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All interested parties

Your Ref:

Our Ref: TR010030

Date: 27 February 2020

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Dear Sir/Madam

**Planning Act 2008 (as amended) – Section 89 and the Infrastructure  
Planning (Examination Procedure) Rules 2010 (as amended) – Rule 9**

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

**Notification of Procedural Decision in respect of the change applications put  
forward by the Applicant at Deadline 4**

**Decisions**

The Examining Authority (ExA) has decided to accept for Examination proposed Changes 2 to 6 to the application that have been put forward by the Applicant. The ExA considers that Changes 2 to 6 are not material changes and they do not, either alone or cumulatively, mean that the development which is now being proposed is in substance not that which was originally applied for. This procedural decision is made under section 89(3) of the Planning Act 2008 (PA2008). The background to, and the ExA's reasoning for, this procedural decision to accept Changes 2 to 6 for Examination are set out below.

At this time the proposed Change 1 has not been accepted for Examination as a change to the submitted application, and the reason for this decision is explained below.

**Background**

In its letter, dated 11 February 2020, the Applicant proposed six changes to the above Application and provided accompanying information (Examination Library references [REP4-013 to REP4-045]). In accordance with The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) the ExA sought further clarifications in regard to the Proposed Changes in its Rule 17 and Rule 8(3) letter dated 14 February 2020 [PD-009].

The Applicant on 18 February 2020 submitted a response [REP4a-001] to the ExA's Rule 17 request [PD-009] of 14 February 2020, and this was submitted for what has become an additional Deadline 4a (D4a) for the Examination. Also submitted at D4a were various accompanying documents [REP4a-002 to REP4a-010] which revised some of the change application documents that were submitted on 11 February 2020.

The six proposed changes, which are set out in more detail in the Applicant's Report on Proposed Scheme Changes [REP4a-004], are as follows:

- Change 1 - extension of the proposed green element on Cockcrow Bridge
- Change 2 - incorporation of two toad underpasses at Old Lane
- 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 - amendments to the proposed speed limit at Elm Lane

### **The Examining Authority's reasoning**

In reaching its decision with respect to Changes 2 to 6, the ExA has taken into account both the DCLG Guidance for the Examination of Applications for Development Consent<sup>1</sup> and the Planning Inspectorate's Advice Note 16.

The DCLG Guidance and Advice Note 16 both accept that applicants may need to change elements of a proposal after an application has been accepted. Further to the Applicant's original notification, dated 4 November 2019, of its intention to make changes to the application [AS-023] a consultation process has been undertaken and amended documentation has been submitted by the Applicant [REP4-013 to REP4-045] as amended by [REP4a-001 to REP4a-010] (hereafter collectively referred to as 'the proposed change documentation').

### ***The materiality of the Applicant's proposed Changes 2 to 6 to the application***

The ExA has had regard to the nature and scale of the proposed changes and consultation responses as detailed in the information provided by the Applicant in the proposed change documentation. The ExA notes that the proposed change documentation includes sections of the Environmental Statement and the Habitats Regulations Assessment which have been updated to consider the proposed changes.

As regards the proposed changes the ExA considers that the nature and scale of Change 2 (incorporation of two toad underpasses at Old Lane); Change 4 (amendments to Saturday construction working hours); Change 5 (diversion of a new gas main crossing of the M25; and Change 6 (amendments to the proposed speed limit at Elm Lane) are not material.

In terms of Change 3 (removal of part of the proposed improvements to the A245 eastbound between the Seven Hills Road and Painshill junctions) the ExA, having considered the information submitted by the Applicant, including the Transport Assessment Addendum Report [REP4-041] and the summary of the consultation

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<sup>1</sup> The Department for Communities and Local Government, Planning Act 2008: Guidance for the Examination of Applications for Development Consent

responses provided in the Consultation report Addendum [REP4-041], has concluded that this proposed change to the application would also be non-material. Accordingly, Change 3 can be accepted for Examination.

Changes 2 to 6, either individually or cumulatively, would not materially alter the substance of the proposal for which development consent is sought.

Additionally, in considering whether or not the proposed changes are material, the ExA notes that Changes 2 to 6 would not cause the engagement of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations). This is because the relevant landowners have consented to the inclusion of additional land as defined in the CA Regulations, as per the correspondence appended to the Applicant's letter of 18 February 2020 [REP4a-001]. Whilst the ExA acknowledges the concerns raised by some Interested Parties regarding specific impacts upon their interests, these concerns do not alter the ExA's view that the changes can be accepted into the Examination. The specific impacts arising will be examined further as explained below.

For the reasons given above, the ExA is content to accept all of Changes 2 to 6 into the Examination provided that issues of fairness can be satisfactorily addressed.

### ***Whether Changes 2 to 6 can be fairly accepted and examined***

The ExA recognises that in considering whether or not to accept the proposed Changes 2 to 6 it needs to act reasonably and in accordance with the principles of natural justice. The ExA has regard to Advice Note 16 and must be satisfied that anyone affected by Changes 2 to 6 should have fair opportunity to make their views on them known and to have their views properly taken into account.

In this regard the ExA notes the non-statutory targeted consultation and notification that the Applicant has carried out and which is detailed in section 2 of the Consultation Report Addendum [REP4-040]. Responses to this consultation are assessed in section 3 of the Consultation Report Addendum.

As set out in the Examination Timetable [PD-005, as amended by PD-011], a set of Hearings is scheduled to be held from 24 to 26 March 2020. The ExA considers that Changes 2 to 6 would be amongst the matters for consideration at this set of Hearings. In addition, and if required, scheduled at future Deadlines within the Examination Timetable are opportunities for any further information requested by the ExA, and for comments on any such further information, to be provided.

Taking all of this into account, it is the ExA's view that due to the nature of the proposed changes, the consultation that has already been undertaken by the Applicant and the time remaining in this Examination that the proposed changes can be fairly accepted and examined. The ExA does not consider that any parties would be unreasonably disadvantaged through Changes 2 to 6 being accepted into the Examination, and will ensure that all Interested Parties have an opportunity to make their views known.

### **Change 1**

The ExA notes that as detailed in [REP4a-001] there remains an outstanding landowner consent in relation to Change 1 (extension of the width of the proposed green element on Cockcrow Bridge from 10m to 25m width). However, the Applicant

considers that there is no reason to suspect that the outstanding consent will not be forthcoming.

The ExA awaits the Applicant's confirmation in writing that the outstanding landowner consent has been received. On receipt, the ExA will consider the materiality of Change 1 and whether or not it can be accepted into the Examination, having regard to factors such as the engagement of the CA Regulations and whether the proposed change can be examined prior to the close of the Examination in accordance with the principles of natural justice.

## **Conclusions**

The ExA considers that the acceptance of Changes 2 to 6 as detailed in [REP4a-004] would represent non-material changes to the originally submitted application and the ExA does not consider that the materiality of the changes applied for, either on their own or when considered cumulatively, would be of such a degree that it would constitute a materially different project that would require a new application to be submitted. The ExA considers that the principles of fairness and reasonableness referred to in Advice Note 16<sup>2</sup> have been met and that the proposed changes numbered 2 to 6 are non-material and can be fairly considered within the scope of the original application.

Consequently, the ExA accepts into the Examination Changes 2 to 6 as set out in the Applicant's Report on Proposed Scheme Changes [REP4a-004] and awaits further information from the Applicant as regards Change 1.

Yours sincerely

*Gavin Jones*

**Lead member of the Panel**

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<sup>2</sup> R. (on the application of Holborn Studios Ltd) v Hackney LBC [2017] QBD and R. (on the application of Moseley) v Haringey LBC [2014] UKSC