



Our ref: TR010040

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Highways England
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30th September 2021

Dear Mr Hutson,

**PLANNING ACT 2008 (AS AMENDED) – SECTION 89
THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010 (AS AMENDED) – RULE 8(3), 9 AND 17**

**THE INFRASTRUCTURE PLANNING (COMPULSORY ACQUISITION)
REGULATIONS 2010 – REGULATIONS 4 TO 19**

**APPLICATION BY HIGHWAYS ENGLAND FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE A47 BLOFIELD TO NORTH BURLINGHAM
SCHEME**

We refer to the Examining Authority's letter of 21 September in relation to the Applicant's request for a non-material change to the above Scheme (NMC Request).

This letter specifically addresses the question of whether the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations) are invoked and is also submitted in compliance with regulation 5 of the CA Regulations.

Infrastructure Planning (Compulsory Acquisition) Regulations 2010

Highways England remains of the view that the relatively minor amendments proposed by the NMC Request do not invoke the CA Regulations.

Section 123 of the Planning Act 2008 (2008 Act) states:

- (1) *An order granting development consent may include provision authorising the compulsory acquisition of land only if the [Secretary of State] is satisfied that one of the conditions in subsections (2) to (4) is met.*
- (2) *The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.*

- (3) *The condition is that all persons with an interest in the land consent to the inclusion of the provision.*
- (4) *The condition is that the prescribed procedure has been followed in relation to the land.*

Highways England considers that Section 123(2) is engaged:

- 1 It is acknowledged that the NMC Request would result in the permanent acquisition of some "rights" land, and the acquisition of rights over a small parcel of land over which previously only temporary possession was sought.
- 2 That does not alter the fact that the Application (as submitted) did include a request for compulsory acquisition powers over the land to which the NMC Request relates.
- 3 The extent to which compulsory purchase was authorised was limited by the draft DCO, and the way it was shown on the Land Plans and described in the Book of Reference. That does not change the fact that compulsory acquisition powers were sought over the land.
- 4 This interpretation is consistent with the CA Regulations which contain the prescribed procedure for the compulsory acquisition of additional land (see regulation 4) referred to in Section 123(4) of the 2008 Act. Regulation 2(1) of the CA Regulations defines "additional land" as "land which it is proposed shall be subject to compulsory acquisition and which was not identified in the book of reference submitted with the application as land".

In summary our view remains that the land to which the NMC Request relates was included in the Book of Reference as land and that the CA Regulations are not therefore invoked.

Regulation 5 – Proposed Provision

Notwithstanding the above, if the Examining Authority does not agree with our conclusions, compliance with the CA Regulations at this stage of the examination is very challenging from a timetabling perspective. We are therefore taking this opportunity to undertake some preliminary steps to comply with the CA Regulations in order to streamline the process in the event that the Examining Authority does not agree with the conclusions as set out above.

Regulation 5 of the CA Regulations provides as follows:

5 Proposed provision

The applicant must send to the Secretary of State details of the proposed provision which must:

- (a) *be in the form of a book of reference or, where a book of reference has been submitted to the Secretary of State, a supplement to that book;*

- (b) *be accompanied by-*
- (i) *a land plan identifying the land required as additional land, or affected by the proposed provision; and*
 - (ii) *a statement of reasons as to why the additional land is required and a statement to indicate how an order that contains the authorisation of the compulsory acquisition of the additional land is proposed to be funded.*

The NMC Request was not framed under the CA Regulations. We have therefore enclosed with this letter the following documents:

- Land Plan Supplement (**TR010040/EXAM/9.18**) containing land plans identifying the "additional land".
- Statement of Reasons Supplement (**TR010040/EXAM/9.19**) relating to the Additional Land
- Book of Reference Supplement (**TR010040/EXAM/9.20**).

Given the minor nature of the change proposed any additional costs for compulsory acquisition or the works themselves can be accommodated with the flexibility allowed for within the Scheme budget for contingencies etc and therefore an additional Funding Statement relating to the Additional Land has not been provided. The Funding Statement for the Scheme (**APP-020**) continues to be applicable.

We have assumed for the purposes of these documents that the "additional land" comprises the plots affected by the NMC Request, even where the only change is an amendment to the plot numbers, although we would reiterate that we do not consider that the NMC Request provides for the compulsory acquisition of additional land.

If the Examining Authority considers that it could not authorise the compulsory acquisition of the land and rights sought by the Applicant as part of the NMC Request unless the CA Regulations are followed, we would ask the Examining Authority, without delay, to accept the "proposed provision" contained in this letter and supporting documents as part of the DCO Application pursuant to Regulation 6 of the CA Regulations. This will allow Highways England to arrange for relevant notices to be sent and published, and maximise time for any responses to be examined following the expiry of the relevant representation period contained in those notices.

Further submissions

We have submitted this letter and enclosures in advance of Deadline 4A due to the very short length of time available in which to comply with the CA Regulations before the close of the Examination on 22 December 2021.

We will be submitting separately at Deadline 4A (as requested by the Examining Authority) the following:

- A timetable to demonstrate how the CA Regulations procedure can be adhered to within the remaining Examination period; and
- Representations in response to questions raised by the Examining Authority in relation to the Masterplan and the oak tree.

Yours sincerely,



Nikki Rowley-Todd
Project Manager
Highways England