

**M25 junction 10/A3 Wisley interchange  
TR010030**

**9.122 Applicant's note for Action Point  
9 (Session 2 Part 3 Special Category  
Land and Replacement Land)**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

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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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### 9.122 Applicant's note to Action Point 9 (Session 2 Part 3 Special Category Land and Replacement Land)

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## 1. Introduction

- 1.1 This note provides a statement as to the current position in relation to the historic common/open space and exchange land issue which was discussed under agenda item 7 of the Compulsory Acquisition Hearing, session 2 part 3, Special Category Land and Replacement Land matters, on 17 June 2020.
- 1.2 This note is intended to consolidate, for the Examining Authority's and Secretary of State's benefit, Highways England's previous submissions on this matter which were set out in the following documents:
- the statement of reasons [APP-022];
  - the note prepared in response to the Planning Inspectorate's section 51 advice ('Transferring Historic Common land and Exchange Land' [AS-017]); and
  - Highways England's responses to the examining authority's written questions ExAQ1.16.15 [REP2-013 at page 160] and ExAQ 1.16.16 [REP2-013 at page 161], ExAQ3.16.6 [REP7-004 at pages 56-57] and ExAQ 4.16.4 [REP10-004 at pages 19-20].

## 2. Background

- 2.1 As set out at section 7.2.14 to 7.2.20 of the statement of reasons [APP-022], the Scheme affects common land and former open space which was originally authorised to be acquired compulsorily for the construction of the M25 junction 10 interchange in the late 1970s and early 1980s. Some of that land is still registered common land despite the M25 having been constructed over parts of it. Additionally, some exchange land which ought to have been given by Highways England's predecessors to Surrey County Council in exchange for the land needed for the construction of the interchange still vests in Highways England, although public access to it is available and it is therefore special category land in any event.
- 2.2 The position which ought to have been reached is that the exchange land currently vested in Highways England should be vested in Surrey County Council and the remaining historic common and open space land transferred from Surrey County Council to Highways England so that the commons register may be updated to reflect the position had the M25 Motorway and the London – Portsmouth Trunk Road (A3) (Wisley interchange) Compulsory Purchase Order (No. 1 CSE) 1979 (the 1979 Order) and The M25 Motorway and the London – Portsmouth Trunk Road (A3) (Wisley interchange) No. 3 Supplementary Compulsory Purchase Order (No. CSE 4) 1982 (the 1982 Order) been implemented in full.

## 3. The affected land parcels

- 3.1 The areas of historic common land/open space and exchange land in question are shown on the plan annexed to 'Transferring Historic Common land and Exchange Land' [AS-017].

### *Historic common land*

- 3.2 The historic common land (so far as it is affected by the Scheme) comprises the following land parcels identified in the book of reference [REP8-016] and shown on the special category land plans [REP8-006]:- 5/18a, 6/4c, 6/6c, 6/6d, 13/16 and 14/10. This land was authorised to be acquired compulsorily pursuant to the 1979 and 1982 Orders and used in connection with the construction and operation of the M25/A3 interchange scheme.

### *Historic open space land*

- 3.3 Some of the former open space land shown coloured yellow on the plan annexed to 'Transferring Historic Common land and Exchange Land' [AS-017] remains within the ownership of Surrey County Council. It is plainly no longer open space land as the M25/A3 interchange has been constructed on it. Accordingly, for the purposes of the Scheme, it is not special category land. The historic open space land is relevant to the historic common land and exchange land issue only to the extent that its ownership affects the operation of the automatic vesting provisions in the 1979 and 1982 Orders (discussed further below).

### *Historic exchange land*

- 3.4 The historic exchange land was authorised to be acquired compulsorily pursuant to the 1979 Order and 1982 Order and given in exchange for the historic common land which was also to be acquired compulsorily.
- 3.5 The historic exchange land (so far as it is affected by the Scheme) comprises the following land parcels identified in the book of reference [REP8-016] and shown on the special category land plans [REP8-006]:- plots 3/23, 3/28, 3/30, 4/5a, 12/32, 12/33 (permanent acquisition) and plots 3/25, 3/27, 3/32, 3/37, 4/3c, 4/3d, 4/4a, 4/4b, 5/21, 11/19, 11/19a, 11/20, 11/21, 12/31 (permanent acquisition of rights).
- 3.6 Each of the historic exchange land plots is special category land on account of being open space land to which public access is available.

## **4. Automatic vesting provisions in 1979 and 1982 Orders**

- 4.1 The historic exchange land was to vest in the owner of the historic common land and historic open space land to be acquired under the 1979 and 1982 Orders, principally Surrey County Council, pursuant to 'automatic vesting provisions' which would have the effect that, once the Minister for Transport or Secretary of State (as the case may be) had acquired all of the historic exchange land, historic common land and historic open space land, the historic common land would cease to be common land and the exchange land would vest automatically in the owners of the historic common land (principally Surrey County Council) and become common land.
- 4.2 In the event, not all of the historic common land and historic open space was acquired by Highways England's predecessors. Given the passage of time and the statutory reorganisations which have taken place (including the establishment of the Highways Agency and its subsequent reorganisation as Highways England), it is not clear to either Highways England or Surrey County

Council why (a) not all of the historic common land and historic exchange land was acquired compulsorily by Highways England's predecessors under the powers conferred by the 1979 and 1982 Orders and (b) why the position was not resolved between the parties during the extensive intervening period.

4.3 For those reasons, the automatic vesting provisions did not have effect which resulted in the current anomalous position in which the historic common land has not become de-registered and some of the exchange land has not yet vested in Surrey County Council.

4.4 Accordingly, the historic common land appears in the commons register maintained by Surrey County Council [REP2-046] and [AS-032] as registered common land despite the land being used for construction of the M25/A3 interchange and no longer having public access. The historic exchange land does not yet appear in the commons register as registered common land.

## 5. Proposed resolution

5.1 In order to give effect to the intention of the 1979 and 1982 Orders, and to reflect the position on the ground, namely that the historic common land has been acquired and used for the construction and operation of the M25/A3 interchange and the historic exchange land has been acquired and made available for use by the public, Highways England and Surrey County Council are negotiating voluntary transfers of land.

5.2 On the completion of the transfers, all of the historic common land and historic open space land will vest in Highways England and, correspondingly, all of the historic exchange land will vest in Surrey County Council. Accordingly, the commons register maintained by Surrey County Council may then be updated so that the historic exchange land is shown as registered common land and the historic common land no longer registered as such.

5.3 Highways England and Surrey County Council continue to discuss the proposed transfers and are confident that they will be completed although it is not possible to confirm that the transfers will be completed before the close of the examination. However, as explained below, the granting of development consent for the Scheme does not depend upon the transfers being completed and the commons register updated.

## 6. Treatment of the historic common land, historic open space land historic exchange land for the purposes of the Scheme

6.1 In relation to the historic common land affected by the Scheme, no powers of compulsory acquisition or temporary possession have been sought and the land is therefore shown coloured orange on the land plans.

6.2 In relation to the historic open space land affected by the Scheme, as noted above following construction of the M25/A3 interchange that land ceased to be open space and accordingly is not special category land.

- 6.3 In relation to the historic exchange land affected by the Scheme, powers of compulsory acquisition (and acquisition of rights) have been sought over such land in order to build and operate the Scheme.
- 6.4 In respect of historic exchange land acquired permanently for the Scheme, replacement land has been provided at a 2.5:1 ratio which has been applied to other common land subject to permanent acquisition, rather than the 2:1 ratio for replacement land which has applied to the permanent acquisition of open space land. This has been done on the prudent basis that, following completion of the transfers and amendments to the commons register, the land will become common land. Had Highways England provided replacement land at a 2:1 ratio (which would reflect the current strict legal status of the historic exchange land), it could have created difficulties were the land to become common land between the making of the application for the Scheme and the Secretary of State's decision as was anticipated. On either basis, the provision of replacement land complies with section 131(4) Planning Act 2008 in that the replacement land is not less in area than the special category land which it is proposed to be given in exchange for and will be no less advantageous.
- 6.5 In respect of historic exchange land over which permanent rights are acquired for the Scheme, replacement land has been provided at a 1:1 ratio. The same ratio has been applied to both common land and open space where the acquisition of the right is considered to burden the land. Accordingly, the current status of the historic exchange land as open space rather than registered common (its intended status following completion of the transfers and amendments to the commons register) has no bearing on the replacement land which has been provided where rights are proposed to be acquired over special category land.

## **7. Implications for the Secretary of State's decision on the Scheme**

- 7.1 Whilst it is unfortunate that the completion of the transfers and amendments to the commons register have not yet been made, this has no bearing on the Secretary of State's ability to make the order. As explained above, no issue arises in relation to the historic common land because Highways England has not sought any compulsory acquisition powers over the land. In relation to the historic exchange land, Highways England has proceeded on the prudent basis that the land will become common land on completion of the transfers and has therefore regarded it as such in calculating the overall amount of replacement land to be provided.
- 7.2 If the Secretary of State disagrees with Highways England's approach and considers that the historic exchange land should be regarded as open space land for the purposes of calculating replacement land, that would not be a basis on which to refuse to make a development consent order for the Scheme although it may have a bearing on the extent of the compulsory acquisition powers which are to be conferred for the purposes of acquiring replacement land.
- 7.3 Accordingly, if the Secretary of State is minded to grant development consent for the Scheme as proposed, he may make a development consent order and certify his satisfaction under sections 131 and 132 Planning Act 2008 without the need

for any amendments to the book of reference, land plans or special category land plans.

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