



National Infrastructure
Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer
Services: 0303 444 5000
e-mail: M25junction10@planninginspectorate.gov.uk

All interested parties

Your Ref:

Our Ref: TR010030

Date: 24 April 2020

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 Decisions in respect of the change applications put
forward by the Applicant at Deadline 4 and at Deadline 7**

Decisions

The Examining Authority (ExA) has decided to accept for Examination proposed Change 1 and proposed Changes 7 to 9 to the application that have been put forward by the Applicant. The ExA considers that all of these proposed Changes 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. These procedural decisions are made under section 89(3) of the Planning Act 2008 (PA2008). The background to, and the ExA's reasoning for, these procedural decisions to accept Changes 1, 7, 8 and 9 for Examination are set out 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]). Five of the six Proposed Changes were accepted by the ExA in its letter dated 27 February 2020 [PD-012], but Change 1 was not accepted at that time.

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

Change 1 - extension of the proposed green element on Cockcrow Bridge

Furthermore, in its letter dated 3 April 2020 [REP6-002] the Applicant notified the ExA of its intention to submit a written request seeking three changes to the scheme that it considered to be non-material. These three changes were formally submitted in the Applicant's letter dated 9 April 2020 [REP7-013] and with the accompanying Report on Proposed Scheme Changes 7 to 9 [REP7-016]. The three additional Proposed Changes are as follows:

Change 7 – Optional alternative private means of access through Heyswood Campsite

Change 8 – Old Lane/Elm Lane junction visibility splay

Change 9 - Wisley Airfield construction worksite

The Examining Authority's reasoning

In reaching its decisions with respect to Changes 1, 7, 8 and 9, the ExA has taken into account both the DCLG Guidance for the Examination of Applications for Development Consent¹ 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 in regard to Change 1. In addition, a targeted consultation process has also been undertaken in regard to Changes 7 to 9, as indicated in the Applicant's Report on Proposed Scheme Changes 7 to 9 [REP7-016]. Consultation responses from some Interested Parties (IPs) on Changes 7 to 9 have already been received at Deadlines 6 and 7.

The materiality of the Applicant's proposed Changes 1, 7, 8 and 9 to the application

The ExA has had regard to the nature and scale of the proposed changes and the consultation responses, as detailed variously in the information provided by the Applicant in the proposed change documentation.

As regards the proposed changes the ExA considers that the nature and scale of Change 1 (extension of the width of the proposed green element on Cockcrow Bridge from 10m to 25m width); Change 7 (Optional alternative private means of access through Heyswood Campsite); Change 8 (Old Lane/Elm Lane junction visibility splay) and Change 9 (Wisley Airfield construction worksite) are not material.

Changes 1, 7, 8 and 9, either individually or cumulatively, would not materially alter the substance of the proposal for which development consent was originally sought.

Additionally, in considering whether or not the proposed changes are material, the ExA notes that Changes 1, 7, 8 and 9 would not cause the engagement of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations). The ExA notes that consent has been obtained from all of the known land interests affected by Changes 1 and 7. Furthermore, Change 8 only requires

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

temporary possession powers, while Change 9 does not involve adjustments to the redline boundary. Therefore, the CA Regulations are not engaged by Changes 1, 7, 8 and 9.

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 Changes 1, 7, 8 and 9 into the Examination provided that issues of fairness can be satisfactorily addressed.

Whether Changes 1, 7, 8 and 9 can be fairly accepted and examined

The ExA recognises that in considering whether or not to accept proposed Changes 1, 7, 8 and 9 for examination 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 1, 7, 8 and 9 should have a 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] in relation to Change 1, and in regard to Changes 7, 8 and 9 which is detailed in [REP7-016]. Additionally, with respect to proposed Change 1 all IPs were given the opportunity to comment on this proposed change through making responses to the ExA's third written question 3.1.4 of 3 April 2020 [PD-016].

The current Examination Timetable [PD-005, as amended by PD-011], contains the opportunity for the ExA to request further information at Deadline 8 with respect to proposed Changes 7, 8 and 9 and responses to this request for further information to be received at Deadline 9. Taking 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, the opportunity that all IPs have already had to comment on proposed Change 1 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 1, 7, 8 and 9 being accepted into the Examination, and will ensure that all IPs have an opportunity to make their views known.

Conclusions

The ExA considers that the acceptance of Changes 1, 7, 8 and 9 as detailed in [REP4a-004 and REP7-016] 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 16² have been met and that the

2

proposed Changes numbered 1, 7, 8 and 9 are non-material and can be fairly considered within the scope of the originally submitted application.

Consequently, the ExA accepts into the Examination Changes 1, 7, 8 and 9 as set out in the Applicant's Report on Proposed Scheme Changes [REP4a-004] and Report on Proposed Scheme Changes 7 to 9 [REP7-016].

Yours sincerely

Gavin Jones

Lead member of the Panel

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² 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