

M25 junction 10/A3 Wisley interchange TR010030

9.147 Applicant's comments to Surrey County Council's Deadline 11 submission

Rule 8(1)(c)(i)

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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Author:	M25 junction 10/A3 Wisley interchange project team, Highways England and Atkins

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1. Introduction

- 1.1.1 This document sets out Highways England's comments to Surrey County Council's Deadline 11 submission *Post Hearing submissions requested by the ExA and Written summaries of oral contributions at the CAH.*
- 1.1.2 Where issues raised within the submission have been dealt with previously by Highways England, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.3 In order to assist the Examining Authority, Highways England has not provided comments on every point made by the Interested Parties, including for example statements which are matters of fact and those which it is unnecessary for Highways England to respond to. However, and for the avoidance of doubt, where Highways England has chosen not to comment on matters contained in the response, this should not be taken to be an indication that Highways England agrees with the point or comment raised or opinion expressed.

2. Highways England's comments to Surrey County Council's Deadline 11 submission

2.1 Key Points from Surrey County Council's oral response at the CAH1 and CAH 2 sessions 3 and 4

2.1.1 Save as mentioned below Highways England makes no comment on Surrey County Council's written summaries of its case made at the CAH

2.2 CAH session part 3 action point 9 – Position statement on historic land

2.2.1 As SCC states that it agrees that Highways England's position statement [REP11-012] broadly summarises the position, no further comments are offered save that Highways England stands by its statement on this issue.

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

2.3.1 Highways England is willing to pay Surrey County Council commuted sums for the embankments supporting the NMU referred so this point is made. Provision has been made accordingly in the prospective (but not yet completed) highways side agreement.

2.3.2 Surrey County Council has requested that Plot 9/13 is made subject to permanent acquisition and transferred to the council. Plot 9/13 is a small plot of 62sqm owned by Burhill Developments Limited and leased to CALP Angling Club.

2.3.3 The plot is subject to temporary possession and the permanent acquisition of rights in order to construct, operate, inspect, access and maintain a carrier drain. These rights are sufficient for that purpose and there is no need for the plot to be acquired outright.

2.4 Outstanding action from ExA Q3

2.4.1 Noted.

2.5 Progress on side agreements

2.5.1 Highways England has provided a position statement at this deadline (12) in respect of all agreements that it is endeavouring to settle, including three with Surrey County Council as listed by Surrey County Council under this heading. In the case of the "Highways Side Agreement" the ExA will be aware that Highways England submitted a set of protective provisions at deadline 11 [REP11-017] that are intended to take the place of this agreement, at least as regards some elements, in the event that the agreement is not completed. For this reason the protective provisions are not included in the dDCO submitted by Highways England at Deadline 12.

2.6 Costs and Fees (Highways Side Agreement)

- 2.6.1 Highways England recognises and appreciates that there has been positive and constructive discussions with Surrey County Council throughout the DCO process. They have been beneficial to both parties.
- 2.6.2 The reason that Highways England is not offering to pay Surrey County Council's costs in dealing with the DCO application or in relation to the DCO when and if made is that it would be contrary to Highways England usual practice to do so.
- 2.6.3 Highways England is promoting numerous nationally significant infrastructure projects across the country. Many of them, including this scheme, include substantial benefits to local authorities for which Highways England is not seeking a financial contribution. Highways England's position is that it ought not be expected to meet costs incurred by local authorities in performing their functions in relation to such schemes, whether as the local highway authority or in any other capacity.
- 2.6.4 Whilst there some cases in which Highways England has agreed to meet some costs incurred by local authorities in relation to DCO schemes these are the exceptions, not the rule. The schemes in relation to which Highways England has paid costs to local authorities tend to be the most complex ones. The M25 Junction 10 scheme does not fall into that category. It is the case that early on in the process Highways England discussed entering into a planning performance agreement (PPA) but it was not progressed beyond a first draft. The offer of a PPA was made in good faith by the Highways England project team but it was not appreciated at the time that a draft was tabled that to enter into it would be contrary to Highways England's usual practice. Although it remained a possibility for some time thereafter it became apparent that Highways England would not agree to it, and also it would not have been appropriate to enter into a PPA retrospectively – i.e. for work already done.
- 2.6.5 As regards the comparison between DCO schemes and schemes subject to Section 4 of the Highways Act 1980, where Surrey County Council point out that fees would be sought under that section, the plain fact is that this is not such a scheme and as a DCO scheme it is not subject to that legislation.

2.7 Commuted Sums

- 2.7.1 In the same way that Highways England's usual practice for DCO schemes is not to meet the costs incurred by local authorities in engaging with such schemes in that capacity, it is not Highways England's usual practice to pay commuted sums in relation to increased maintenance responsibilities falling upon local highway authorities as a result of DCO schemes. The same logic applies in that Highways England ought not be expected to pay for commuted sums in addition to paying for the works themselves. Funding is provided to local highway authorities by central Government for highway maintenance and if that funding is not adequate for any reason it does not follow that Highways England should meet the shortfall.
- 2.7.2 In the case of this scheme the works proposed to the local highway network are substantial. Although they flow from the improvement of the M25/A3 junction at the heart of the scheme, the improvements being made to the local highway network, in particular major improvements for facilities available to non-motorised

users (NMUs) that are part of the scheme, represent approximately £10 million of investment in the local highway network, for which Surrey County Council is not being asked to make a contribution.

2.7.3 Nonetheless Highways England is willing, as an exception to its usual practice, to pay Surrey County Council a commuted sum for the future maintenance of some aspects of the local highway network affected by (or in large part) being created by the scheme. The commuted sum is proposed to cover the cost of future maintenance of so called “Non-standard Highway Assets” for which Surrey County Council will become responsible under the DCO. This arrangement follows that proposed by Highways England in the A303 Sparkford to Ilchester Dualling scheme, the subject of a DCO application now before the Secretary of State for decision following an examination that closed on 12 June 2019. The draft DCO submitted by Highways England in relation to that scheme [REP8-004] contains protective provisions for the payment of commuted sums on this basis. Surrey County Council has consistently referred to the Sparkford scheme as an example to be followed and Highways England decided to follow it as regards the issue of commuted sums. The position remains, however, that the payment of commuted sums by Highways England in respect of DCO schemes remains by exception.

2.7.4 Indeed Highways England is willing, exceptionally, to go a bit further than Sparkford in respect of this scheme by agreeing to pay commuted sums not only in relation to so called “Non-standard Highway Assets” but also in respect of the new route for NMUs running from the Wisley Lane diversion to Seven Hills Road. Highways England is also willing to pay a commuted sum for the future maintenance of some new traffic signals at the Ockham roundabout (on the local highway network).

Highways England trusts that the summary of the situation in this sub-section and 6.1 above puts Surrey County Council's concerns in their proper context.

2.8 Ockham Bites – Planning permission

2.8.1 The position as regards an agreement between Highways England and Surrey County Council is explained in the position statement provided at this deadline (12). Although the responsibility for obtaining planning permission (if required) is a relatively minor aspect of the arrangement, it remains one to be settled between Highways England and Surrey County Council.

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