

# M25 junction 10/A3 Wisley interchange TR010030

## 9.113 Applicant's comments to ExA's fourth written question 4.1.3

Rule 8(1)(b)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

## M25 junction 10/A3 Wisley interchange

### Development Consent Order 202[x ]

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#### 9.113 Applicant's comments to ExA's fourth written question 4.1.3 (Schedule of Side Agreements)

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## 1. Introduction

- 1.1.1 This document sets out Highways England's response to the ExA's question 4.1.3 at Deadline 10 submission.

## 2. Highway's England response to the ExA's question 4.1.3

### 2.1.1 Summary of proposed side agreements

**ExA question:**

*4.1.3: The ExA notes the comments that you have made in REP7-001 with respect to your intention not to submit any executed side agreements as Examination documents on the grounds of commercial sensitivity. To assist the ExA's understanding of the matters that may be covered within any such side agreements, the ExA considers the Applicant should submit a Schedule listing all of the side agreements it is expecting to enter into. The Schedule should include summaries of the heads of terms that are likely to be included in each of the agreements*

- 2.1.2 Further to Highways England's (HE) comments in REP7-001 regarding side agreements, a summary of each of the proposed side agreements has been set out below to assist the ExA.
- 2.1.3 In each case, the relevant agreement remains in draft form and should be regarded as subject to contract and conditional upon the DCO to authorise the Scheme being made by the Secretary of State.

### 2.2 Agreement with Surrey County Council (in respect of highway matters)

- 2.2.1 Highways England and Surrey County Council are discussing the terms of an agreement dealing with various matters relevant to Surrey County Council's role as the local highway authority. The agreement deals with a variety of matters arising from the extensive discussions between Highways England and Surrey County Council in relation to the statement of common ground and otherwise. It covers various topics that need not be covered in the DCO itself or not in the level of detail proposed in the agreement. The current draft agreement, in summary, covers the following:
1. Detailed Design - Provisions to enable Surrey County Council to have an input into the detailed design of works to or directly affecting the local highway network;
  2. Local operating agreement – provisions requiring the parties to use reasonable endeavours to agree a local operating agreement to cover traffic management and other arrangements during works which directly interfere with a local highway;
  3. Works to the local highway network – provisions requiring Highways England to ensure the highway is safe for use as a public highway whilst the works are being carried out such as preventing materials from being

carried on to the adjacent operational highway, providing and maintaining temporary ramps and other traffic measures to protect the safety of road traffic;

4. Surveys – provisions to require that Surrey County Council's land will be reinstated if damaged following a survey;
5. Access – provisions to ensure that Surrey County Council has adequate access to inspect and maintain the areas for which it will become responsible for under the DCO;
6. Traffic signals –provisions to ensure co-ordination of the signals and make arrangements for maintenance;
7. Provisions to enable Surrey County Council to inspect the works and to certify that they have been carried out to the appropriate standard;
8. Road safety audits – provisions to require Highways England to consult with Surrey County Council and share the audits with them;
9. Drainage – provisions to require that where Highways England has taken temporary possession of land under the DCO Highways England becomes responsible for drainage in place of Surrey County Council whilst Highways England is in possession;
10. Toad underpasses – provisions to ensure the two toad underpasses provided for in the DCO application can be repositioned if necessary to better serve their function as well as providing for an additional toad underpass if needs be;
11. Ockham Bites – provisions requiring the parties to use reasonable endeavours to enter into an agreement in relation with the reconfiguration and improvement of the Ockham Bites car park that will be affected by the works;
12. Commuted sums – provisions for the payment of commuted sums to Surrey County Council in relation to parts of the local highway network; and
13. Indemnity, costs and dispute resolution provisions.
14. Potential applications by Highways England for designated funds in relation to certain matters.

## Environmental Side Agreements

- 2.2.2 As the ExA will be aware the Scheme involves HE acquiring and/or using special category land ('**SCL**') and/or land which falls within the Thames Basin Heaths Special Protection Area ('**SPA**'). In order to ensure that the integrity of the SPA is maintained notwithstanding the Scheme, the draft DCO envisages that enhancement works are carried out on some of the existing SPA land and also that additional land is managed such that it is suitable to become SPA land as compensation for the loss of some existing SPA land. The draft DCO provides that HE will have the necessary rights to enter upon the relevant land to carry out the necessary works (Works Nos. 57 and 58 in the draft DCO) and maintain them. Additionally, the draft DCO provides for replacement SCL to be acquired to recompense for the SCL (or rights over SCL) which is required for the Scheme.

2.2.3 HE is proposing to enter into two agreements in order to discharge its obligations under the relevant requirements. In essence the agreements will require the Surrey Wildlife Trust (“**SWT**”) to carry out the relevant works to the extent that HE does not intend to require its contractor for the DCO scheme to do so. As Surrey County Council (“**SCC**”) owns most of the land subject to these arrangements SCC wishes to be party to the agreement that affects its land. Accordingly one agreement will be between Highways England, SCC and SWT. The other agreement, not involving SCC’s land, will be between HE and SWT only.

#### Proposed Agreement between HE/SCC/SWT

2.2.4 The land on which the SPA enhancement works are to be carried out is owned by SCC. SCC also owns the SPA compensation land north of Old Lane (Work 57(b)). Likewise, the land to be laid out as replacement SCL and on which further long-term ecological management and monitoring works are to be carried out is for the most part to be vested in SCC (as SCC owns most of the SCL land to be acquired) in accordance with Article 38(5) of the draft DCO.

2.2.5 The draft DCO contains requirements that will require HE to carry out and maintain the necessary environmental/ecological works on both the replacement SCL and on the SPA areas. These are set out within requirements 6 (‘Landscaping’), 7 (‘Design, layout and implementation of Replacement Land’), 8 (‘Thames Basin Heaths Special Protection Area (SPA) Compensatory Habitat Creation and Enhancement Measures’), 10 (‘Bolder Mere Mitigation and Enhancement Area’) and 17 (‘Restoration and/or landscaping of land used temporarily for construction’) of the draft DCO.

2.2.6 SWT currently manages the wildlife conservation at Wisley & Ockham Commons, in which the SPA land falls, under long leases and a long-term contractual arrangement with SCC. HE proposes that its principal contractor would undertake the initial works to, and maintenance of, both the SPA land and the replacement SCL under the construction contract, which would be for a period of up to five years. HE is entering this agreement with SCC and SWT, requiring SWT to carry out (at HE’s cost) the long-term management and monitoring works for up to a further 20 year period (depending on the location) on the SPA land and replacement SCL, insofar as that land is owned by SCC (or, in the case of replacement SCL, will vest in SCC).

2.2.7 The principal terms of the agreement can be summarised as follows:

- The agreement is conditional upon the DCO being made.
- The term of the agreement will be sufficient to cover the longest period of management and monitoring envisaged – currently until 2046.
- HE will consult with SCC and SWT prior to submitting the final landscape and ecology management plan (the ‘Final LEMP’) and any other documents to the Secretary of State for approval in accordance with requirement 7 of draft DCO.
- HE to consult with SCC and SWT prior to submitting the final SPA management plan (the ‘Final SPAMP’) and any other documents to the Secretary of State for approval in accordance with requirement 8 of draft DCO.

- HE (or its principal contractor) to carry out the initial works on the SPA enhancement and compensation areas for the initial period of up to 5 years, in accordance with the details approved by the Secretary of State under requirement 8. SCC and SWT grant HE a licence to access/occupy SPA areas for the purpose of carrying out these works. This will obviate the need for HE to exercise its land rights under the DCO in relation to these areas.
- After the initial period, SWT shall perform the long-term management and monitoring of the SPA enhancement and compensation areas in accordance with the details approved by the Secretary of State under requirement 8 of the draft DCO.
- HE (or its principal contractor) will carry out the initial works to the replacement SCL (after Highways England has acquired it from the relevant parties either by agreement or using powers of compulsory acquisition) for the initial period of up to 5 years, in accordance with the details approved under requirement 7 of the DCO.
- After the initial period, SWT shall perform the long-term management and monitoring of the replacement SCL in accordance with the details approved by the Secretary of State under requirement 7 of the draft DCO.
- SWT will maintain on behalf of HE any green verge element of the replacement Cockcrow bridge as from the date that the green element has been laid out by Highways England and is ready for use.
- The works are to be carried out to the standard required by the Final LEMP and Final SPAMP, such that any 'measures of success' (KPI's) set out in those documents shall be met or exceeded, and a monitoring party appointed by HE shall monitor and report on whether the measures of success have been met.
- HE will retain step-in rights in the event that SWT becomes unable or unwilling to continue to perform their obligations to manage and monitor the land in accordance with the terms of the agreement.
- HE is to pay for the works performed by SWT on the land in accordance with the terms of the agreement.
- A steering group is to be established in accordance with the Final LEMP and Final SPAMP in order to oversee performance and management of the agreement.

#### Proposed Agreement between Highways England and SWT

- 2.2.8 The draft DCO provides for some land not owned by SCC to be managed such that it is suitable to become SPA land as compensation for the loss of some existing SPA land. This area of land is owned by the Royal Horticultural Society ('RHS'). The draft DCO provides that Highways England will have the necessary rights to enter upon the relevant land to carry out the necessary works (Work no. 57(a) in the draft DCO) and maintain them.
- 2.2.9 Additionally, the draft DCO provides for replacement SCL to be acquired to recompense for the SCL (or rights over SCL) which is required for the Scheme.

The land to be laid out as replacement SCL and on which further long-term ecological management and monitoring works are to be carried out is for the most part to be vested in SCC, but there are some areas of replacement land to be vested in others under article 38 of the draft DCO.

- 2.2.10 The draft DCO contains requirements that will require Highways England to carry out and maintain the necessary environmental/ecological works on both the replacement SCL and on the SPA compensation area. These are set out within requirements 6 ('Landscaping'), 7 ('Design, layout and implementation of Replacement Land'), and 8 ('Thames Basin Heaths Special Protection Area (SPA) Compensatory Habitat Creation and Enhancement Measures') of the draft DCO.
- 2.2.11 SWT) currently manages the wildlife conservation at Wisley & Ockham Commons and also currently manages the proposed SPA compensation area owned by RHS under what HE understands to be an informal licence arrangement. Highways England proposes that its principal contractor would undertake the initial works to, and maintenance of, both the SPA compensation area and the replacement SCL under the construction contract, which would be for a period of up to five years. Highways England is entering this agreement with SWT, requiring SWT to carry out (at Highways England's cost) the long-term management and monitoring works for up to a further 20 year period (depending on the location) on the SPA compensation area owned by RHS and the replacement SCL, insofar as that land will vest in parties other than SCC.
- 2.2.12 The principal proposed terms of the agreement can be summarised as follows:
- The agreement is conditional upon the DCO being made.
  - The term of the agreement will be sufficient to cover the longest period of management and monitoring envisaged – currently until 2046.
  - HE (or its principal contractor) is to carry out the initial works on the SPA compensation area owned by RHS for the initial period of up to 5 years, in accordance with the details approved by the Secretary of State under requirement 8 of the DCO.
  - After the initial period, SWT shall perform the long-term management and monitoring of the SPA compensation area in accordance with details approved by the Secretary of State under requirement 8 of the DCO.
  - HE will exercise its land powers if no agreement with the land owner is reached for the necessary rights to maintain the SPA compensation area, to ensure continuing access to the land for both itself and SWT (in effect, its contractor).
  - HE (or its principal contractor) will carry out the initial works to the replacement SCL (after HE has acquired it from the relevant parties either by agreement or using powers of compulsory acquisition) for the initial period of up to 5 years, in accordance with the details approved by the Secretary of State under requirement 7 of the DCO.
  - After the initial period, SWT will perform the long-term management and monitoring of the replacement SCL in accordance with details approved by the Secretary of State under requirement 7 of the DCO.

- The works shall be carried out to the standard required by the Final LEMP and Final SPAMP, such that any 'measures of success' (KPI's) set out in those documents shall be met or exceeded and a monitoring party appointed by Highways England will monitor and report on whether the measures of success have been met.
- HE will retain step-in rights in the event that SWT becomes unable or unwilling to continue to perform their obligations to manage and monitor the land in accordance with the terms of the agreement.
- HE will pay for the works performed by SWT on the land in accordance with the terms of the agreement.
- A steering group will be established in accordance with the Final LEMP and Final SPAMP in order to oversee performance and management of the agreement.

## 2.3 Wisley Property Investments Limited (WPIL)

2.3.1 HE and Wisley Property Investment Limited (WPIL) are continuing to negotiate the terms of an agreement to put in place a binding mechanism in respect of the interaction between the construction and operation of the DCO Scheme and WPIL's redevelopment proposals for the airfield (the "**Airfield Redevelopment**"). The overarching principle which is intended to underpin the agreement is that HE wishes to work collaboratively with WPIL with a view to the DCO Scheme and the Airfield Redevelopment both being delivered in a timely and co-operative manner.

2.3.2 In summary the main elements of the proposed agreement are as follows:

### Construction Access Arrangements

Provisions to allow WPIL to use, subject to conditions, an access way (i.e. the construction access to be created by HE to build the Wisley Lane diversion and the new road itself before it is open to traffic) for the purposes of constructing the Airfield Redevelopment.

### Permanent Access to the Airfield Redevelopment

Provisions for HE to seek to agree with WPIL arrangements for a future permanent vehicular access (to a prescribed standard) from the Wisley Lane diversion to the Airfield Redevelopment. In essence this involves HE constructing the Wisley Lane diversion and incorporating futureproofing for such an access by, for example, locating utilities such that WPIL will not incur substantial costs in relocating them for the purposes of its new access

### Wisley Lane Worksite

Provisions as to the use of the this worksite including obligations upon HE to vacate it as soon as it is in a position to do so, also as to its use bearing in mind the likely proximity of a Suitable Alternative Natural Greenspace (SANG) related to the Airfield Redevelopment

### Methods of Working

Provisions for the parties to seek agreement on various methods of working to be adopted during construction.

### Species

Provisions for the detailed design of the Wisley Lane diversion to accommodate appropriate features to avoid habitat severance

### Trees and Other Habitat

Provisions under which HE will retain trees and other valuable habitat in so far as practicable

### Stratford Brook

Provisions for the parties to agree arrangements whereby WPIL will undertake maintenance responsibilities on HE's behalf and cost in accordance with an agreed specification and in conformity with requirement 12 of the DCO.

### Access for Surveys

Provision for HE to enter upon WPIL's land, subject to certain conditions, for the purposes of carrying out non-intrusive ecological and other surveys.

## Land

Provisions in relation to temporary / permanent land acquisition, use, rights and compensation

## **2.4 Royal Horticultural Society**

- 2.4.1 Highways England (HE) and the Royal Horticultural Society (RHS) are discussing heads of terms for a land and works agreement (LWA) which are intended to form the basis of a binding agreement in respect of the interaction between the construction and operation of the Scheme and the continued operation of RHS Garden Wisley (the Garden). The overarching principle which is intended to underpin the agreement is that HE wishes to work collaboratively with RHS with a view to minimising the effects of the Scheme on the Garden so far as practicable and consistent with HE's need to deliver the Scheme in a timely and efficient manner.
- 2.4.2 The discussions on the heads of terms are without prejudice to RHS' objection to the Scheme but Highways England wishes to reach as much common ground with RHS as may be possible.
- 2.4.3 The basis of the heads of terms is generally but not exclusively as follows:-
- In order to meet the overarching objective referred to above, the parties will establish a working group with terms of reference and will meet regularly to ensure that RHS is kept informed of the detailed design of the Scheme so far as relevant to RHS and in relation to the carrying out of construction which may affect access to the Garden.
  - HE will where appropriate share information with RHS of relevance to access to and the operation of the Garden, including so far as relevant the draft construction and environmental management plan (CEMP) and will consider any comments which RHS may make.
  - It is proposed that the agreement will contain specific provisions in relation to particular issues which have been raised by RHS, including access during construction for visitors to the Garden arriving via Footpath 7, access for visitors arriving by bus and the construction of the Wisley Lane overbridge.
  - The agreement will contain provisions relating to the provision of temporary and permanent signage to the Garden.
  - The agreement will provide for a communication protocol to be developed including notification of RHS major events and traffic management measures by HE with the ability to affect access to the Garden and will provide for named points of contact for both parties.
  - The agreement will contain provisions relating to access to and use of land within RHS ownership needed temporarily or permanently for construction and operation of the scheme, including in relation to the SPA compensation works which are proposed on plots 11/2 and other environmental mitigation works on plot 11/3.
- 2.4.4 The parties are working towards a binding agreement giving effect to the agreed heads of terms being entered into before the close of the examination, and a

signed agreement prior to the Secretary of State making a decision on the DCO application for the Scheme.

## **2.5 Agreements with statutory undertakers**

2.5.1 Highways England is negotiating side agreements with National Grid, South Eastern Power Networks (SEPN), Affinity Water and Southern Gas Networks (SGN). The agreements are to ensure each statutory undertaker retains its existing rights to access and maintain apparatus as well as some other details that do not need to be dealt with in the DCO itself. The agreements with SEPN and SGN are agreed and the remaining agreements are expected to be entered into before the close of the examination.

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