

M25 junction 10/A3 Wisley interchange

TR010030

9.152 Applicant's Response to Secretary of State's Letter dated 16 November 2020

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 This document sets out Highways England's response to the Secretary of State's (SoS) letter dated 16 November 2020.
- 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.

2. SoS Bullet 1- Article 9 of the Draft Development Consent Order (consent to transfer benefit of Order)

- 2.1.1 Article 9 of the draft development consent order (dDCO) [REP12-007] identifies the relevant undertakers whose apparatus requires diversion in order to facilitate the construction of the Scheme. The power to transfer the benefit of the order to those parties is limited to the purposes of undertaking works to their apparatus or to replacement apparatus.
- 2.1.2 As requested, Highways England has identified below the relevant works applicable to each undertaker:
- Work No. 62(a) to Work No. 62(q) inclusive - South Eastern Power Networks plc;
 - Work No. 63(a) to Work No. 63(e) inclusive - Southern Gas Networks plc;
 - Work No. 64(a) to Work No. 64(k) inclusive - Affinity Water Limited;
 - Work No. 65(a) to Work No. 65(f) - British Telecommunications plc;
 - Work No. 65(g) - Sky UK Limited and Virgin Media Limited; and
 - Work No. 65(h) - Virgin Media Limited

3. SoS Bullet 2 - DCO Drafting Points

- 3.1.1 The responses below should be read in conjunction with the updated dDCO which is submitted with this response in clean and tracked form and is accompanied by an updated Validation Report. As noted in Highways England's response to the Secretary of State's letter dated 4 November 2020, the updated dDCO also includes the amendments described in that response.

Secretary of State Comment:

Article 13 (classification of roads, etc): Please would the Applicant explain what is meant by the term "authorised vehicle" in paragraph (4) of this article.

Highways England's response:

- 3.1.2 Highways England is content for article 13(4) to be removed from the dDCO on the basis that it does not serve a useful purpose. Accordingly, it has provided a revised dDCO with this provision removed.

Secretary of State's comment:

Article 49 (arbitration): Please would the Applicant explain why it has diverged in this article from the wording used in other highways DCOs.

Highways England's response:

- 3.1.3 Highways England considers that the substance of article 50 (formerly article 49 in previous versions of the dDCO) is comparable to equivalent arbitration provisions in other made highways DCOs.
- 3.1.4 The form of article 50 of the dDCO differs slightly from other made highways DCOs in that Highways England considered that it was more appropriate to separate the article into two paragraphs and to clarify that, as an arbitrator is given sole power by the article to settle disputes relating to the dDCO, it is appropriate to clarify that disputes could not be determined by the courts of England and Wales.
- 3.1.5 However, Highways England does not have a strong view on the matter and would be content for the Secretary of State to substitute the arbitration article from other made highways DCOs should he be minded to do so.

Secretary of State's comment:

Schedule 5 (land in which only new rights, etc. may be acquired): There is no entry in column (3) of the table against the entry for Plot references 2/9, 2/10 and 2/14. Please would the Applicant explain this omission. The Secretary of State also invites comments from the owners and occupiers with an interest in these plots.

Highways England's response:

- 3.1.6 These plots form part of Elm Lane which is currently public highway. As part of the Scheme, the part of Elm Lane which adjoins the A3 is to be stopped-up and converted to a footpath.
- 3.1.7 However, the dDCO includes powers for Highways England to acquire rights over the plots in order to access the authorised development for maintenance purposes.
- 3.1.8 In the light of the Secretary of State's comments, Highways England has provided a revised dDCO which includes in column (3) of the entry for plots 2/9, 2/10 and 2/14 in schedule 5 the following work references:

- the new superspan gantry over the A3 (Work No. 23(b));

- the new footpath in the embankment earthworks to connect Elm Lane with the Wisley Lane overbridge (Work No 33(c));
- the embankments supporting the Wisley Lane overbridge (Work No. 33(d));
- the diversion of Footpath 14 (Work No. 36);
- a new drainage attenuation pond (Work No. 52(c)); and
- a diverted gas main (Work No. 63(a)).

3.1.9 It can be seen from the Works Plans (sheet 2 of [REP8-004]) and Scheme Layout Plans (sheet 2 of [REP8-009]) that the rights over the part of Elm Lane to be stopped up will be necessary in order for Highways England and third parties to access the relevant parts of the authorised development.

3.1.10 Highways England has liaised with Surrey County Council as the highway authority for the land who have confirmed that they understand the works required for these plots and agree with Highways England's response to this SoS question.

Secretary of State's comment:

Schedule 9 (protective provisions): Please would the Applicant clarify the apparent incorrect cross-reference in sub-paragraph (5) of paragraph 49 (indemnity). The Secretary of State also invites comments from Southern Gas Networks PLC.

Highways England's response:

- 3.1.11 Highways England confirms that sub-paragraph (5) should be removed as it concerns a matter that is provided for in the side agreement with Southern Gas Networks plc (SGN) which has been completed.
- 3.1.12 Highways England has discussed this matter with representatives of SGN who have confirmed their agreement to the proposed removal of sub-paragraph (5).
- 3.1.13 Highways England has therefore provided a revised dDCO which incorporates this amendment.

4. SoS Bullet 3 - Funding for Cockcrow Bridge

4.1.1 Highways England is pleased to confirm that Designated Funds have now been secured to construct the green element of the Cockcrow Bridge (Work No. 35 (b)). Highways England confirms that the funding which has been obtained is for a 25m green bridge as proposed under Change 1 - Extension of the proposed Cockcrow Green Bridge, the details for which are set out in Report on Proposed Scheme Changes Rev 1 [REP4a-004].

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