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To Andy Kelly
Highways England

Your Ref:

Our Ref: TR010054

Date: 12 August 2020

Dear Mr Kelly

Planning Act 2008 - Section 89

Application by Highways England for an Order Granting Development Consent for the M54 to M6 Link Road

Notice by Applicant of intention to submit a request for changes to the application

Thank you for e-mail dated 28 July 2020 with the attached document entitled '8.3 Notification of Proposed Scheme Changes'. The email states that attached is Highways England's Notification of a design Change to the M54/M6 scheme for consideration. It requests advice on the procedural implications of the proposed changes and the need, scale and nature of consultation to be carried out. The document has been published on the National Infrastructure Planning website here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010054/TR010054-000444-200728%20M54M6%20Applicant%20Notification%20of%20proposed%20scheme%20changes%20letter.pdf>

The document, in section 1, concludes that because of the potential cumulative impacts and changes associated with change 4, the Applicant intends to err on the side of caution and follow the process associated with material changes as set out in The Planning Inspectorate Advice Note 16: Requesting Changes (version 2, March 2016) (AN16). I have therefore taken this document as notification of a change request in accordance with Step 1 of the recommended procedure in AN16.

The document identifies seven proposed changes and sets out the detail of these in section 2. An indicative programme is also included, at section 5, and this anticipates a formal material change request, in accordance with step 4 of AN16, around 5 October 2020. Moreover, the document sets out the consultation the Applicant proposes to undertake, at section 4, and how this would be reported. The Applicant seeks advice from the Examining Authority (ExA) regarding the need, scale and nature of the consultation to be carried out and on the procedural implications of the proposed changes

Materiality of the proposed changes

In the Applicant's view the proposed changes 1, 2, 3, 6 and 7 are not material, with proposed changes 4 and 5 potentially being material. The Applicant has not expressed a view as to whether the proposed changes cumulatively may be considered to be material. It is ultimately for the ExA to decide whether or not a proposed change is material and the ExA does not at this stage have sufficient information to reach a view as to materiality. It is however noted that the Applicant states the changes will not necessitate the Compulsory Acquisition of "additional land" as defined in The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) or secure additional rights over land but that the changes could result in minor changes to the operational environmental effects reported in the Environmental Statement (ES) with work to assess the changes being on going. The Applicant has not made any comment as to whether there would be any change as to land of which Temporary Possession (TP) is sought; this should be clarified. The Applicant's assertion around changes in opinion of prescribed consultees is not, at this time supported by appropriate evidence, and therefore conclusions cannot be drawn.

On receipt of the formal change request, such factors may lead the ExA to conclude that the changes taken together are material. This means that before accepting the material changes for examination, the ExA will need to have:

- the information identified in paragraphs (a) to (d) in Figure 3 of AN16;
- confirmation that the CA Regulations are not engaged. Albeit that with Change 7, the potential reduction in land required for environmental mitigation, the Applicant will need to update the information to support CA or TP and whether any land is no longer needed and therefore there is no longer justification for its CA/TP. The Book of Reference and Statement of Reasons, and any other relevant documents should be updated to reflect any conclusions drawn; and
- confirmation that any new environmental effects have been adequately assessed and subject to publicity and that any consultation bodies have been consulted (see paragraph (f) of Figure 3 of AN16) and the appropriate documentation updated.

The Applicant is also advised that it is, of course, possible that the ExA may consider one or more proposed change is acceptable as a change (whether or not material), but another or others not. The Applicant is therefore asked to consider the interdependence of these with each other.

Consultation

Whether or not the proposed changes are material the ExA considers that, in order to ensure fairness, appropriate and proportionate non-statutory consultation should be carried out before the change request is submitted.

The ExA agrees that the consultation must engage all those persons identified in the Planning Act 2008 under section 42 (a) to (d) who would be affected by the proposed changes (giving a minimum of 28 days) including any section 42 persons not originally consulted on the application but who may now be affected by the proposed changes. The Applicant also proposes, and the ExA agrees, that the public should be consulted through a leafleting scheme and publication in appropriate newspapers.

When submitting the change request it is recommended that the Applicant submits a statement which:

- lists the persons (affected by the changes) under section 42 (a) to (d) who have been consulted (identifying particularly any new persons ie those who were consulted in relation to the proposed change but not in relation to the original application);
- identifies (within the above list) those section 42 (d) persons who are “affected persons”, meaning those persons over whose land Compulsory Acquisition powers will be exercised;
- provides justification as to why any person under section 42 (a) to (d) is not affected by the proposed changes and has not therefore been consulted (if any);
- provides copies of any newspaper notices or site notices; and
- appends as an annex to a Consultation Statement to be submitted with the formal change request comprising any consultation responses received.

If the ExA decides to accept the changes (whether or not material) into the Examination, all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as the Examination progresses. Nonetheless, if the ExA is not satisfied with the extent of non-statutory consultation undertaken by the Applicant the ExA may request that further non-statutory consultation is carried out to safeguard the interests of and/ or inform those potentially impacted by the changes who are not already involved in the Examination.

Effect on timetable

On the assumption that the documentation and change requests are submitted in line with the timetable identified, then the ExA does not anticipate that this will have any effect on the overall timetable for the examination. However, should any submission not be made in line with that timetable, then the Applicant is asked to give an indication as to how it considers the request can be accommodated within the examination timetable, the draft of which, set out in the Rule 6 letter, will be set out shortly.

Next steps

The Applicant is asked to ensure that the change request, that is intended to be submitted in September 2020, responds fully to the points made above and contains sufficient information to enable the ExA to prepare further questions, if necessary.

If you have any questions about any of the matters raised in this correspondence, please contact the Case Team using the details provided in this letter.

Yours sincerely

Robert Jackson

Lead Member of the Panel of Examining Inspectors

This communication does not constitute legal advice.

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