

For the attention of Natasha Kopala, Head of Transport Infrastructure Planning Unit

Secretary of State for Transport
Transport Infrastructure Planning Unit
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Our Ref
OLS/MXC/151216.0044
Date
20 June 2022

By Email

Dear Madam

The M25 Junction 10/A3 Wisley Interchange Development Consent Order 2022 - request for correction under section 119 and schedule 4 of the Planning Act 2008

We write on behalf of National Highways further to the above mentioned development consent order (the **Order**) which was made by the Secretary of State for Transport on 12 May 2022, following an application by National Highways Limited (formerly Highways England Company Limited) for an order granting development consent under section 37 of the Planning Act 2008 (**2008 Act**) in relation to the M25 junction 10/A3 Wisley interchange scheme.

Upon examination of the Order as made, National Highways considers that it contains a number of correctable errors, as more particularly described in the Annex to this letter.

Accordingly, National Highways respectfully requests that the Secretary of State makes the corrections requested in this letter, which is sent within the 'relevant period' as defined in paragraph 1(6) of Schedule 4 to the 2008 Act. Many of the corrections are typographical errors, but where they are not, National Highways nevertheless considers that they are within the scope of 'correctable errors' such that a correction order may be made in respect of them.

In order to assist the Department's consideration of this request we have enclosed a draft Correction Order.

We would welcome the opportunity to discuss any queries that the Department may have on the request for corrections or the draft Correction Order.

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Documents to be certified

Separately, we note that the examining authority, at paragraph 9.3.44 of the recommendation report, recommended that two additional documents be added to Schedule 11 of the Order (*Documents to be certified*), namely:

- Proposed carriageway surface course options Regulation 5(2)(o) Sheet 1 of 1 TR010030/APP/9.22; and
- Report of Proposed Scheme Changes 7 to 9, Figure 5 in TR010030/APP/10.12 (Vol 10).

The examining authority also recommended that the title of document reference TR010030/9.140 be amended. These recommended amendments were included in Table 9.2 of the recommendation report. We note on consideration of the Order as made that Schedule 11 (*Documents to be certified*) does not include these amendments.

In his decision letter, the Secretary of State stated (see paragraph 237) that he was content with the modifications to the Order recommended by the examining authority set out in Table 9.2 of the recommendation report except where previously stated. The decision letter does not indicate that the Secretary of State disagreed with the examining authority's proposed amendments to Schedule 11 (*Documents to be certified*).

Accordingly, National Highways is unclear as to the Secretary of State's position on this matter, and whether the non-inclusion of the examining authority's recommended amendments to Schedule 11 was the result of an omission or because he disagreed with the examining authority's recommendation.

National Highways' view is that it is not necessary for either of the two additional documents to be added to Schedule 11. The information shown on document 'Proposed carriageway surface course options Regulation 5(2)(o) Sheet 1 of 1 TR010030/APP/9.22', including as regards road surfacing options, is included in the scheme layout plans which are already included in Schedule 11. The document 'Report of Proposed Scheme Changes 7 to 9, Figure 5 in TR010030/APP/10.12 (Vol 10)', shows the layout of the proposed Wisley Airfield construction worksite, is also shown on Sheet 2 of the Temporary Works Plans which are already included in Schedule 11.

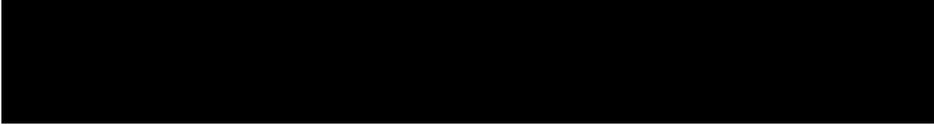
National Highways would be content for the title of document TR010030/9.140 to be amended as recommended.

National Highways would be grateful if the Department could confirm how the Secretary of State wishes to proceed, noting National Highways' views on the matter.



We should be grateful if you would acknowledge safe receipt of this letter and enclosure.

Yours faithfully



BDB Pitmans LLP

Enc draft Correction Order

Annex: Table of correctable errors and proposed corrections

The following table identifies several correctable errors contained in the Order. The first column identifies the provision of the Order that contains the correctable error in question. Column 2 sets out the proposed correction. Column 3 provides a brief commentary to explain the proposed correction.

Provision	Correction sought	Comment
Article 2 (<i>Interpretation</i>)	Insert “)” at the end of “(meaning of electronic communications networks and services of the Communications Act 2003”.	To correct a typographical error.
Article 2 (<i>Interpretation</i>)	In the definition of “the speed limits and traffic regulations plans”, the second reference to the ‘speed limits and traffic regulations plans’ should be in the plural to be consistent with the name of the plans.	To correct a typographical error.
Article 9(5) (<i>Consent to transfer benefit of Order</i>)	Include the following statutory undertaker in paragraph (5): “ <i>South Eastern Power Networks plc (company number 03043097, whose registered office is at Newington House, 237</i>	As set out in National Highways’ responses dated 23 November 2020 and 7 December 2020 to the Secretary of State’s consultation letters dated 16 and 27 November 2020, the details of South Eastern Power Networks plc

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	<i>Southwark Bridge Road, London, SE1 6NP)</i> ” for the purposes of undertaking Work No 62 (a) to (q).”	should be included in article 9(5) in relation to Work No. 62(a) to (q).
Article 13(2) (<i>Classification of roads, etc.</i>)	Provision to be completed.	The provision in the made Order does not make grammatical sense and appears to be the result of a typographical error, although it is not clear to National Highways what amendments the Secretary of State proposed to make to this article.
Article 17(1) (<i>Clearways</i>)	For “or with the permission or” substitute “or with the permission of”.	To correct a typographical error.
Article 34(1)(a) (<i>Crown Rights</i>)	Insert “to” between “belonging” and “Her Majesty”.	To correct a typographical error.
Article 34(2) (<i>Crow Rights</i>)	Insert “of” between “to the exercise” and “any right under”.	To correct a typographical error.
Article 34(2) (<i>Crown Rights</i>)	For “compulsorily”, substitute “compulsory”.	To correct a typographical error.
Article 36(2)(a) (<i>Apparatus and rights of statutory undertakers in stopped up streets</i>)	Insert “statutory” between “position as the” and “utility may reasonably”.	To correct a typographical error.

<p>Article 38(6) (<i>Special category land</i>)</p>	<p>For “plot numbered 27/1 and 11/17a” substitute “plots numbered 27/1 and 11/17a”.</p>	<p>To correct a typographical error.</p>
<p>Schedule 1 (<i>Authorised development</i>)</p>	<p>Remove Work Nos. 39 and 51.</p>	<p>As set out in National Highways’ response dated 1 March 2021 to the Secretary of State’s consultation letter dated 15 February 2021 (see heading ‘Deletion of Work Nos. 39 and 51), the Secretary of State’s decision to reduce the extent of replacement land to be provided would necessitate the omission of Work Nos. 39 and 51 from the authorised development.</p> <p>The updated plans and documents submitted with National Highways’ response reflect the removal of the above mentioned works from the authorised development, and the Order itself should reflect this.</p>
<p>Requirement 19, Schedule 2 (<i>Requirements</i>)</p>	<p>In paragraph 19(3), add the following underlined amendments:</p> <p>“(3) The scheme to be submitted to the Secretary of State must include a timetable for implementation and completion of the approved scheme for the management of traffic flows along the B2215 through the village of Ripley and, <u>if to be carried out by the undertaker</u>, the works must be implemented and completed in accordance with the approved scheme.”</p>	<p>Paragraph 19(3) was inserted by the Secretary of State in the form of Order as made following the recommendation of the examining authority (see in particular the recommendation report at paragraph 5.2.168 and 9.3.38).</p> <p>However, paragraph (3) may in practice impose an obligation on a third party, namely Surrey County Council in the event that the scheme approved by the Secretary of State under requirement 19(1) provides that National</p>

		<p>Highways is to provide funding to Surrey County Council as local highway authority to construct the works forming part of the approved scheme, i.e. the scenario contemplated by 19(3)(b)(i). Non-compliance with that obligation may constitute a criminal offence under section 161 of the 2008 Act, for which both National Highways and Surrey County Council may potentially be liable.</p> <p>National Highways considers that this is a correctable error, as it would not be appropriate for National Highways to be placed in a position where it might be in breach of section 161 of the 2008 Act on account of the default of a third party in circumstances where it has discharged its obligations under requirement 19(3)(b)(i) to make funding available to the local highway authority for the works to be carried out.</p> <p>Further, it is in any event doubtful that a development consent order could impose criminal liability on a party other than the original applicant or transferee, such as Surrey County Council in this case, for non-performance of obligations under the Order.</p> <p>The proposed correction respects the spirit of the examining authority's amendment to requirement 19 whilst avoiding the consequences described above, as the obligation to implement and complete the works required by the approved scheme would, in the drafting</p>
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		<p>of the requirement as proposed to be corrected, apply to National Highways as undertaker in the event that under the scheme approved by the Secretary of State, it is proposed that National Highways is to carry out the works rather than Surrey County Council, i.e. the scenario contemplated by 19(3)(b)(ii).</p>
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<p>Schedule 5 (<i>Land in which only new rights etc. may be acquired</i>)</p>	<p>Insert new entries in 'Land Plans – Sheet 13' as follows:</p> <table border="1" data-bbox="667 416 1294 1166"> <thead> <tr> <th data-bbox="667 416 875 671"> <ul style="list-style-type: none"> Plot Reference Number shown on Land Plans </th> <th data-bbox="875 416 1070 671"> <ul style="list-style-type: none"> Purpose for which rights over land may be acquired </th> <th data-bbox="1070 416 1294 671"> <ul style="list-style-type: none"> Relevant part of authorised development </th> </tr> </thead> <tbody> <tr> <td data-bbox="667 671 875 938">13/9b</td> <td data-bbox="875 671 1070 938">To construct, access and maintain a pre earthworks ditch and environmental barrier.</td> <td data-bbox="1070 671 1294 938">Work No.26 Work No.35(e) Work No.61(c)</td> </tr> <tr> <td data-bbox="667 938 875 1166">13/9c</td> <td data-bbox="875 938 1070 1166">To construct, access and maintain a filter drain and environmental barrier.</td> <td data-bbox="1070 938 1294 1166">Work No.26 Work No.35(e) Work No.61(c)</td> </tr> </tbody> </table>	<ul style="list-style-type: none"> Plot Reference Number shown on Land Plans 	<ul style="list-style-type: none"> Purpose for which rights over land may be acquired 	<ul style="list-style-type: none"> Relevant part of authorised development 	13/9b	To construct, access and maintain a pre earthworks ditch and environmental barrier.	Work No.26 Work No.35(e) Work No.61(c)	13/9c	To construct, access and maintain a filter drain and environmental barrier.	Work No.26 Work No.35(e) Work No.61(c)	<p>As set out in National Highways' letter dated 1 March 2021 in response to the Secretary of State's consultation letter dated 15 February 2021 (see heading 'Plot 13/9 (part of CF2 replacement land parcel at Chatley Farm), on account of the Secretary of State's decision to reduce the extent of replacement land to be provided including by the removal of plot 13/9 from the Order limits, it would be necessary for permanent rights to be acquired over a small area of the former plot in order for the authorised development to be delivered. The documents enclosed with National Highways' response, including an updated draft development consent order and revised land plans, show two new land parcels, plots 13/9b and 13/9c respectively.</p> <p>In the decision letter (see paragraph 221), the Secretary of State accepted the need to retain temporary possession powers over the former parcel 13/9 following its removal as replacement land and the same argument applies by analogy for the acquisition of rights over plots 13/9b and 13/9c.</p> <p>As noted in National Highways' response to the post-examination consultation, the minor ancillary works for which these rights are required have always formed part of the authorised development and the correction sought reflect National Highways' requirements for the land,</p>
<ul style="list-style-type: none"> Plot Reference Number shown on Land Plans 	<ul style="list-style-type: none"> Purpose for which rights over land may be acquired 	<ul style="list-style-type: none"> Relevant part of authorised development 									
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		<p>which were explained and justified throughout the examination.</p>						
<p>Schedule 7 (<i>Land of which temporary possession may be taken</i>)</p>	<p>Insert new entry in 'Land Plans – Sheet 13' as follows:</p> <table border="1" data-bbox="672 523 1413 928"> <thead> <tr> <th data-bbox="672 523 824 813">(1) Plot Reference Number shown on Land Plans</th> <th data-bbox="824 523 999 813">(2) Purpose for which temporary possession may be taken</th> <th data-bbox="999 523 1413 813">(3) Relevant part of the authorised development</th> </tr> </thead> <tbody> <tr> <td data-bbox="672 813 824 928">13/9</td> <td data-bbox="824 813 999 928">For use as a construction compound.</td> <td data-bbox="999 813 1413 928">All works</td> </tr> </tbody> </table>	(1) Plot Reference Number shown on Land Plans	(2) Purpose for which temporary possession may be taken	(3) Relevant part of the authorised development	13/9	For use as a construction compound.	All works	<p>As set out in National Highways' letter dated 1 March 2021 in response to the Secretary of State's consultation letter dated 15 February 2021 (see heading 'Plot 13/9 (part of CF2 replacement land parcel at Chatley Farm), on account of the Secretary of State's decision to reduce the extent of replacement land to be provided including by the removal of plot 13/9 from the Order limits, it would be necessary for temporary possession powers to be retained over part of the plot in order for the authorised development to be delivered. The documents enclosed with National Highways' response, including an updated draft development consent order and revised land plans, show the area of temporary possession as plot 13/9.</p> <p>In the decision letter (see paragraph 221), the Secretary of State accepted the need to retain temporary possession powers over the former parcel 13/9 following its removal as replacement land, but this has not been reflected in the Order as made.</p> <p>The proposed correction would therefore give effect to the Secretary of State's decision that temporary possession powers should be retained over part of plot 13/9 as shown on the revised land plans.</p>
(1) Plot Reference Number shown on Land Plans	(2) Purpose for which temporary possession may be taken	(3) Relevant part of the authorised development						
13/9	For use as a construction compound.	All works						

Schedule 11 (<i>Documents to be certified</i>)	Three blank rows in table to be deleted.	To correct a typographical error.
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