



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

Environment Transport and Infrastructure  
Surrey County Council  
County Hall  
Kingston Upon Thames  
KT1 2DY

Emailed to: M25Junction10@planninginspectorate.gov.uk

Your Ref: TR010030

Our Ref: IP 20023014

3rd July 2020

Dear Mr Jones

### **Planning Act 2008**

### **Application by Highways England for an order granting development consent for the M25 Junction 10/A3 Wisley Interchange improvement project**

### **Submission made pursuant to Deadline 11**

The submission includes the following:

1. **Key points from Surrey County Council's oral response at the CAH 1 and CAH 2, sessions 3 and 4.**

Detail is provided at Annex A and also addresses session 2, part 4 action point 1.

2. **Further information following CAH**

Although it was not discussed at the CAH, Surrey County Council (SCC) would like to highlight that plot PBF1 has been identified for potential flood storage. SCC have had recent contact with the Environment Agency, who have stated that the Sanway, Byfleet Flood Alleviation is very likely to go ahead. There is another parcel of land owned by RHS Wisley that may be used instead of or, or as well as the land at PBF1. As the scheme is not at the Detailed Design stage, it is not possible to establish what percentage of PBF1 may be required. SCC wishes to highlight that if PBF1 is the only parcel to be offered, this may be compromised by potential use by the FAS.

The Council notes the ExA letter of 2<sup>nd</sup> July 2020 requesting comments regarding possible Replacement Land options and will review the options presented for deadline 12.

### **3. CAH session 2, part 3 action point 9 – Position statement on historic land**

Highways England (HE) have shared the position statement that they have produced and SCC are in broad agreement with this summary in relation to the transfer of historic land. The relevant sections from the HE summary with some minor additions have been submitted as a consistent summary at Annex B.

### **4. CAH session 2, part 4 action point 3 – Objection to land plots if agreement not reached**

Set out below are land plots that SCC might object to if agreement is not reached within the relevant side agreement with respect to its Compulsory Acquisition (CA) and/or Temporary Possession concerns:

If Highways England do not provide commuted sum payments to SCC for the embankments supporting the NMU then SCC would require these plots to be shown as temporary possession with permanent rights as opposed to temporary possession and require Highways England to maintain these embankments. SCC acknowledge that some of these embankments will be relatively small in height, however others (e.g. around Cockcrow bridge) are significant. These plots are as follows:

**Plot No's** 3/33 (part), 3/34, 4/4c, 4/3b, 4/3, 5/7b 5/9, 12/5 (NMU embankments)

**Plot No's** 4/22a, 4/24, 4/30a, 4/32, 4/40, 4/42, 4/45, 4/46a, 4/48, 4/48b, 4/49, 4/49b, 4/57, 4/58 (Cockrow Bridge)

**Plot No's** 5/1, 5/2, 5/7b, 5/9 (Sandpit Hill bridge).

**Plot No** 9/13 – this is shown as temporary acquisition with permanent rights but appears to contain a drainage outfall structure. SCC would request that this is permanent acquisition with title passing to SCC.

### **5. Outstanding action from ExA Q3**

The first edition Commons map as requested in question 3.9.1 is provided at Annex C

### **6. Progress on side agreements**

A final position statement on the three side agreements that are being progressed will be provided at deadline 12, namely the:

- (i) Highway Side Agreement,
- (ii) Ockham Bites side agreement and
- (iii) Landscape and Environmental Side Agreement

However, given current progress SCC would like to advise the ExA of the situation at Deadline 11 and highlight a number of items that may be unlikely to reach a satisfactory conclusion before the end of the examination period.

#### **6.1 Costs and Fees (Highway Side Agreement)**

SCC have sought throughout the DCO process to work positively and constructively with Highways England (HE) over and above just responding to a DCO in line with the County's statutory duties. This was we believe recognised by HE in the recent CAH.

For the activities leading up to the end of the DCO examination stage SCC have been seeking funding from HE (under a Planning Performance Agreement – PPA) to cover

the County's costs for staff time in providing technical input into the scheme and to suggest where the scheme could be improved. A draft PPA was tabled by HE at a much earlier stage but subsequently withdrawn. As such to date no agreement has been reached regarding any recovery of costs or fees, which was highlighted as item 10.5.1 in our Statement of Common Ground (SoCG) (REP8-030).

In a non-DCO situation where HE are working on the County's Local Road Network it would enter into a section 4 agreement (under the Highways Act 1980) for which the County's costs and fees would be recoverable. As the DCO effectively allows HE to work on the County's network SCC are seeking to recover its costs/fees via the Highways Side Agreement. In addition SCC has been contacted by HE's Balfour Beatty Atkins (BBA) team regarding consultation on the next phase of the project covering detailed design and delivery of the scheme.

To date Highways England's position is that no funds will be provided to SCC for post DCO highway fees and expenses (as well as for pre DCO activities) and so HE are proposing to exclude these from the highways side agreement. SCC is very concerned to hear this as it has provided substantial input so far and there will inevitably be an impact on the level of engagement and input that the County will be able to offer going forward in the absence of the ability to recover costs incurred.

At the time of writing this situation is delaying the completion of the highways side agreement and SCC is currently raising this issue with HE to seek a positive resolution to enable the agreement to be concluded.

## **6.2 Commuted sums**

Commuted sums have been an issue from the outset of the DCO process. In recent weeks commuted sums for non-standard items have been offered by HE and a schedule was only recently provided by HE, on 1<sup>st</sup> July 2020, setting out what they consider to be the qualifying scheme components in this specific scheme. SCC is currently reviewing this.

Despite assurances that work was being undertaken at HE Birmingham office to calculate level of funding for commuted sums based on a consistent approach, SCC were recently advised that it is now the expectation that the County Council calculate the appropriate funding. SCC does not have the detail on quantities/details to enable the costs to be calculated. This has been incredibly frustrating and disappointing as this is a matter that has been consistently raised both before and during the examination. SCC would have carried out further work during the examination if HE had provided the relevant details or not given assurances that these calculations were in hand. This matter was also the subject of written question 4.15.4 in HE's response to ExA further questions at deadline 10 (REP10-004). SCC raised this matter at a meeting with HE on 2<sup>nd</sup> July 2020 and have received assurances that HE will be calculating the appropriate funding. However this will require the current draft highways side agreement to be revised.

SCC raise this at this point as it is concerned that issues for which a resolution has been promised, will remain unresolved by the end of the examination.

SCC understand that at Deadline 11 HE may be submitting a "backstop" protective provisions document (based upon the A3030 Sparkford to Ilchester scheme) but having been provided with a draft of this on 2<sup>nd</sup> July 2020 would comment that it doesn't include/allow for SCC's costs and fees. SCC is currently reviewing the

protective provisions document and would be seeking costs and fees to be included within it.

### **6.3 Ockham Bites – Planning permission**

SCC are continuing to work with HE over this location. In terms of planning permission SCC have established in discussion with the Local Planning Authority (Guildford Borough Council - GBC) and also the County Planning Authority that a Reg 3 application by the County is considered to be inappropriate as it is not a scheme being funded, designed or delivered by SCC and the works are a direct result of the HE M25 junction 10 scheme.

Therefore SCC's view is that HE should approach GBC to determine whether planning permission is required. It may be that a reasonable case could be made that it doesn't require planning permission but this is difficult to confirm without an agreed scheme. Formal confirmation will be possible through a Lawful Development Certificate once design is confirmed.

By way of an update HE have now completed a detailed topographical survey of the area and at the time of writing SCC/HE are considering what could be provided within the available land (e.g. land within SCC's ownership for which planning permission for an extended car park would be granted or within the existing car park footprint) to provide facilities to avoid users of the SCL being disadvantaged.

There is a risk that these discussions may not be concluded by the end of the examination. SCC are concerned regarding this, as this issue was raised within the County's Written Representation and Local Impact Report much earlier in the examination process.

### **6.4 Landscape and Environmental Side Agreement**

Discussion on this agreement is continuing between HE, SCC and SWT.

### **7.0 Wider reflections on HE interaction with highway authorities**

SCC recognise that issues have arisen around the interaction and working practices of HE and local highway authorities that are wider than just the matters being considered through this examination. Through the HE DCO programme nationally there has been significant positive collaborative working between parties to achieve the best schemes possible. However, local authorities are incurring significant costs often without any level of funding, be that through Planning Performance Agreements, commuted sums or fees for involvement at detailed design and scheme delivery stages.

Much time is spent by local authorities to separately research and identify other HE schemes where hard fought concessions on funding have been achieved. An example has been where SCC identified the payment of commuted sums for non-standard elements on the A303 Sparkford to Ilchester project and as a result managed to have this considered for the M25 Junction 10 scheme as opposed to this being offered in a consistent way. Similarly SCC understand that arrangements agreed through protective provisions for other organisations within the draft DCO allow for costs, charges and expenses. The council is also aware that HE are entering into a PPA with affected local authorities in relation to another scheme currently under development.

Time is spent during the examination process strongly negotiating on issues that are being dealt with by HE inconsistently at a national level. Fundamentally, SCC's

experience on this DCO is that local authorities are adding significant value through technical input but that HE have to date not been adequately budgeting for this element as they do for supporting consultants/advisors.

SCC has liaised with a number of other County Council authorities and will continue to work collectively on these issues with other authorities.

Yours sincerely

A solid black rectangular box used to redact the signature of the sender.

Caroline Smith – Planning Group Manager

**Surrey County Council (IP 20023014) Written Summaries of Oral Submissions put at the Compulsory Acquisition Hearing held between 16 and 17 June 2020**

**CAH1 session 2, part 3 Special Category Land and Replacement Land matters**

**1. Agenda item 3 – Surrey County Council’s case with respect to the Applicant’s compulsory acquisition and temporary possession of Special Category Land.**

As set out within the Statement of Common Ground with Highways England, the County Council considers that the compulsory acquisition and temporary possession of the special category land, or rights over special category land owned by the County Council, are appropriate and that the draft DCO makes suitable provision for replacement land.

The County Council has been involved in discussions with Highways England regarding the different factors affecting the Council’s land and has responded in our role as both landowner and statutory body and also representing the best interests of our residents.

Discussions relating to Replacement Land have broadly covered: suitability in terms of public access and biodiversity and responses to the specific proposals for land parcels put forward by Highways England. Background information on the rationale and evidence to support decision making has been provided by Highways England. The council’s involvement with the process has been at a relatively high level.

The County Council’s 2030 Vision for Surrey sets out our aims to support communities in a range of ways, with the protection and enhancement of our natural, accessible green spaces being a key element. The council is of the view that the Replacement Land as set out in the scheme would make a valuable contribution to those aims. The Replacement land in the north-west quadrant at Park Barn Farm provides a favourable location due to its proximity to the residential area of Byfleet which is in close walking distance.

It is the council’s expectation that the title of all land to be transferred to the council will have undergone a due diligence process to ensure it is being transferred unencumbered by any potential issues such as outstanding covenants, enforcement notices, adverse title or existing drainage issues.

**2. Agenda item 5a – ExA questions on the SCL affected by the Proposed Development**

When questioned on the functional quality of example SCL plots immediately surrounding the M25 junction, the County Council agreed with points raised by the Highways England team. This included the valuable public amenity role that these plots play as a buffer zone. They are broadly accessible and contain Rights of Way routes, although can be categorised as zones that users travel through rather than to. It was acknowledged that they would tend to be less desirable in terms of littering and noise.

Similarly when questioned on example plots of SCL for which the acquisition of permanent rights is proposed the County Council agreed with points raised by the Highways England team. These plots were felt to be higher quality than the previous plots considered which abutted the M25 junction. They are also regularly used as an informal pedestrian route.

**3. Agenda item 5b – ExA questions on factors to be taken into account when calculating the amount of RL to be provided.**

The County Council agreed that most users would be unable to tell the difference between land classified as Common Land and Open space designations in visual landscape terms.

When questioned about the impact on users of SCL through the historical construction of the M25 in this area, the County Council highlighted the significance of the severance of the Common under that scheme. Although the County Council does not have detailed data on the usage of the Common Land, officers suggested that in population terms, usage and need for accessible Common Land is even greater today.

**4. Agenda item 5c – ExA questions on the amount of RL to be provided in association with the Proposed Development.**

In order to have a reference point for this scheme, the County Council agreed that it was appropriate for Highways England to consider the RL ratios from when the M25 was built in this area. It was felt to be a reasonable approach in the absence of other information.

When specifically asked for a view on the proposed replacement land ratios, the council confirmed that in their view the principles of the proposed ratios are considered to be appropriate.

## **CAH1 session 2, part 4 Surrey County Council non-Special Category Land matters**

### **1. Agenda item 2 – SCC case**

In the council's Deadline 9 submission the County Council raised 5 areas for discussion at the CAH hearing. These were in relation to:

1. Ockham Bites car park
2. Permanent rights for access
3. Designation of land acquisition in relation to environmental mitigation and enhancement
4. Queries around land acquisition at Ockham roundabout
5. Maintenance access and land required for visibility

The council is pleased to report that through ongoing collaborative dialogue with Highways England there has recently been significant progress on a number of the council's issues.

The summary below outlines the issues raised by the council along with highlighting areas where issues have either been resolved or the parties are actively working together to achieve a resolution. In many cases these resolutions require appropriate confirmation within the relevant legal side agreements that are currently in development between the two parties.

#### **Ockham Bites car park and cafe**

1. Part of the Ockham Bites car park is within the DCO red line boundary (plots 4/24, 4/25 and 4/27) but this only covers part of the car park and therefore the Council has concerns regarding the impact on the residual area that it feels should have either have been included in the DCO red line or been dealt with through accommodation works.

In recent days Highways England have advised that a draft Ockham Bites Legal side agreement has been produced broadly based on the scope of works the council set out in the last set of written questions. The council welcomes this approach and will continue to work collaboratively with Highways England to agree and sign a final version before the close of the examination. This will involve some further discussion and investigation on permissions required for the works.

The council would ask that this hearing note that Highways England have agreed to enter into this agreement and design and deliver these accommodation works.

SCC are uncertain whether redesign of the car park will require planning permission and if it does SCC would like Highways England to make the application and if it is refused then SCC and users of SCL will be disadvantaged. SCC stated that it may be possible that planning permission isn't required but it is SCC's view that it is incumbent on Highways England to speak to the LPA and obtain any permissions required.

SCC also clarified that users of SCL currently cross at north east end of car park to the heathland and it is at that point where the embankment at its highest. This is a key car park for visitors to start/end their journeys as not only has a car park but also a café.

#### **Permanent rights for access**

2. The council has consistently argued that the NMU route beside the A3 should be considered a replacement facility and the future maintenance burden should not fall to the County Council (example plot numbers include 2/36, 3/32, 4/3c, 4/4a, 4/51a 13/10).

It has recently been confirmed by Highways England that they are willing to provide commuted sums to the Council for this element (excluding a short section along Seven Hills Road). The County Council welcomes this confirmation and will continue to work with Highways England to ensure that this confirmation is now included in the Legal highway side agreement that the parties are working towards agreeing during the examination period.

It is the council's view that these commuted sums should also cover any supporting earthworks for the NMU route such as Cockrow Bridge embankments. (This affects plot numbers such as 3/33, 3/34, 4/3, 4/4c, 5/7b, 5/9, 12/5 (NMU embankments) 4/24, 4/22a, 4/30a, 4/32, 4/40, 4/42, 4/45, 4/46a, 4/48, 4/57, 4/58 (Cockrow Bridge) and 5/1, 5/2, 5/7b, 5/9 (Sandpit Hill bridge).

The council also asks that this hearing note that Highways England have agreed to provide commuted sums for the NMU route and include these in the Legal highways side agreement.

At the CAH the Applicant's Counsel representation stated that Highways England would make some form of contribution to the maintenance of the NMU Route.

SCC confirmed that SCC's view is that as Highways England are banning cycling on the A3 between Ockham Roundabout and Painshill and are widening the A3 over the existing cycle facility the NMU is a replacement for this facility and as such Highways England should maintain this section. SCC view is that should Highways England provide a full commuted sum contribution for the maintenance liability of the NMU route that would fall to the County Council including the surfacing and supporting structures/embankments then SCC would be minded to take a different view over the NMU route.

The council's submission also raised broader issues regarding the scope of the applicant's permanent rights for access around other areas. These included 3 main areas:

- The section of **Elm Lane** where it meets the A3 (plots 2/8, 2/9, 2/10, 2/14, 2/14a, 2/14b) but Highways England have subsequently confirmed that these rights of access are for the diverted gas main. The council would ask if the applicant will also provide commuted sums for the maintenance of this section
- Secondly the **ditch at the western side of the Wisley Lane** overbridge (plots 2/12, 2/13a) and whether the temporary acquisition with permanent rights mean that Highways England will maintain the ditch
- In relation to the access to soakaways and drainage ponds along the route such as that on north side of Cockcrow Bridge (plots 4/41, 4/72, 4/46, 4/74, 5/1c, 5/1d, 5/7a, 5/7c). These accesses are outside of the NMU route and so the council would ask if Highways England's permanent rights mean that they will either carry out or fund any repairs or provide the council with commuted sums for the maintenance of these access routes?

#### **Designation of land acquisition in relation to environmental mitigation and enhancements**

3. The third area of concern for the council was the issue of permanent rights remaining over land, subject to temporary possession that would be subject to a time limited maintenance period. This covers the Special Protection Enhancement areas (such as plots 25/1 or 4/21).

In recent days Highways England have suggested that the Legal environmental side agreement should set out that these rights should be extinguished at the appropriate point in the future when no longer required. This addresses the council's concern around plots being encumbered by permanent rights in the future when no longer necessary.

#### **Queries around land acquisition at Ockham roundabout**

4. The council had also queried why permanent acquisition is required for land plots at the Ockham roundabout that form part of the council's highway network (such as 1/19 or 1/20). There is also land owned by Highways England that forms part of council's highway at this location (1/5, 1/7, 1/10, 1/17 and parts of 1/25, 1/26 and 1/32).

The council's Highway rights cannot be purchased as they are a legal status, so regardless as to whether Highways England acquire the freehold of the land, the surface will remain vested in the County Council as Highway authority until such time as the highway rights are stopped up or the highway ceases to be maintainable at public expense by the County council, neither of which are proposed for the plots in question.

It is understood that it is standard practice for Highways England to include the land it already owns within the compulsory acquisition powers as a precautionary approach to ensure that no known or unknown third-party rights remain over the land which could potentially impede delivery of the Scheme. However, the council would wish to seek clarification on this particularly as plot 1/31 is shown as temporary possession and there appears to be inconsistency with temporary and permanent acquisition where the situation is the same (plots 1/14 and 1/16) for example.

### **Maintenance Access**

5. Finally the council have raised issues regarding land in relation to maintenance access, visibility splays and the realigned Wisley Lane.

There are areas where the council require title acquisition in order to carry out future maintenance activities without future impediment. The council are currently in discussion with Highways England on this issue. On 27th May Highways England provided the council with a schedule and plans relating to draft proposals for maintenance access to which the council has responded with a short report regarding areas of concern

The council are also still currently awaiting a detailed schedule of assets that Highways England require the Council to take on and maintain including around the realigned Wisley Lane but Highways England have confirmed that this will be provided.

The council had concerns regarding the land required in respect of visibility splays. Some of these were set out in the council response to the 3rd set of written questions REP7-025 (question 3.13.5). Both parties are currently working collaboratively to resolve these issues and have recently met virtually to discuss this.

Finally the council note that Highways England wishes the County Council to adopt and maintain the realigned Wisley Lane. In addition to the commuted sums for maintenance the council require title to pass to the council for this new road

In summary the remaining issues are therefore:

1. Ockham Bites legal side agreement being finalised during the examination period
2. Agreeing the specific list of assets for which Highways England will provide commuted sums and confirming this in the legal side agreement including clarity regarding maintenance around Elm Lane, drainage ditch on the west side of Wisley Lane and the access tracks to the ponds and soakaways.
3. Confirming the extinguishment of permanent rights over land, subject to temporary possession that would be subject to a time limited maintenance period at an appropriate future point in the legal environmental side agreement
4. Clarity on the title acquisition status around Ockham Roundabout
5. Confirmation of title passing to the council for access widths/tracks for maintenance purposes and the realigned Wisley Lane
6. Resolving the remaining forward visibility issues at the Painshill junction

### **2. Agenda item 4 – Questions from the ExA**

- a. The County Council set out concerns that under current discussions with Highways England the process of obtaining any permissions required for the Ockham Bites car park will be the responsibility of the County Council. Had the entire car park been included within the original red line boundary for the DCO, this additional work would not have been required of the council. It is therefore the council's view that all aspects of the work required for this site should be the responsibility of Highways England. The County Council will continue discussions with Highways England on the draft Ockham Bites side agreement.

## **Annex B – Position statement on historic exchange land**

Surrey County Council (SCC) have instructed external lawyers in respect of historic exchange land matters. As these external lawyers are not dealing with the DCO matters they are not close to the detail. However, Highways England (HE) have shared their position statement (below) and SCC agree that this broadly summarises the position subject to the following comments from the SCC lawyer:

- The Statement refers to a number of statements, plans, plan references, notes and responses which the lawyers have not reviewed.
- Perhaps because of initial minor errors on the plans or because of changes in boundaries/ownership since the original 1979 CPO order there are a few amendments to the areas which need to transfer from SCC to HE and in the reverse. There are also to be a couple of voluntary transfers not anticipated in the CPOs to tidy the legal title and regularise the position for a right of way over the M25. These are not material in the scheme of things but the actual position is slightly more complex than the Statement below sets out.

### **Relevant extract from HE Position Statement from a SCC perspective**

At points 6 and 7 of HE's note HE have set out narrative regarding the treatment of the historic common land, historic open space land historic exchange land for the purposes of the Scheme and Implications for the Secretary of State's decision on the Scheme. As HE are the Applicant for the M25 Junction 10 A3 Wisley scheme SCC have not included this narrative in the extracts below.

#### **1. Introduction**

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.

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 (document 9.1 '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**

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.

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**

The areas of historic common land/open space and exchange land in question are shown on the plan annexed to document 9.1 'Transferring Historic Common land and Exchange Land' [AS-017].

#### **Historic common land**

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**

Some of the former open space land shown coloured yellow on the plan annexed to document 9.1 '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**

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.

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).

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**

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.

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.

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.

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.

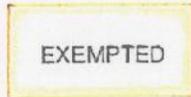
## **5. Proposed resolution**

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.

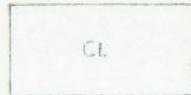
On the completion of the transfers, all of the historic common land and historic open space land will vest in Highways England and, correspondingly, all of the historic exchange land will vest in Surrey County Council. Accordingly, the commons register maintained by Surrey County Council may then be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

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.

## KEY TO COLOURING AND SYMBOLS



Land exempt from registration under Section 11



Land registered as Common Land or Town or Village Green under the Commons Registration Act 1965 containing the appropriate unit number

CL Prefix of Common Land Register  
VG Prefix of Town or Village Green Register

R  
{ O  
Ownership { B  
Identification { SY

Land over which a Registered Right of Common is exercised

Land over which Registration of Ownership applies

Land over which Ownership has been claimed under Section 8(2)

Land which is registered at H M Land Registry under Land Registration Acts 1925 to 1971

*NOTE: Absence of Ownership Identification indicates either*

- i Common Land subject to Section 9*
- ii Town or Village Green subject to Section 8(3)*



Land which has been removed from the register under Section 13 or over which the registration has been cancelled



Land subject to an agreement made under Section 2 of the Act



Land which has been removed from the register under the Common Land (Rectification of Registers) Act 1989

