

M25 junction 10/A3 Wisley interchange TR010030

9.128 Applicant's Submission of Surrey County Council's Protective Provisions

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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The Infrastructure Planning (Examination Procedure) Rules 2010

M25 junction 10/A3 Wisley interchange Development Consent Order 202 [x]

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1. Introduction

- 1.1.1 Highways England and Surrey County Council are negotiating a side agreement on highway matters, the scope of which is summarised in paragraph 2.2.1 of REP10-008.
- 1.1.2 Although negotiations are at an advanced stage Highways England cannot be certain that the agreement will be completed before the examination ends. To deal with this uncertainty Highways England has prepared a set of protective provisions in favour of Surrey County Council in its capacity as local highway authority.
- 1.1.3 The protective provisions are very substantially based on the protective provisions in favour of the local highway authority in Schedule 8 of the most recent draft of the development consent order in respect of the proposed A303 Sparkford to Ilchester Dualling Scheme (application reference TR10036) – REP8-005. This DCO application has been through its examination stage and is currently before the Secretary of State for determination. These protective provisions have been referred to by Surrey County Council during the negotiations upon the side agreement and are mentioned in Part 1.5 of the Statement of Common Ground with Surrey County Council (on page 28)[REP8-030].
- 1.1.4 The protective provisions now submitted by Highways England in respect of the M25 Junction 10/A3 Wisley Interchange Scheme reflect a number of provisions in the highways side agreement. If that agreement is completed then the protective provisions would be unnecessary. If it is not then the Secretary of State may decide to include them in the DCO as made. For this reason they are not included in the draft DCOs currently before the examining authority.
- 1.1.5 The protective provisions have been drafted on the basis that they would form two new parts to Schedule 9 of the DCO, the latest draft version of which is REP8-013, with the paragraphs numbered accordingly.
- 1.1.6 In summary the main matters the subject of the protective provisions are;
- Provisions for the calculation and payment of commuted sums to Surrey County Council for the future maintenance of “Non-Standard Highway Assets” (as defined in the provisions) that will be added to the local highway network by the Scheme
 - Provisions for the calculation and payment of commuted sums to Surrey County Council for the future maintenance of the new route for non-motorised users that is to run from Wisley Lane to Seven Hills Road
 - Provisions whereby officers of Surrey County Council may participate in the detailed design of works to the local highway network
 - Provisions under which officers of Surrey County Council may inspect the works and test materials

- Provisions under which Surrey County Council may participate in road safety audits in respect of the works
- Various provisions with a view to minimising disruption and as regards safety
- Provisions under which Highways England must make good any defects in the works

2. Protective Provisions

202[] No. 0000

INFRASTRUCTURE PLANNING

**The M25 Junction 10/A3 Wisley Interchange Development
Consent Order 202[]**

Made - - - - 202[]
Coming into force - - 202[]

SCHEDULE 1

Articles 35 and 44

PROTECTIVE PROVISIONS

PART 7

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY REGARDING VEHICULAR HIGHWAYS

70. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the local highway authority.

71. In this Part of this Schedule—

“Commuted Sum” means the sum to be paid by the undertaker to the local highway authority for the future maintenance of Non-standard Highway Assets not previously forming part of the local highway as calculated in accordance with paragraph 85 of this Part of this Schedule;

“Detailed Information” means the following drawings, specifications and other information relating to the relevant works to the local highway, which must be in accordance with the detailed design of the authorised development—

- (a) boundary, environmental and mitigation fencing;
- (b) road restraint systems (vehicle and pedestrian);
- (c) drainage and ducting;
- (d) earthworks;
- (e) road pavements;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) road lighting (including columns and brackets);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures;
- (k) landscaping, planting and any boundary features which will form part of the local highway;
- (l) utility diversions;
- (m) a schedule of timings for the works, including dates and durations for any closures of any part of the local highway;
- (n) traffic management proposals including any diversionary routes; and
- (o) a schedule of condition of any features of the local highway that will be affected by the relevant works;

“local highway” means any public, vehicular highway which vests or is intended at the completion of works to vest in or be otherwise maintainable by the local highway authority;

“local highway authority” means Surrey County Council; and

“Non-standard Highway Assets” means highway assets which the local highway authority will become responsible for maintaining and which incur maintenance costs beyond the normal costs of maintaining the public highway having regard to the lists of standard and non-standard assets set out in paragraph 85 of this Schedule.

72. Before commencing the construction of, or the carrying out of any work authorised by this Order which involves works to a local highway the undertaker must provide to the local highway

authority the Detailed Information relating to those works and the works must be carried out substantially in accordance with that Detailed Information.

73.—(1) Before commencing the construction of, or the carrying out of any work authorised by this Order which involves works to a local highway the undertaker must use reasonable endeavours to agree with the local highway authority a local operating agreement covering the following as relevant to the works in question—

- (a) Communications and Customer Care – communication with stakeholders and identification of which party is responsible for each activity;
- (b) Operational Areas – definitions and scheme extents for the works areas;
- (c) Winter maintenance and severe weather arrangements;
- (d) Continuity of technology arrangements;
- (e) Incidents – arrangements for dealing with and recording incidents;
- (f) Traffic management arrangements providing the key activities to be undertaken with regard to the design, installation, maintenance and removal of traffic management measures.

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the relevant works.

74. The undertaker will allow and facilitate an appropriately qualified officer or officers of the local highway authority that has been nominated by the local highway authority to participate in the design process for the detailed design of those parts of the authorised development which comprise works to any local highway and will have reasonable regard to the views of any such officer given in writing to the undertaker with specific reference to this paragraph in finalising the detailed design prior to any element reaching design fix or freeze provided that any views are provided within 2 weeks of the relevant meeting or the local highway authority being provided with the relevant information and provided always that it will be the decision of the undertaker whether it implements such views and for the avoidance of doubt any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

75. Participation under paragraph 74 is to be facilitated by invitations to attend design meetings (during the period that such meetings are taking place) not less than once per calendar month and the provision to the local highway authority of such drawings, cross sections and design proposals as are required to allow the local highway authority to provide views on detailed design proposals to the undertaker.

76.—(1) Any officer of the local highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker not less than two working days' notice, enter upon and inspect any part of the authorised development which—

- (a) is in, over or under any local highway, or
- (b) which may affect any local highway or any property of the local highway authority during the carrying out of the works and the undertaker must give to such officer all reasonable facilities for such inspection.

(2) The testing of materials used in any works affecting local highways must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works).

(3) The local highway authority must be provided with copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable.

(4) Notwithstanding the foregoing, the local highway authority may upon giving at least 10 working days' notice to the undertaker test all or any materials used or proposed to be used in any work to the local highway at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

(5) The undertaker must not alter, disturb or in any way interfere with any property of the local highway authority on or under any local highway, or the access thereto except to the extent authorised by this Order without the consent of the local highway authority.

77.—(1) The undertaker must procure that an appropriately qualified safety auditor undertakes road safety audits stages 2, 3 and 4 on the works the subject of this Part in accordance with the Design Manual for Roads and Bridges Volume 5 Section 2 Part 2 (GG 119) or any replacement or modification of that standard and must provide copies of the reports of such audits to the local highway authority.

(2) The local highway authority must be invited to participate in the stage 2, 3 and 4 road safety audits conducted under sub-paragraph (1) by being given an opportunity to comment thereupon.

(3) Where the report of a road safety audit referred to in sub-paragraph (2) recommends works to be carried out, the undertaker must use reasonable endeavours to agree with the local highway authority arrangements for them to be implemented, provided that no works may be implemented that would give rise to any materially new or materially different significant environmental effects from those identified in the environmental statement.

(4) Any works to be carried out pursuant to a recommendation in a road safety audit as referred to in sub-paragraph (2) must be carried out by the undertaker prior to the local highway authority becoming responsible for the maintenance of the relevant part of the local highway network under article 12 (construction and maintenance of new, altered or diverted streets and other structures) of this Order.

(5) The undertaker must use reasonable endeavours to agree with the local highway authority a programme for any works to be carried out under sub-paragraph (4), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes as appropriate.

78. Provision must be made in accordance with the local highway authority's reasonable requirements at the site of any works the subject of this Part to prevent mud and other materials from being carried on to the adjacent local highway by vehicles and plant and the operational highway in the vicinity of the site of the works is to be swept to ensure its safe use as a public highway.

79. The undertaker must not, except with the consent of the local highway authority or as authorised by this Order erect or retain on or over a local highway to which the public continues to have access any scaffolding or other structure which obstructs the local highway.

80. Except in an emergency or where necessary to secure the safety of the public, no direction or instruction may be given by the local highway authority to the contractors, servants or agents of the undertaker regarding any highway operations without the prior consent in writing of the undertaker.

81. In exercising the powers conferred by the Order in relation to any local highway the undertaker must have regard to the potential disruption of traffic which may be caused, seek to minimise such disruption so far as is reasonably practicable and must at no time prevent or unreasonably impede access by emergency service vehicles to any property.

82. The undertaker must, if reasonably required by the local highway authority, provide and maintain during such time as the undertaker may occupy any part of a local highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic, or both, and any other traffic measures required for the safety of road traffic.

83. Where the undertaker carries out any works to any local highway pursuant to the Order it must make good any defects in those works notified to it by the local highway authority within the period of 52 weeks after the date of the completion of the works (the "Defects Period") and do so to the reasonable satisfaction of the local highway authority as certified by the local highway authority.

84. Prior to the completion of any works under this Part, the undertaker must invite the local highway authority to inspect the works to identify any defects or incomplete works.

85.—(1) The undertaker must, within 3 months of the detailed design of the authorised works having been finalised, prepare a list of assets not previously forming part of the local highway for which the local highway authority will be responsible for maintenance following completion of the works under this Part.

(2) The undertaker and the local highway authority must use reasonable endeavours to agree a schedule of items on the list agreed under sub-paragraph (1) that are Non-standard Highway Assets having regard to the following—

(a) Standard Highway Assets include—

- (i) bollards and markers posts manufactured from plastic derivatives or recycled plastic/rubber;
- (ii) carriageways;
- (iii) cycleways;
- (iv) embankments and earthworks;
- (v) footways;
- (vi) galvanised pedestrian guard railing;
- (vii) grass verges;
- (viii) gully drainage, connection pipes and gravity draining highway carrier drains;
- (ix) landscaping;
- (x) passively safe sign posts where required for road safety;
- (xi) pre-cast concrete kerbing;
- (xii) road markings;
- (xiii) standard highway lighting layouts, columns and lanterns;
- (xiv) standard illuminated and non-illuminated highway signs;
- (xv) traffic signals;

(b) Non-Standard Highway Assets include—

- (i) culverts, bridges and retaining walls;
- (ii) landscaping features including planting, trees and hedging;
- (iii) special features including noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails, knee fences and gates;
- (iv) sustainable drainage systems ("SuDS") or non-standard highway drainage features such as—
 - (aa) flow control devices and attenuation storage;
 - (bb) SuDS including maintenance of any related landscaping;
 - (cc) oil or petrol interceptors including for the disposal of contaminated waste;
 - (dd) pumping stations and their energy charges;
 - (ee) watercourses and swales.

(3) Where the schedule required under paragraph (2) is not agreed, notwithstanding escalation of the matter to a more senior level within the local highway authority and the undertaker, matters of dispute in respect thereof are to be referred to arbitration under article 49 (arbitration).

(4) Following agreement of the schedule under sub-paragraph (2) or determination under sub-paragraph (3), the local highway authority must prepare a calculation of the Commuted Sum based on the maintenance the local highway authority considers to be required for the schedule of Non-Standard Highway Assets agreed under sub-paragraph (2) or determined under sub-paragraph (3) and must use reasonable endeavours to agree the calculation with the undertaker.

(5) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by the local highway authority under sub-paragraph (4) including details of any assumptions used.

(6) Where the calculation prepared under paragraph (4) is not agreed, notwithstanding escalation of the matter to a more senior level within the local highway authority and the undertaker, the determination of the Commuted Sum will be referred to arbitration under article 49 (arbitration).

(7) The undertaker must pay the Commuted Sum related to any works to the local highway authority in one instalment on the date of completion of the relevant works under this Part to the local highway network once the Defects Period referred to in paragraph 83 has passed and any defects to be made good under that paragraph have been made good to the reasonable satisfaction of the local highway authority as certified by the local highway authority.

86. Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as it considers appropriate forthwith without prior notice to the undertaker in the event of an emergency or imminent danger to the public and the local highway authority will forthwith inform the undertaker of any steps taken under this paragraph.

87. Any participation by the local highway authority under this Part will be at the cost of the local highway authority

PART 8

FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY REGARDING NON-VEHICULAR HIGHWAYS

88. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the local highway authority.

89. In this Part of this Schedule—

“Commuted Sum” means the sum to be paid by the undertaker to the local highway authority—

- (a) for the future maintenance of Non-standard Highway Assets not previously forming part of the local highway; and
- (b) for the future maintenance of the surface and any filter drains comprised in the bridleway forming part of Work No.33, Work No.35 (except Work No.35(k)) and Work No.44(c) as calculated in accordance with paragraph 95 of this Schedule;

“Detailed Information” means the following drawings, specifications and other information relating to the local highway, which must be in accordance with the detailed design of the authorised development—

- (a) the relevant streets rights of way and access plans;
- (b) a schedule of widths and limitations, including details of any gates and stiles;
- (c) details of surfacing, kerbs and drainage; and
- (d) details of any signage to be altered or erected;

“local highway” means any public, non-vehicular highway which is to be maintainable by the local highway authority.

90. Before commencing the construction of, or the carrying out of any work authorised by this Order which involves works to a local highway, the undertaker must provide to the local highway authority the Detailed Information relating to those works, and those works must be carried out substantially in accordance with that Detailed Information.

91. Any officer of the local highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker not less than two working days’ notice, enter upon and inspect any part of the authorised development which is in, over or under any local highway, or which may affect any local highway or any property of the local highway authority, during the

carrying out of the works, and the undertaker must give to such officer all reasonable facilities for such inspection.

92.—(1) The testing of materials used in any works affecting local highways must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works).

(2) The undertaker must provide to the local highway authority copies of all test certificates and results which have been requested by the local highway authority in writing as soon as reasonably practicable.

(3) Notwithstanding the foregoing, the local highway authority may upon giving at least 10 working days' notice to the undertaker test all or any materials used or proposed to be used in any work to the local highway at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

93.—(1) Where the undertaker carries out any works to any local highway it must make good any defects in those works notified to it by the local highway authority within the period of 52 weeks after the date of the completion of the works (the "Defects Period") to the reasonable satisfaction of the local highway authority as certified by the local highway authority.

(2) The carrying out of any remedial works required under sub-paragraph (1) are works under this Order.

94. The undertaker must notify the local highway authority in writing of the date of the completion of the works to any area of local highway within 5 working days of such completion.

95.—(1) The undertaker must, within 3 months of the detailed design of the works relevant to this Part being made final prepare a list of assets not previously forming part of the local highway for which the local authority will become responsible for maintenance following completion of that work.

(2) The undertaker and the local highway authority must use reasonable endeavours to agree a schedule of items on the list agreed under sub-paragraph (1) that are Non-standard Highway Assets having regard to the list of Standard Highway Assets and Non-standard Highway Assets in paragraph 85(2) in Part 7 of this Schedule.

(3) Where the schedule required under paragraph (2) is not agreed, notwithstanding escalation of the matter to a more senior level within the local highway authority and the undertaker matters of dispute in respect thereof are to be referred to arbitration under article 49 (arbitration).

(4) Following agreement of the schedule under sub-paragraph (2) or determination under sub-paragraph (3), the local highway authority must prepare a calculation of the Commuted Sum and must use reasonable endeavours to agree it with the undertaker.

(5) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by the local highway authority under sub-paragraph (4) including any details of assumptions used.

(6) Where the calculation prepared under paragraph (4) is not agreed, notwithstanding escalation of the matter to a more senior level within the local highway authority and the undertaker, the determination of the Commuted Sum will be referred to arbitration under article 49 (arbitration)

(7) The undertaker must pay the Commuted Sum related to any works to the local highway authority in one instalment on the date of completion of the relevant works under this Part once the Defects Period referred to in paragraph 93 has passed and any defects to be made good under that paragraph have been made good to the reasonable satisfaction of the local highway authority as certified by the local highway authority.

96. Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

97. Any difference arising between the undertaker and the local highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 49 (arbitration).

98. Any participation of the local highway authority under the matters in this Part shall be at the cost of the local highway authority.

STATUTORY INSTRUMENTS

202[] No. 0000

INFRASTRUCTURE PLANNING

The M25 Junction 10/A3 Wisley Interchange Development
Consent Order 202[]

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