



# Department for Transport

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To: Highways England

Date: 20 January 2021

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Dear Sir/Madam

## **Planning Act 2008 (as amended) and the Infrastructure Planning (Examination Procedure) Rules 2010**

Application by Highways England (“the Applicant”) for an Order granting development consent to make improvements to the M25 Junction 10/A3 Wisley Interchange. The proposal includes building four new dedicated free-flowing slip lanes that will mean all left-turning traffic can pass through the junction unimpeded by traffic signals. Carriageways on the existing roundabout will also be elongated and widened to increase capacity for right-turning traffic.

### **REQUESTS OF THE APPLICANT**

#### **1. Request for information in relation to proposals for reductions in replacement land**

In paragraph 3 of his consultation letter of 4 November 2020, the Secretary of State sought comments on a proposal for reducing the provision of replacement land (“RL”) to be provided in exchange for Special Category Land (“SCL”). In its response of 19 November 2020, the Applicant expressed disagreement with that proposal and suggested an alternative proposal should the Secretary of State be minded to reduce the provision of RL.

In paragraph 4 of the same consultation letter, the Secretary of State sought comments from the Applicant and other interested parties, as regards the proposed reduction in the RL provision, in relation to biodiversity mitigation and/or enhancement measures proposed by the Applicant as part of the Development. The Secretary of State sought further comment from the Applicant regarding the significance of effects on species for which the Applicant intends that RL would contribute to the mitigation of habitat loss. The Secretary of State also

requested clarification from the Applicant as to whether the conclusions of the Applicant's HRA rely in any way on the RL.

**Please would the Applicant provide information, to supplement the information provided in its response of 19 November 2020, to reflect the proposed amount of RL to be provided in the DCO, as set out below. It is the same amount of RL as suggested in the Secretary of State's letter of 4 November 2020 but with one addition. The additional information should include the Applicant's consideration of whether any new or different significant environmental effects of any nature would be likely as a consequence of the proposed amount of RL to be provided.** An outline of the reasons considered by the Secretary of State for the proposed reduction in RL is set out in the Annex to this letter. Interested parties will be given a chance to comment on the Applicant's response.

#### Proposed Replacement Land Amounts

- A reduction in the provision of RL for SCL proposed for outright acquisition to approximately 13.77ha.
- A reduction in the provision of RL to compensate for the permanent acquisition of rights to approximately 2.63ha.

The Proposed RL is to comprise the following:

- the whole of the sites identified by the Applicant as PBF1 and PBF2 on Figure B.1 in [\[REP12-004\]](#) (together 13.45ha) and 2.95ha drawn from the southern part of PBF3, namely all of land plots 11/17i and 11/17j and part of the southern end of land plot 11/17h [\[REP8-006\]](#).
- land plot 28/2, to avoid severing a small parcel of the landowner's land from the remainder of this retained land.

RL sites CF1 to CF4, HF1 and HF2, i.e. land plots 13/9, 13/9b, 13/12, 13/12a, 14/1, 14/1a, 14/3, 26/4, 26/4a, 26/5, 26/5a and 26/6 [\[REP8-006\]](#) to be excluded from the compulsory acquisition powers.

## **2. Request for comments from the Applicant to the comments from the Royal Horticultural Society("RHS")**

**The Secretary of State requests comments from the Applicant on the submissions of the Royal Horticultural Society ("RHS") relating to the Habitats Regulations Assessment as contained in RHS' Response to the Secretary of State's letter dated 4 November 2020 [\(RHS/RMCo/13\)](#) and its Response to the Secretary of State's letter dated 27 November 2020 [\(RHS/RMCo/14\)](#). In particular, the Secretary of State invites comments on the Opinion from David Forsdick QC that was appended to the response.**

**The deadline for any response is Wednesday 3 February 2021.**

Given the coronavirus (COVID 19) emergency, the Planning Inspectorate are currently unable to accept hard copies of consultation responses. Responses to the matter outlined in this letter should therefore be submitted by email to: [M25Junction10@planninginspectorate.gov.uk](mailto:M25Junction10@planninginspectorate.gov.uk). If you will have difficulty in submitting a response by the consultation deadline, or difficulty in submitting a response by email, please inform the Case Team.

The responses will be published on the project page for the M25 Junction 10/A3 Wisley DCO on the Planning Inspectorate's website as soon as possible after the above deadline at: <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m25-junction-10a3-wisley-interchange-improvement/>

This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the M25 Junction 10/A3 Wisley Interchange Improvement or the content of the DCO should it be granted, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

Natasha Kopala  
Head of the Transport Infrastructure Planning Unit

## **Annex: Outline of the reasons considered by the Secretary of State for the proposed reduction in Replacement Land**

The following is an outline of the reasons for the Secretary of State's proposal for a reduction in the amount of RL. It is provided on the basis that it is without prejudice to the Secretary of State's final decision on the DCO application.

### **Legal and Policy Context**

- Sections 131 and 132 of the Planning Act ("the 2008 Act") make provision about the compulsory acquisition of open space and common land ("SCL") and rights over such land respectively. In particular, they provide that the Special Parliamentary Procedure ("SPP") applies to a DCO if made, unless the Secretary of State is satisfied that one of a number of subsections in each of the sections apply. The relevant subsections in this case are sections 131(4) and 132(4) which make provision about RL.
- Section 131(12) of the 2008 Act states that "... 'replacement land', in the context of SCL to be acquired outright, means land which is not less in area than the Order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public. There is a similar definition in section 132(12) in relation to the acquisition of rights over SCL, but it does not provide for a minimum amount of RL to be provided".
- The National Policy Statement for National Networks ("NPSNN") paragraph 5.166 advises that "Existing open space... should not be developed unless... the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location".
- The Planning Act 2008 Guidance relating to procedures for the compulsory acquisition of land says, in paragraph 8 of Annex A, that where either section 131(4) or section 132(4) PA 2008 applies, the Secretary of State will have regard to such matters as relative size and proximity of the replacement land when compared with the land it is proposed to compulsorily acquire through the development consent order.
- Section 122(3) of the 2008 Act sets out a requirement for a compelling case in the public interest to be made out for land to be acquired compulsorily.

### **The amount of SCL affected and the Applicant's approach to the amount of RL**

- The Proposed Development would involve the outright acquisition of approximately 13.77ha of SCL.
- With respect to all the SCL that the Applicant proposes to acquire permanent rights over, it has identified around 8.5ha of SCL that would be "burdened" by Order rights.
- Amongst other matters, the Applicant considered precedent set by other projects with regard to the ratio of RL to be provided, including the ratios of RL relative to the affected SCL that were applied when junction 10 of the M25 was first constructed in the 1980s.

### **Matters informing the Secretary of State's consideration of RL**

- Each case needs to be considered on its own merits taking account of both the amount and the quality of SCL to be lost/affected. The degree of disadvantage that the public as users of the SCL might encounter is also of significance.

- The Secretary of State considers that in this case, as there is little difference in the user experience of the Common Land (“CL”) and Open Space (“OS”), when assessing how much RL is required to mitigate the loss of advantage for SCL users, the same ratios should be applied to the affected CL and OS.
- A RL ratio of at least 1:1 must be provided as regards SCL to be acquired outright, otherwise SPP may become engaged under section 131(3) of the 2008 Act.
- The recreational quality of the 13.77 ha of SCL to be acquired outright is one matter that should be taken into account when considering whether an RL ratio that is higher than 1:1 is warranted in relation to that SCL.

#### RL for SCL Subject to Outright Acquisition

- With respect to the SCL that would be subject to outright acquisition, much of this land is close to the running lanes of the exiting M25 and A3.
- There was general agreement amongst a number of parties that the affected land does not possess the highest recreational/functional quality when compared with other parts of the SCL [\[EV-022\]](#). These areas are situated on the periphery of Ockham Common and Wisley Common and not heavily used by visitors and are more likely to be used to get to and from the main body of these areas.
- The Secretary of State is of the view that the 13.77ha of SCL subject to outright acquisition is of a relatively poor recreational quality and is not persuaded that the scale of disadvantage for SCL users arising from the Proposed Development would be anything like as significant as that which arose when the M25 was first built and exchange ratios in excess of 1:1 were applied.
- Having regard to the recreational quality of the SCL for which outright acquisition powers have been sought, for the purposes of section 131 of the 2008 Act, the Secretary of State is of the view that the provision of 13.77ha of RL would be not less advantageous to users of the SCL.

#### RL for SCL Subject to the Acquisition of Rights

- In Section 5 of [REP11-011](#) the Applicant provided information on a plot by plot basis about the types of activities that would be undertaken in association with the exercising of the rights that are proposed for acquisition and in section 6 of [REP11-011](#) the Applicant provided estimates for the frequency and duration of the exercising of the rights.
- Seven categories of right that are required by the Applicant and the approximate total land area affected as respects each category were set out in paragraph 5.1.3 of [REP11-011](#):
  - a. Access tracks, 4.42ha;
  - b. Earthworks to access tracks, 0.93ha
  - c. Drainage ditches and infiltration ditches, 1.56ha
  - d. Access tracks serving related ditches, 0.58ha;
  - e. Filter drains and associated access spaces, 0.77ha;
  - f. Soakaways and associated access space, 0.11ha; and
  - g. Earthworks to access tracks on the highways side of environmental barrier fencing, 0.26ha.

- When these areas are added together, they total 8.63ha.
- The Secretary of State accepts that the exercise of category b, c and g rights could impede movement and/or prevent public access over SCL and the resulting disadvantage should be compensated by the provision of RL.
- However, the Secretary of State is of the view that with respect to category b and g rights within Table C.3 in [REP11-011](#), there has been double counting with respect to Plots 12/4a, 12/6 and 12/7.
- The consequence of the double counting is that the total area of land mentioned in paragraph 5.1.3 of [REP11-011](#) is 0.1183ha (rounded up to 0.12ha) greater than the SCL that would be subject to burdensome rights of acquisition identified by the Applicant.
- With respect to the four other rights categories (a, d, e and f) the Secretary of State considers that any burden for SCL users would be likely to be negligible because while SCL users may encounter a vehicle or vehicles using a Public Right of Way or other track as the vehicle travels to or from an inspection or maintenance location, such occurrences would probably affect an individual SCL user sporadically and would therefore not yield a level of disadvantage needing to be compensated by the provision of RL.
- For those reasons, the Secretary of State considers that only the acquisition of rights coming within the scope of rights categories b, c and g would necessitate the provision of RL for the purposes of section 132 of the 2008 Act.
- The amount of SCL in those categories is 2.63ha, taking account of the 0.1183ha that has been double counted.
- The Secretary of State is content with applying the Applicant's RL ratio of 1:1 for rights to be acquired permanently over SCL, so the Secretary of State considers that the appropriate RL provision in relation to the acquisition of rights should be 2.63ha.

#### Conclusion on amount of land to be compulsorily acquired to provide RL

- For the reasons set out above, the Secretary of State considers that the acquisition of 39.8ha of RL to address the Proposed Development's implications upon SCL users in the area, as proposed by the Applicant, is not necessary and therefore the condition under section 122(3) of the 2008 Act of there being a compelling case in the public interest for that amount of land to be compulsorily acquired would not be met.
- Instead, the Secretary of State considers that the acquisition of 16.40ha for RL would be justifiable and reasonable when regard is paid to the NPSNN and the Compulsory Acquisition Guidance, and as such would meet the compelling case test. It would also, in the view of the Secretary of State meet the conditions of sections 131(4) and 132(4) of the 2008 Act, and therefore would avoid the need for SPP were the DCO to be made.
- In addition to the RL which the Secretary of State originally proposed in the first consultation letter, the Secretary of State proposes including, as part of the RL provision, plot 28/2, an area of 0.0495ha. Doing so would avoid severing this area from the remainder of the owner's retained land.

#### Where the Replacement Land is to be located

- The proposal is that the RL be made up of PBF1, PBF2 and the southern part of PBF3, as this land is: contiguous with the SCL that lies to the north east of junction 10; has

the potential to provide consolidated and recreationally attractive areas of outdoor space; and its proximity to the built-up area of Byfleet increasing the chances of the SCL being used by people walking to and from it, thereby reducing reliance upon the private car.

- This is preferred to CF1 to CF4, HF1 and HF2 as these locations are either subject to higher noise levels and/or would not be as well related to the existing SCL. These plots are therefore not considered to amount to as favourable a proposal for compensating for the loss of SCL when regard is paid to paragraph 5.174 of the NPSNN.