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Jonathan Wade  
Highways England

Your Ref:

Our Ref: TR010030

Date: 14 February 2020

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Dear Mr Wade

## **The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 8(3) and Rule 17**

### **Application by Highways England for an Order Granting Development Consent for the M25 Junction 10/A3 Wisley Interchange**

#### **Request for further information from Highways England and changes to the timetable**

We are writing under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) to request further information from the Applicant on the proposed changes to the application.

At Deadline 4 (D4) of the Examination, Tuesday 11 February 2020, the Applicant proposes (Examination Library (EL) references REP4-013 to REP4-045) to make six changes to the proposed development. The changes, as noted in the Applicant's covering letter, are:

- Change 1 - extension of the proposed green element on Cockcrow Bridge.
- Change 2 - incorporation of two toad underpasses at Old Lane and other mitigation measures.
- Change 3 - removal of part of the proposed improvements to the A245 eastbound between the Seven Hills Road and Painshill junctions.
- Change 4 - amendments to Saturday construction working hours.
- Change 5 - diversion of a new gas main crossing of the M25.
- Change 6 - amendment to the proposed speed limit at Elm Lane (and including Byway 525 – Byway Open to All Traffic).

It is the responsibility of the Examining Authority (ExA) to satisfy itself: a) that the proposed changes are not so material that they change the scope of the proposed scheme; b) whether the proposed changes engage the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (CA Regulations) and c) if the CA Regulations are engaged, that the prescribed procedures are fully and properly followed for the consideration of the relevant 'proposed provision(s)'<sup>1</sup>.

In that regard the ExA requests the following information from the Applicant to be able to properly assess the proposed changes:

### **Change 1**

In our letter of 5 December 2019 (EL reference PD-008) we requested that the Applicant provide confirmation that the procedural requirements of the CA Regulations can be met within the remainder of the statutory six months of the Examination timetable.

The ExA notes that in its letter dated 11 February 2020 the Applicant proposes an 'illustrative timetable' which notifies and publicises the proposed provisions potentially in advance of a decision on whether or not the changes are accepted. Schedule 3 and the Explanatory Note to the CA Regulations indicate that the publicity requirements under Regulation 8 should only be followed if and when the proposed provision(s) **have been accepted** by the ExA. This is considered to be good practice and to do otherwise appears out of sync with the processes and procedures set out from Regulation 6 onwards of the CA Regulations and the Planning Act 2008.

The decision on whether or not to accept the change has not yet been taken. In the light of this the Applicant is asked to justify how it considers the approach proposed in its letter of 11 February to be compliant with the CA Regulations, having regard to the wording of Schedule 3 of the CA Regulations and the Explanatory Note.

The ExA would draw the Applicant's attention to the fact that when the CA Regulations are engaged they require a timetable (Regulation 12) to be set to examine the proposed provisions, which should include submission of written representations (Regulation 13) and responses to them, written questions from the ExA if required, and that hearings **must be reheard**.

### **Change 2**

The ExA notes that the Applicant asserts that the relevant landowners' consent has been granted. The ExA needs to be satisfied that this is the case and, to that end, requests copies of documentation illustrating that the Applicant has received written consent to the inclusion of the additional land concerning Change 2 and therefore that the CA Regulations are not engaged, particularly as the extended plot 24/4 has a number of unknown owners listed in the proposed amended Book of Reference.

The ExA also notes a conflict between the wording in the covering letter of 11 February 2020 and other documents provided, e.g. Report on Proposed Scheme Changes and Book of Reference showing DCO changes, as to whether there is an adjustment to the red line boundary. As above, in order for the CA Regulations not to be engaged all relevant landowners need to have provided their consent, evidence of

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<sup>1</sup> Section 123(4) of the Planning Act 2008 (as amended)

which needs to be provided. Consequently, the Applicant must confirm whether or not it considers that the CA Regulations are engaged in regard to Change 2, the reasons for this and provide any supporting evidence.

#### **Change 4**

The ExA notes that the Applicant's covering letter of 11 February 2020, only specifically refers to amendments to Saturday construction working hours. However, the proposed changes would also entail an increase to the construction working hours on Mondays to Fridays: from the currently proposed hours of 07:30 to 18:00, to the amended hours of 07:00 to 19:00 (with the same construction working hours also proposed for Saturdays). Please comment on this in regard to the consultation exercise you have undertaken.

#### **Change 5**

The ExA notes that the Applicant asserts that the relevant landowners' consent has been granted. The ExA needs to be satisfied that this is the case and, to that end, requests copies of written documentation illustrating that consent has been given by all of the affected landowners and the CA Regulations are not engaged.

The ExA notes the Environment Agency has expressed support for this change and requests evidence of its consultation response be provided.

#### **General matters**

The ExA notes some typographical and page numbering errors in some of the submitted documents. For example, the page numbering in the Addendum to the Statement of Reasons is incorrect and the last item under paragraph 4.1.1 should refer to Change 5 and not Change 6. Therefore, the Applicant is requested to undertake a full search of the documents for any errors and inconsistencies and to submit amended versions to correct all errors, as necessary.

In order to facilitate a timely response, the Examining Authority also makes a Procedural Decision under Rule 8(3) to add a new deadline, **Deadline 4a**, by 5pm on **Tuesday 18 February 2020** for this response only. This variation is set out at **Annex A**.

Yours sincerely

*Gavin Jones*

**Lead member of the Panel**

## Original timetable with variation in Red

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| 10. | <p>Publication by the ExA of:</p> <ul style="list-style-type: none"> <li>ExA's Further Written Questions (ExQ2) (if required)</li> </ul> <p><b>Deadline 4a (D4a)</b><br/>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>Documents and information requested by the ExA from the Applicant in the Procedural Decision dated 14 February 2020 following the Applicant's submission of proposed changes at D4.</li> </ul> | <p><b>Tuesday 18 February 2020</b></p> <p><b>For D4a: 5pm on Tuesday 18 February 2020</b></p> |
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