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National Highways
For information – to all Interested Parties

Your Ref:

Our Ref: TR010039

Date: 21 June 2022

Dear Sir/ Madam

The Planning Act 2008 (as amended), Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9

Planning Act 2008 (as amended) – Section 123 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 – Regulation 4

Application by National Highways for an Order Granting Development Consent for the A47 Wansford to Sutton Dualling Project

Notification of decision relating to reject as part of the application the proposed provision for the compulsory acquisition of additional land and the proposed design changes

I am writing to inform you of my procedural decision made by me as Examining Authority (ExA) regarding the Applicant's proposed changes to the Development Consent (DCO) application.

The Applicant submitted a letter dated 6 May 2022 where it indicated that it would be submitting a formal change request to the application [AS-045] together with associated plans [AS-046] and [AS-047]. In response, I wrote on 10 May 2022 [PD-011] making various comments, particularly emphasising the need to ensure that any changes could be incorporated into the Examination. Any changes would also need to be appropriately considered before the end of the Examination on 11 July 2022 in the event that Regulations 5 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regulations) were engaged.

The Applicant responded to this Rule 17 letter on 20 May 2022 [REP7-018] dealing with the query relating to a covenant in favour of a person unknown, and I responded with another Rule 17 letter on 24 May 2022 [PD-013].

Proposed Changes

The Applicant formally submitted the change request on 14 June 2022 [REP8-029] together with a number of associated documents which are referred to in that letter.

The changes can be summarised as follows:

Change One – the realignment of the new link road from the A47 Wansford eastern roundabout to the new A47 off-bound slip to the north by approximately 14m. The Applicant indicates that this is to reduce construction phasing requirements associated with utility diversions. The change, according to the Applicant, represents a more efficient interface between the Proposed Development and the assets of various statutory undertakers.

Change Two – the modification of the access alignment to Sacrewell Farm. The Applicant indicates that this is to avoid Anglian Water assets and would improve visibility at the access to the Sacrewell Farm.

Change Three – the shortening of the cycle route at the eastern end of the Proposed Development by deleting a section of cycle track on the northern frontage of Peterborough Road. This would, according to the Applicant, avoid the need for cyclists to leave Peterborough Road at the Nene Way junction. However, sections of footway would be provided on both the northern and southern frontages of Peterborough Road.

The Applicant takes the view that all three changes should be considered to be non-material changes to the application and has submitted an Environmental Statement Addendum One [REP8-030] which indicates that the changes would not result in any new or different likely significant effects compared to those found in the Environmental Statement.

The Applicant acknowledges that in respect of Change Two that the proposals would involve “additional land” for the purposes of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regulations). Therefore, it has provided signed letters (see Annex A of [REP8-029]) on behalf of those within an interest, as set out in Part 1 of the Book of Reference [REP8-012], agreeing to the land being compulsorily acquired to seek to show that all persons with an interest in the additional land have consented to the inclusion of that land.

However, in Part 3 of the Book of Reference for the two relevant plots (Plots 3/2d and 3/3g as shown in the Land Plans [REP8-002]) in the column entitled “Names of All Those Entitled to Enjoy Easements Or Other Private Rights Over Land (Including Private Rights Of Navigation Over Water) Which It is Proposed Shall Be Extinguished, Suspended Or Interfered With” there is reference to “Unknown (in respect of Restrictive Covenants contained within a Deed of Grant dated 9 January 1976)”.

The Applicant takes the view that these restrictive covenants do not relate to persons with an interest in the land because they do not amount to a legal interest in land registrable at HM Land Registry in respect of the two cited plots and therefore Regulations 5 to 19 of the CA Regulations are not engaged.

I note that the Applicant has consulted with those it identified in its letter of 6 May 2022 and with the affected statutory undertakers. The Applicant has advised that there were no responses.

ExA Conclusion

I have reviewed the information provided and assessed the Applicant's request in line with paragraphs 109 to 115 of DCLG Guidance 'Planning Act 2008: Examination of Applications for Development Consent' and the Planning Inspectorate's Advice Note 16¹ (AN16).

AN16 sets out that there is no legal definition of 'material' but the tests to apply are whether the change is substantial or whether the development now being proposed is not in substance that which was originally applied for but is a matter of planning judgement and gives examples as to what may represent a 'material' change. These include whether the change would generate a new or different likely significant environmental effects and, whether (and if so the extent to which) a change request involves an extension to the Order land, particularly where this would require additional Compulsory Acquisition powers.

I have looked at the three amendments both individually and cumulatively and I note that all the proposed changes fall within the Application site of the Proposed Development and would not result in a materially different project. However, Change Two would involve additional land. I have therefore concluded that on its own this would represent a material change, but on their own Changes One and Three would be non-material; together all three would represent a material change.

I have carefully considered the Applicant's case as to why those 'persons unknown' do not represent 'a person with an interest in the additional land' but disagree with it. Any interest will be held by a person (whether a legal person or otherwise) and, to my mind, it matters not whether that is an interest registrable or not at HM Land Registry.

As the Applicant has explained in the Application documents the aim of the compulsory acquisition is to obtain clean title. If this were to be achieved here then 'persons unknown' would have been deprived of their interest and the opportunity to make representations about that interest.

This means that Regulations 5 to 19 of the CA Regulations would be engaged were Change Two to be accepted. As the Applicant correctly indicated in its letter of 20 May 2022 [REP7-018] there would be insufficient time left in the Examination to comply with the procedural requirements of the CA Regulations. I therefore am unable to accept Change Two.

Because Change Two is inextricably linked in the submission to Changes One and Three I would be unable to accept those at this time.

It is therefore for the Applicant to decide what, if anything, it wishes to do in response to this decision. For clarity, while I have arranged for them to be published so that Interested Parties will be aware of them, none of the documents set out in the Table following

¹ Advice Note sixteen: How to request a change which may be material

paragraph 2.1.1 of the Applicant's "Request for a Non-Material Change to the Application" have been accepted into the Examination.

They will remain as part of the documents submitted at D8 in the Examination Library so that there is a record. Of the other documents submitted at D8 because ES Addendum Two is contingent on ES Addendum One I am also unable to accept it into the Examination at this time.

Given that the Applicant agrees that the version of a number of these documents that is currently within the Examination, including the Draft DCO, Explanatory Memorandum, Book of Reference and Guide to the Application will need to be amended prior to the close of the Examination I would ask that the Applicant looks at these with urgency with a view to submitting as appropriate at D9, 28 June 2022.

In the Applicant's Cover letter to the D8 Submission [REP8-001] I note that the Applicant intended to undertake a targeted consultation in ES Addendum Two in the period 15 June to 27 June 2022. The Applicant will need to consider this further in light of my decision on the proposed changes.

I would also ask that the Applicant looks again at the northern end of the Sacrewell Farm access road to address Hearing Point 38 [EV-038] relating to visibility.

Yours faithfully

Robert Jackson

Robert Jackson
Examining Authority

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