Manual for Road and Bridges may lead to any changes in methodology, assessments or outcome that could influence scheme design. The Applicant concluded that no changes were required. The Applicant asked how it could best include this sensitivity testing information and conclusions as an Application document. The Inspectorate said it would be extremely useful and considered a standalone document was appropriate.

Specific decisions/ follow-up required?

The following actions were agreed:

- To arrange a meeting in two weeks

TR010029 - M25 junction 28 improvement scheme

Section 51 Advice regarding draft Application documents submitted by Highways England

This advice relates solely to matters raised upon the Inspectorate’s review of the draft application documents submitted by Highways England (“the Applicant”), and not the merits of the proposal. The advice is limited by the time available for consideration and raised without prejudice to the acceptance or otherwise of the eventual application. It is provided to assist the preparation of the next iteration.

Abbreviations used

ANxx	Advice Note number
Axx	Article and number
BoR	Book of Reference
dDCO	draft Development Consent Order
EM	Explanatory Memorandum
ExA	Examining Authority
PA2008	Planning Act 2008
The Inspectorate	- The Planning Inspectorate
SI	Statutory Instrument
SoR	Statement of Reasons
SoS	Secretary of State

General Drafting points

1. The Applicant should ensure that when the draft development consent order (dDCO) is finalised for submission all internal references and legal footnotes are checked, and the drafting follows best practice in AN13 and AN15 and any guidance on statutory instrument drafting.
2. A thorough justification should be provided in the Explanatory Memorandum (EM) for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.
3. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO application is appropriate will be for the ExA to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

Draft Development Consent Order			
Ref No.	Article/ Requirements	Extract from DCO (for ease of reference)	Comment/Question
1.	General		The Applicant should ensure that all cross references within the dDCO are checked and corrected where necessary/relevant, this includes references to any plans.
2.	General		The Applicant will be asked to maintain a list of all plans and other documents that will require SoS certification (including plan/document references). These should be updated throughout the examination process, and supplied to the ExA before the close of the examination
3.	General		The DCO is proposed to be a SI and so should follow the statutory drafting conventions. The dDCO (and any subsequent revisions) should be in the form required by the statutory instrument template (see AN15) and validated as such using the current SI template, including detailed footnotes to all statutory references.
4.	General		<p>The application DCO and any subsequent versions of the submitted to the examination:</p> <ul style="list-style-type: none"> • should be supplied in both .pdf and Word formats, the latter showing any changes from the previous version by way of tracked changes. • should be accompanied by a document explaining the changes made– see e.g. Document explaining changes made to dDCO for Deadline 5 in the A19 (Testo’s Junction) DCO examination <p>The examination timetable will usually provide a deadline for receipt of the applicant’s final or preferred version of the DCO. That version should be supported by a report of the outcome of validating it through the Publishing section of the legislation.gov.uk website.</p>
5.	General	<i>Use of “shall”</i>	The Office of the Parliamentary Counsel Drafting Guidance document advises against the use of “shall” (see para 1.2.9). The current draft uses “shall” in numerous locations. These should be reworded as per the guidance.
6.	R1	<i>Definition of “European protected species”</i>	Should this refer to the 2017 Regulations?

Draft Development Consent Order			
Ref No.	Article/ Requirements	Extract from DCO (for ease of reference)	Comment/Question
7.	Schedule 4	<p><i>DCO contents:</i> <i>"PERMANENT STOPPING UP OF HIGHWAYS AND PRIVATE MEANS OF ACCESS AND PROVISION OF NEW HIGHWAYS AND PRIVATE MEANS OF ACCESS"</i></p> <p><i>DCO Schedule 4 title:</i> <i>PERMANENT STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND PRIVATE MEANS OF ACCESS</i></p>	The Applicant may wish to consider the contents/ schedule title
8.	R9	<p><i>EM:</i> <i>'Requirement 9 (archaeology)'</i></p> <p><i>DCO:</i> <i>'Archaeological remains'</i></p>	The Applicant may wish to consider the contents/ Schedule title

Draft Explanatory Memorandum			
Ref No.	Paragraph	Extract from EM	Comment/Question
9.	General		<p>Generally, the dEM tends to explain the effect of the relevant provision in the DCO, rather than explaining why it is necessary.</p> <p>Further explanation and evidence (including the outcomes of any consultation) is required to explain why the content of each article, schedule etc to the dDCO is relevant and required for this proposal. Please refer to AN15.</p> <p>The EM should provide explanation and justification where a provision departs from a precedent. (See AN13 and 15).</p> <p>This should include reference to the particular circumstances of this development and an explanation as to why this is necessary or desirable.</p>

Draft Land Plans			
Ref No.	Land Plan Ref	Extract from Plan Key (for ease of reference)	Comment/Question
10.	2/1 & 3/31	<i>Land not subject to compulsory acquisition</i>	These plots are listed in PART 1 of the Book of Reference as 'No interests or rights to be acquired' but are not listed further in PARTS 2A, 2B, 3 or 4 to explain their presence within the red-line boundary.
11.	4/8		The Applicant may wish to consider adding an insert, for ease to the reader.

Draft Works Plans			
Ref No.	Work Plan Ref	Extract from Schedule 1: Authorised Development (PART 1)	Comment/Question
12.	Sheet 1	Work No. 17 – <i>A new private means of access approximately 475 metres in length, commencing at a point situated approximately 100 metres north of the existing Grove Farm access, passing through the proposed Grove Farm Underpass (Work No. 6) and terminating approximately 125 metres north of Grove Farm Underpass, as shown on sheets 1 and 3 of the Works Plans.</i>	Work 17 on Sheet 1 seems to start north of the existing Grove Farm access, comes south, passing through the underpass and finishes south onto the m25 northbound on-slip. The description has it finishing 125 metres north of the grove farm underpass; the Applicant may wish to consider the depiction on the plan or the description.

Draft Consultation Report			
Ref No.	Paragraph/Section	Extract from CR (for ease of reference)	Comment/Question
13.	General		The Inspectorate would advise the Applicant to consider the phraseology when referring to further rounds of consultation. Please specify whether the consultation was statutory or non-statutory and if non-statutory, the Applicant could consider using language from the DCLG pre-application guidance.

Draft Consultation Report			
Ref No.	Paragraph/Section	Extract from CR (for ease of reference)	Comment/Question
14.	General		Annexes C8 and onwards have not been provided by the Applicant for review alongside the draft Consultation Report, therefore we are unable to provide comment on such references.
15.	1.4.3	<i>As part the loop road construction there will be...</i>	Grammatical error, should this read, 'as part of the loop road construction there will be...'?
16.	3.4.1	<i>Details of the exhibitions are listed in Table 3.4.1</i>	There is no table 3.4.1. The six public consultation exhibitions are listed in Table 3.5.1, perhaps this is the table being referred to?
17.	4.7.1	<i>The consultation materials were available on the Scheme webpage www.highwaysengland.co.uk/m35j28</i>	There is a spelling error in the link to the Scheme webpage (/m35j28) causing the hyperlink not to work.
18.	4.9.5	<i>On 28 February 2018 a post was also placed on the Applicant's Facebook page to provide a prompt that the consultation was about to close.</i>	Should this not be 28 February 2019 if the post on social media was to indicate the closing of the extension to consultation, which ran from 30 January 2019 – 28 February 2019?
19.	Table 5.3.1 SoCC compliance	<i>The suite of documents will include a PEIR and non-technical summary, which will set out environmental impacts and possible mitigation measures.</i>	Spelling error – 'possible'
20.	Figure 6.4.2	<i>Physical extent of the statutory consultation target area</i>	This figure is not listed in the Table of Contents and is a replica of Figure 6.2.1
21.	Chapter 8		The Inspectorate recognises that the Consultation Report is still in draft form and that sections 8.5 and onwards of Chapter 8 remain incomplete.
22.	Conclusion		The Inspectorate recognises that the Consultation Report is still in draft form and that sections of the conclusion remain incomplete.

Draft BOOK OF REFERENCE			
Ref No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Comment/Question

Draft BOOK OF REFERENCE			
Ref No.	Paragraph/Section	Extract from [abbreviation of doc] (for ease of reference)	Comment/Question
23.	General		The Applicant is advised to cross-refer to the relevant Article in the DCO, in Part 1 of the Book of Reference. This could, however, be part of the unfinished template submitted for advice and the Inspectorate recognises that reference to the relevant Articles could be made clear in the Introduction pages of the final document upon submission of the application.
24.	Part 3		The Applicant may wish to check that all parties in Part 3 should be listed in Part 1. This wasn't checked by The Inspectorate due to time constraints.

General

- Where references are provided to other Application documents it would be beneficial to provide the full title thereof inclusive of document reference number. Should further draft documents be provided for review, the Applicant may wish to consider providing a full list of known application documents (for purpose of sign-posting) as well as their respective reference number.
- [DCLG: Application form Guidance](#), paragraph 3 states: *"The application must be of a standard which the Secretary of State considers satisfactory: Section 37(3) of the Planning Act requires the application to specify the development to which it relates, be made in the prescribed form, be accompanied by the consultation report, and be accompanied by documents and information of a prescribed description. The Applications Regulations set out the prescribed form at Schedule 2, and prescribed documents and information at regulations 5 and 6."*