

Royal Mail - A1 Birtley to Coal House – ExQ3

Ref. Royal Mail Response		
Royal Mail's position on A1 Birtley to Coal House Improvements		Royal Mail's Position
	Royal Mail supports the improvement scheme. However, Royal Mail wishes to ensure the protection of its future ability to provide an efficient mail sorting and delivering service to the public in accordance with its statutory obligations that may be adversely affected by the construction of this proposed scheme.	The Applicant notes the response from Royal Mail in respect of maintaining an efficient sorting and delivery service and confirms that the scheme will result in numerous benefits to users including reduced congestion and travel duration. So far as the Applicant is aware, there are no adverse effects that will impact on Royal Mail's service as a result of the Scheme.
		Royal Mail notes that the Scheme will be beneficial once it is completed. However, the impact during the construction phase may potentially have an adverse effect on Royal Mail's distribution operations which are all road based.
Royal Mail requests that the final DCO includes a specific requirement that:		
1	<p>The forthcoming DCO application offers a requirement that Royal Mail is pre-consulted by Highways England on any proposed road closures/ diversions/ alternative access arrangements, hours of working and the content of the final CTMP. As well as, where possible provide potential alternative access arrangements for impacted Royal Mail sites and other business road users.</p>	<p>The final Construction Traffic Management Plan (CTMP) will include provision for a mechanism to inform major road users about works affecting the local and strategic road network including Royal Mail distribution facilities in the area surrounding the Scheme (see paragraph 2.8.1 of the CTMP, Appendix B of the Construction Environmental Management Plan [REP4-022 and 023]). This will include notifications related to proposed road closures and associated diversions. Details of the anticipated closures are referenced in Appendix 11.2 of the ES [APP-156] and the diversion routes are shown in the Applicant's response to First Written Questions [REP2-028]. The Applicant will use reasonable endeavours to accommodate alternative access arrangements for impacted Royal Mail sites of which the nearest to the Scheme are at Station Approach, Team Valley and Windlass Lane, Washington.</p> <p>However, the principal means of managing the effects of the Scheme upon the highway network will</p>
		<p>HE's commitment to provide advance notification of diversions and road closures to major road users specifically including Royal Mail and its operations at 2.8.1 of the Outline CTMP (as appended to the Outline CEMP) is welcomed and agreed by Royal Mail.</p> <p>In order to fully meet Royal Mail's requirement it is requested that this wording is included in the final CTMP and that Highways England's commitment to consult with Royal Mail in advance of roadworks or traffic management that will affect the highways network (as set out in paragraph 2.8.1 of the draft CTMP) is secured either by a specific requirement in the DCO or by a legal Agreement between Royal Mail and Highways England.</p> <p>Highways England's recently consented M42 Junction 6 Improvement scheme provides examples of the options available for giving Royal Mail the certainty it requires on advance consultation with Highways England on A1 Birtley to Coal House:</p>

		<p>be by consultation with the local highway authorities. This is akin to the approach for all other highway's schemes by the Applicant and those authorities and no additional consultation approach is required in this instance.</p>	<p>1. DCO requirement – please see clause 10 (1) under Traffic management on Page 51 of the DCO as made on 21 May 2020 at: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010027/TR010027-000970-200520%20M42%20DCO%20(SI%20number%20included).pdf</p> <p>2. Legal Agreement – legal Agreement between Highways England and Royal Mail in relation to the M42 Junction 6 Improvement Scheme dated 5 November 2019 (PDF attached) - please see section 3.</p>
2	<p>The forthcoming DCO application offers a requirement that the final CTMP includes provision for a mechanism to inform major road users about works affecting the local network (with particular regard to Royal Mail's distribution facilities in the area surrounding the DCO application site).</p>	<p>The final CTMP will include provision for a mechanism to inform major road users about works affecting the local and strategic road network including Royal Mail distribution facilities in the area surrounding the Scheme (see paragraph 5.3.7 of the CTMP, Appendix B of the Construction Environmental Management Plan [REP4-022 and 023]). This will include notifications related to proposed road closures and associated diversions. Details of the anticipated closures are referenced in Appendix 11.2 of the ES [APP-156] and the diversion routes are shown in the Applicant's response to First Written Questions [REP2- 028].</p>	<p>Royal Mail welcomes Highways England's commitment at paragraph 5.3.7 of the draft CTMP to consult directly with local businesses including Royal Mail to ensure that effects on businesses is minimised. This is welcomed and agreed by Royal Mail.</p> <p>Again, it is requested that that this wording is included in the final CTMP and either secured by a specific requirement in the DCO, or by a legal Agreement between Royal Mail and Highways England.</p>
	<p>Royal Mail reserves its position to object to the DCO application if the above requests are not adequately addressed.</p>	<p>The Applicant does not believe that the operation of Royal Mail's service or any of its existing sites will be adversely affected by construction or operation of the scheme. As is required pursuant to the powers contained in the Order.</p>	<p>Royal Mail will be in a position to agree with this statement if the final CTMP incorporates the above referenced wording and it is secured by either an appropriate requirement in the DCO or under a legal Agreement, as proposed above.</p>

DATED 5th November 2019

(1) HIGHWAYS ENGLAND COMPANY LIMITED

and

(2) ROYAL MAIL GROUP LIMITED

AGREEMENT

relating to the M42 Junction 6 Improvement scheme



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THIS DEED is made on 5 November 2019

Parties

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** (company registration number 09346363) of C/O Company Secretary, Bridge House, 1 Walnut Tree Close, Guildford, GU1 4LZ (**Highways England**); and
- (2) **ROYAL MAIL GROUP LIMITED** (company registration number 04138203) whose registered office is at 100 Victoria Embankment London EC4Y 0HQ (**Royal Mail**).

BACKGROUND

- (A) On 2 January 2019 Highways England applied to the Secretary of State under section 37 of the Planning Act 2008 for a Development Consent Order, the M42 Junction 6 Development Consent Order (**the Order**);
- (B) The Order would enable Highways England to acquire rights in land, to construct various works and exercise powers for the purposes of, and in connection with, the construction of the works proposed to be authorised by the Order, namely improvement works to the M42 Junction 6.
- (C) Royal Mail is the operator of a universal postal service;
- (D) By letter dated 28 March 2019, Royal Mail wrote to the Planning Inspectorate to make representations about Highways England's application for the Order (**the Representation**);
- (E) Highways England and Royal Mail are entering into this Agreement for the purpose of establishing the protections which will apply during the construction of the Scheme and to secure the withdrawal by Royal Mail of the Representation.

NOW IT IS AGREED AS FOLLOWS

1 Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, words and expressions defined by the Draft Order have the same meaning as they have in the Draft Order but are to be interpreted as being adjusted to the extent necessary to accord with the provisions of the Order as made and:

2008 Act means the Planning Act 2008;

Application means the application submitted by Highways England to the Secretary of State on 2 January 2019 pursuant to section 37 of the 2008 Act for the Order to grant development consent for the Scheme;

Authorised Works means the works proposed to be authorised and set out in Schedule 1 to the Draft Order and any other development authorised by the Draft

Order which is development within the meaning of section 32 of the 2008 Act;

Business Day means any day other than a Saturday, a Sunday or a day on which commercial banks in London are required or authorised to be closed;

Draft Order means the proposed M42 Junction 6 Development Consent Order;

Order means the Draft Order in the form it is made by the Secretary of State;

PINS means the Planning Inspectorate;

Scheme means the M42 Junction 6 Improvement scheme.

1.2 References in this Agreement to numbered clauses are references to the clauses of this Agreement and references in this Agreement to numbered articles are references to the articles of the Draft Order.

1.3 The headings in this Agreement are for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement.

1.4 Words importing the singular shall include the plural and vice versa, words importing any gender include every gender and words importing persons shall include firms, companies and corporations and vice versa.

1.5 Where any Party to this Agreement for the time being comprises two or more persons obligations expressed or implied to be made by or with that Party are deemed to be made by or with the persons comprising that Party jointly and severally.

1.6 Any reference in this Agreement to a 'Party' or 'the Parties' is a reference to those Parties who are signatories to this Agreement or to their successors in title and commitments made in this Agreement shall be binding on those successors.

1.7 Any reference to an enactment includes a reference to it as amended (whether before or after the date of this Agreement) and to any other enactments which may, after the date of this Agreement, directly or indirectly replace it, with or without amendment.

1.8 Any reference to consent refers to this consent in writing.

2 Withdrawal of the Representation

2.1 In consideration of the terms of this Agreement Royal Mail shall immediately upon completion of this Agreement:

2.1.1 write to PINS in order to withdraw the Representation and express support for the Scheme, providing a copy of the letter of withdrawal to Highways England; and

2.1.2 refrain from further opposition to the Scheme and the making of the Order in respect of the matters addressed in this Agreement.

3 Consultation and Construction Traffic Management Plan

3.1 Highways England agrees to consult Royal Mail in respect of:

3.1.1 any proposed road closures, diversions, alternative access arrangements and hours of working; and

3.1.2 the content of the final Construction Traffic Management Plan.

3.2 Highways England shall have reasonable regard to any reasonable comments received from Royal Mail on any of the matters in Clauses 3.1.1. and 3.1.2 and shall thereafter implement any reasonable arrangements in respect of such matters.

3.3 Highways England shall include provision for a mechanism to inform major road users about works affecting local network within the final Construction Traffic Management Plan.

4 Nominated Representatives

4.1 For the purposes of the consultation and under Clause 3 both parties shall, by notice in writing within two months of the date of the Secretary of State making the Order, appoint a representative, hereinafter referred to as the "Nominated Representative".

4.2 Any notice served under Clause 4.1 above shall specify the name, address, telephone and email address of the Nominated Representative.

4.3 Where either party needs to replace a Nominated Representative, that party shall ensure that

4.3.1 a replacement is identified as soon as reasonably practicable; and

4.3.2 notice is served on the other party to appoint the replacement Nominated Representative in writing accordance with Clause 4.2 no later than 10 Working Days from the departure of the previous Nominated Representative.

5 Termination

5.1 This Agreement may be terminated by Highways England by giving not less than 20 Business Days' notice to that effect to Royal Mail in the event that the Secretary of State determines not to make the Order.

5.2 This Agreement will automatically terminate if the powers granted under the Order expire before Highways England has commenced exercising them.

5.3 On termination of this Agreement the rights and obligations of the Parties under this Agreement shall immediately cease and determine save in relation to any rights or remedies either Party might have against the other in respect of any antecedent breaches before subsisting at the date of termination.

6 Notices

- 6.1 Any notice served or given or plans, drawings or documents supplied under or in relation to this Agreement shall (in the case of a notice) be in writing, must refer to the relevant provision of this Agreement, and will in all cases be deemed to be sufficiently given, served or supplied if addressed or supplied to Highways England or Royal Mail, as the case may be, and sent by first class post, courier service or registered post to the address of the parties given in this Agreement or to such other address as they may from time to time designate by written notice to the other.
- 6.2 Any notice sent in accordance with Clause 6.1 shall be deemed, in the absence of evidence of earlier receipt, to have been given, served or delivered two Business Days after posting or despatch, exclusive of the day of posting.

7 Governing law and jurisdiction

- 7.1 This Agreement and any non-contractual obligations arising in connection with it (and, unless provided otherwise, any document entered into in connection with it are governed by and construed in accordance with English law.
- 7.2 Subject to Clause 13 of this Agreement, the English courts have exclusive jurisdiction to determine any dispute arising in connection with this Agreement (and, unless provided otherwise, any document entered into in connection with it), including disputes relating to any non-contractual obligations.

8 Relationship with the provisions of the Order

In the event of any inconsistency with the terms of this Agreement and the provisions of the Order the terms of this Agreement shall prevail unless otherwise agreed between Highways England and Royal Mail.

9 Entire agreement

- 9.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior agreements and understandings whether oral or written with respect to its subject matter.
- 9.2 No variation of this Agreement shall be effective unless it is reduced to writing and is signed by or on behalf of a duly authorised representative of each of the Parties.

10 Future agreement

Highways England and Royal Mail agree and acknowledge that the terms of this Agreement do not establish any precedent for any other arrangement, project or development which may affect or relate to any land or interest in land belonging to Highways England or Royal Mail.

11 Assignment of this Agreement

- 11.1 Subject to Clause 11.2, neither Highways England nor Royal Mail may assign its rights and obligations under this Agreement in whole or in part except with the consent of the other and upon any approved assignment the Party seeking to assign its rights and obligations in this Agreement shall procure prior to such assignment a direct covenant from the assignee to the other Party (in a form reasonably acceptable to such other Party) to observe and perform such of the rights and obligations of that Party under this Agreement as are assigned.
- 11.2 Clause 11.1 shall not in any way affect Highways England's ability to transfer the benefit of the Order to another person under article 8 of the Order provided it has complied with Clause 11.

12 Transfer of benefit of the Order

- 12.1 If Highways England intends to transfer the benefit of the Order to another person ("the transferee") under article 8 of the Order, Highways England shall, prior to such transfer, procure a direct covenant from the transferee in favour of Royal Mail to observe and perform such of the obligations of Highways England under this Agreement as relate to the exercise of the powers which have been transferred.
- 12.2 Upon Highways England procuring the direct covenant referred to in Clause 12.1, Highways England shall be released from any obligation under this Agreement to observe and perform the obligations and restrictions which relate to the exercise of the powers which have been transferred (save in respect of any antecedent breach).

13 Dispute Resolution

- 13.1 Highways England and Royal Mail agree to act reasonably and unless otherwise stated where any Party is required to give its agreement, consent or approval to any matter, such agreement, consent or approval shall be given as a notice in writing and shall not be unreasonably withheld or delayed save that in the case of any matters which risk harm to any person or property, Highways England shall retain absolute discretion.
- 13.2 Highways England and Royal Mail shall not use any means or take any action or procure any other person to take any action that would have the effect of nullifying or rendering less effective this Agreement.
- 13.3 Without prejudice to any other provisions of this Agreement, the Parties will attempt to resolve any lack of agreement, dispute or difference between them arising out of this Agreement (**Dispute**) by discussion and agreement in accordance with this Clause 13.
- 13.4 If any Dispute has not been resolved within 14 days of arising, either Party may call a meeting for the purposes of resolving the Dispute by serving not less than 5 Business Days' written notice on the other Party.
- 13.5 Each Party agrees to procure that their representative shall attend any meeting called in accordance with this Clause and will co-operate in good faith with the others to resolve the Dispute as amicably as possible and within 5 Business Days of the meeting called for that purpose.



13.6 If the senior representatives fail to resolve the Dispute in the allotted time:

13.6.1 any Dispute as to the meaning or construction of this Agreement shall be referred to and determined by an independent solicitor or barrister of at least 10 years' standing, acting as an expert and who is experienced in drafting, negotiating and advising upon agreements similar to this Agreement, such independent person to be agreed between the parties or failing such agreement to be nominated by the President or the Vice President or other duly authorised officer of the Law Society on the application of any Party, having given written notice to the others and the cost of the parties shall be borne as the expert shall direct; and

13.6.2 any other Dispute or difference arising between the parties under this Agreement shall be referred to and settled by arbitration in accordance with article 47 of the Order on referral by either Highways England or Royal Mail provided that, where relevant, the arbitrator shall settle the Dispute or difference in accordance with the terms of this Agreement and the parties shall bear the costs associated with the arbitration in such manner as the arbitrator may determine, and in so doing the arbitrator shall take into account the reasonableness of Highways England's and Royal Mail's respective positions leading to the difference arising between them and thereafter before its determination.

14 Rights of third parties

Only Highways England and Royal Mail and any assignee under Clause 10 may enforce the terms of this Agreement and no third party may enforce any such term by virtue of the Contracts (Rights of Third Parties) Act 1999.

EXECUTED as a deed by the parties and delivered on the date set out at the head of this Deed.

<p>THE CORPORATE SEAL of HIGHWAYS ENGLAND COMPANY LIMITED was affixed to this deed in the presence of [] an authorised signatory</p> <p>[REDACTED]</p>	
<p>Signed as a DEED by ... [REDACTED] as attorney for ROYAL MAIL GROUP LIMITED under a power of attorney dated 23 March 2019 in the presence of: <u>Holly Trotman</u> (witness)</p> <p>Signature of witness: [REDACTED]</p> <p>Name of witness: <u>Holly Trotman</u></p> <p>Address of witness: <u>Royal Mail Group Limited</u> <u>185 Farringdon Road</u> <u>London EC1A 1AA</u></p> <p>Occupation of witness: <u>Solicitor</u></p>	<p>[REDACTED]</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>