



# Department for Transport

National Highways  
Temple Quay House  
2 The Square  
Bristol  
BS1 6HA

Rosalind Wall  
Co-Director Motoring and Freight  
DEPARTMENT FOR TRANSPORT  
ZONE 1/14-18  
GREAT MINSTER HOUSE  
33 HORSEFERRY ROAD  
LONDON  
SW1P 4DR

ENQUIRIES: 07971145878  
E-MAIL: [TRANSPORTINFRASTRUCTURE@dft.gov.uk](mailto:TRANSPORTINFRASTRUCTURE@dft.gov.uk)

Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)

21 April 2022

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED M54 to M6 LINK ROAD DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the report of 21 July 2021 of the Examining Authority (“the ExA”), a Panel of two examining Inspectors consisting of Robert Jackson BA MPhil DMS MRTPI MCMI (Lead Member) and Kenneth Stone BSc (Hons) DipTP MRTPI, who conducted an examination into the application by Highways England (now known as National Highways) (“the Applicant”) for the M54 to M6 Link Road Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- late representations received by the Secretary of State following the close of the examination; and
- responses to further consultation undertaken by the Secretary of State in respect of the application.

2. The application was accepted for examination on 28 February 2020. The examination began on 21 October 2020 and was completed on 21 April 2021. The examination was conducted on the basis of written and oral submissions submitted to the ExA. Due to the ongoing pandemic the ExA was unable to hold an accompanied site visit but conducted three unaccompanied site inspections in June 2020 and March 2021.

3. The Order as applied for under the 2008 Act would grant development consent to the Applicant to provide a link road between Junction 1 on the M54, M6 North and the A460 to Cannock. The proposals would comprise the replacement of the existing M54 junction 1 with free flow slip roads between the new link road and the M54, the construction of three new roundabouts and construction of a new dual carriageway between M54 junction 1 and the M6 junction 11.

4. Published alongside this letter on the Planning Inspectorate's website is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA's Report") (as amended by Errata Sheet (Ref TR0 010054)). The ExA's findings and conclusions are set out in sections 5 to 17 of the ExA's Report, and the ExA's summary findings and conclusions and recommendation are set out in section 18.

### **Summary of the ExA's Recommendation**

5. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the ExA's Report under the following headings:

- Legal and Policy Context;
- Planning Issues
- Air Quality;
- Biodiversity, Ecology and Natural Environment;
- Cultural Heritage including Archaeology;
- Green Belt;
- Landscape and Visual Effects;
- Noise and Vibration;
- Socio-Economic Effects;
- Traffic and Transport;
- Water Environment;
- Habitats Regulations Assessment;
- The case for Development Consent
- Compulsory Acquisition and Related Matters; and
- Draft Development Consent Order and Related Matters

6. The ExA recommended that the Secretary of State should make the Order in the form recommended at Appendix D of the Report.

### **Summary of the Secretary of State's Decision**

7. **The Secretary of State has considered the ExA's Report and has decided under section 114(1)(a) of the 2008 Act to grant development consent.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

### **Secretary of State's Consideration**

8. The Secretary of State has considered the ExA's Report, the further representations received after the close of the examination, responses to consultation, and all other material considerations. The Secretary of State's consideration of these matters is set out in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations, as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the

ExA in support of the conclusions and recommendations. All “ER” references are to the specified paragraph in the ExA’s Report. Paragraph numbers in the ExA’s Report are quoted in the form “ER x.xx.xx” as appropriate.

## **Legal and Policy Context**

9. Given that the application requires development consent, section 104(2) of the 2008 Act has effect in relation to the development to which the application relates. In determining this application, the Secretary of State must therefore have regard to any relevant National Policy Statement (“NPS”), and any Local Impact Report (“LIR”) submitted, any matters prescribed in relation to development of the description to which the application relates, and any other matters the Secretary of State considers to be both important and relevant to the decision (ER 3.1.2). Under section 104(3) of the 2008 Act the Secretary of State must decide this application in accordance with any relevant NPS which in this case is the National Networks National Policy Statement (“NNNPS”), subject to any of the exceptions in section 104(4) to (8) of the 2008 Act applying. The Secretary of State does not consider any of these exceptions apply on the facts of this case.

10. The LIRs and the relevant development the Secretary of State has had regard to are described in ER 3.9 and 3.10. The Secretary of State also notes the ExA’s assessment set out in ER 3.3, 3.4, 3.5, 3.6, 3.7 and 3.8 of UK Regulations derived from European law, other relevant legal provisions, previous DCOs, transboundary effects, other relevant policy statements and the National Planning Policy Framework (“the Framework”), and agrees these are matters to be considered in deciding this application. The Secretary of State notes that the UK Regulations derived from European law set out in ER 3.3 remain in place despite the UK having left the EU on 31 January 2020 and despite transition arrangements ending on 31 December 2020. These are therefore still relevant to this application.

### Need for the Development

11. Paragraph 2.2 of the NNNPS sets out a critical need to improve national networks and address road congestion. The Secretary of State agrees with the ExA that the proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NNNPS and local planning policy. The need and benefits include relieving traffic congestion on the A460, A449 and A5 and providing more reliable journey times, keeping the right traffic on the right roads and improving safety by separating local community traffic from long distance and business traffic, reducing volumes of through-traffic in villages, improving local community access and supporting local economic growth for Telford, Shrewsbury, Wolverhampton, Cannock and Tamworth by improving traffic flow and enhancing access to east-west and north-south routes (ER 15.4.13). The Secretary of State notes the ExA’s view that significant economic benefits would result from the Proposed Development, along with other benefits in terms of overall improvements for air quality.

## **Planning Issues**

12. The Secretary of State notes there was substantial local support for the principle of the development. However, the Secretary of State notes objections were raised to the detail of the proposal but the local community did not raise objections to the precise line of the link road. There were specific concerns from South Staffordshire Council (“SSC”) and

Hilton, Featherstone & Brinsford and Shareshill Parish Councils (“the Parish Councils”) that the Preferred Alignment decision was incorrect and that the easterly alignment would have less of an effect on local communities (ER 4.1.1 and 4.1.2).

13. The Secretary of State notes that in accordance with paragraph 4.26 of the NPSNN, the Applicant included within the ES an outline of the main alternatives studied and provided an indication of the main reasons for the preferred route, taking into account the environmental effects. He further notes that in accordance with paragraph 4.27 of the NPSNN, that the ExA are satisfied that the project has been subject to a full options appraisal in achieving its status within the Road Investment Strategy, and that proportionate option consideration of alternatives would have been undertaken as part of the investment decision making process. The Secretary of State further notes that in considering whether the proposed alignment is acceptable, taking into account all considerations as set out in s104 of the 2008 Act, the ExA reached their conclusion in Chapter 15 of their Report, having assessed all the individual planning issues and reaching a balanced conclusion (ER 4.6.19 to 4.6.21).

14. In a Ministerial Statement issued on 22 July 2021 the Secretary of State for Transport advised that a review of the NPSNN will begin later in 2021, to be completed no later than Spring 2023. While the review is undertaken, the NPS remains relevant government policy and has effect for the purposes of the Planning Act 2008. The NPS will, therefore, continue to provide a proper basis on which the Planning Inspectorate can examine, and the Secretary of State can make decisions on, applications for development consent.

15. The Secretary of State notes that the Proposed Development is development for which an Environmental Impact Assessment (“EIA”) is required as recorded in Section 1.5 of the ExA Report and the documents which comprise the Environmental Statement (“ES”) and the various addenda to that are set out in the Examination Library set out in Appendix B of the ExA Report.

## **Air Quality**

16. The Secretary of State notes the ExA’s assessment of the Policy frameworks relating to Air Quality set out in ER 5.2, the case for the Applicant set out in 5.3 and the position of interested parties in ER 5.5.

17. The Secretary of State notes there were no robust or technical objections or concerns raised in respect of the effect of the proposed development on air quality. The Parish Councils and SSC raised issues related to the alignment of the mainline of the link road (“the mainline”) and the preferred route, expressing concern that its proximity to residential properties around Dark Lane would result in a deteriorating environment for local residents including in respect of air quality. They did not however provide any evidence or data to support these assertions and SSC confirmed that their Environmental Health department did not raise any objections to the Proposed Development (ER 5.7.1).

18. The Secretary of State notes the Applicant’s air quality assessment concludes that there are no properties with adverse changes in air quality (small, medium or large) above the air quality values and there is no adverse effect on air quality for compliance links. Whilst the assessment does identify locations where the air quality position would be worse than in the Do Minimum (“DM”) situation the increase in concentrations of pollutants would

be imperceptible or a small change as a result of the Proposed Development and would be below limit values or objectives (ER 5.7.2).

19. The Secretary of State notes that overall, the ExA were satisfied the Proposed Development would not result in significant adverse effects on air quality. He notes there are areas which would have increases in pollutant levels but that these would not perceptibly worsen concentrations in those areas already above any objective and would not result in concentrations exceeding objective levels or relevant statutory air quality thresholds. The ExA concluded that across the study area there would be a net benefit for air quality for sensitive receptors. The Secretary of State notes the ExA's view that the Proposed Development therefore is in compliance with paragraphs 5.9 and 5.10 of the NPSNN (ER 5.7.7, 15.3.10).

20. During construction there would be the potential for dust to affect air quality, with particular impacts on residential receptors in relatively close proximity to the works (ER 5.7.9). However, the ExA concluded that this could be appropriately mitigated and that there would be no other significant air quality effects resulting from construction of the Proposed Development (ER 15.3.9). The Secretary of State is content this this mitigation has been secured through the Order.

21. The Secretary of State notes that the ExA were satisfied that the Proposed Development would not result in unacceptable air quality impacts, it would meet the tests in the NPSNN and would not result in a significant effect or deterioration of air quality and would not adversely affect an Air Quality Management Area or any nature conservation sites and would not conflict with local policies (ER 5.7.10). The Secretary of State agrees with this conclusion.

## **Carbon emissions**

### **Background**

22. Section 104(3) of the 2008 Act states that the Secretary of State must decide an application for a national network Nationally Significant Infrastructure Project in accordance with the NPSNN except to the extent that one or more of subsections 104 (4) to (8) of the 2008 Act apply. These include not only where the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits, but where the Secretary of State is satisfied that deciding the application in accordance with the NPSNN would: lead to the UK being in breach of any of its international obligations; lead to him being in breach of any duty imposed on him by or under any enactment; be unlawful by virtue of any enactment (ER 3.1.3). The UK's international obligations include the Paris Agreement, which was ratified by the UK Government in 2016, after the NPSNN was designated in 2014. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008.

23. In June 2019 the Government announced a new carbon reduction 'Net Zero target' for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment Order 2019). This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050 (ER 5.2.15). The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth, fifth and sixth

budget are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the target of net zero carbon by 2050.

24. The ExA set out that the NPSNN advises that traffic-related emissions are expected to continue to fall, and that there are therefore only very limited circumstances in which a highway proposal will lead to material adverse change in carbon emissions, on a scale that would bear on the achievement of the statutory carbon budget. The Secretary of State considers that this part of the ExA's report relates particularly to paragraph 3.8 and 5.17 of the NPSNN Paragraph 3.8 sets out that the impact of road development on aggregate levels of emissions is likely to be very small and that the impacts of road development need to be seen against significant projected reductions in carbon emissions as a result of current and future policies to meet the Government's legally binding carbon budgets. Paragraph 5.17 sets out that it is very unlikely that the impact of a road project will, in isolation, affect the ability of Government to meet its carbon reduction plan targets. The Secretary of State notes the ExA's view that this Proposed Development is not of sufficient scale to have such an effect (ER 5.7.11).

25. The Secretary of State notes that the ExA has considered the Government's carbon budgets which at the start of the Examination included the third (2018-2022), fourth (2023-2027) and fifth (2028-2032). The ExA highlighted that Greenhouse Gas ("GHG") emissions (measured as carbon dioxide equivalent and referred to as "carbon emissions") for the Proposed Development in net terms between the Do-something ("DS") and Do minimum ("DM") scenarios as set out by the Applicant in its ES would result in a total increase of 206,860tCO<sub>2e</sub>. Splitting these between construction (81,890tCO<sub>2e</sub>) and operation (121,730tCO<sub>2e</sub>) and across the relevant carbon budgets, given that the construction of the Proposed Development was then expected to take place in 2021-2024 and opening in 2024, the ExA set out that the Proposed Development would contribute to 0.0013% of the UK's carbon budget for the third carbon budget period. The Proposed Development's carbon emissions would equate to 0.0048% of the UK's carbon budget for the fourth carbon budget period and 0.0043% of the UK's carbon budget for the fifth carbon budget period (ER 5.7.12).

26. The Secretary of State notes that during the Examination, whilst the sixth carbon budget was not available, the ExA asked the Applicant about the recommendations for the sixth budget as set out in the Committee on Climate Change's ("the CCC") Sixth Carbon Budget report of 9 December 2020. This set out recommendations for the 2033 to 2037 period and recommended a net reduction of 78% between 1990 and 2035, representing the bringing forward of the previous 80% target by nearly 15 years. The Secretary of State notes that the ExA asked the Applicant to make an assessment against this proposed change in carbon emissions from the development in respect of the third, fourth and fifth carbon budgets, and to comment on what effect, if any, that this might have on the Government's ability to meet any revised target set by Parliament. The Applicant responded by stating as the third, fourth and fifth carbon budgets would remain the same following publication of the sixth carbon budget, the percentage contribution from the Proposed Development remains the same for these periods despite the Government's more ambitious carbon reduction target. When compared against the sixth carbon budget as set out in the CCC report (and which was later confirmed by the Carbon Budget Order 2021) the Applicant identified that GHG emissions from the Proposed Development represent

0.0079% of that budget, which is a higher contribution than for the previous budgets, but which the Applicant considered was still well below a threshold of 1% of a given carbon budget. Therefore, the Applicant considered that their conclusion that *“the GHG impact of the Proposed Development would not have a material impact on carbon reduction targets as set by the UK government”* remained applicable (ER 5.7.13).

27. The Secretary of State notes that there were no substantive issues or concerns raised by any party with regard to the Applicant’s assessment of the effects or broader implications in respect of carbon emissions (ER 5.7.15). The ExA considered that given the Applicant’s comments regarding the CCC’s Sixth Carbon Budget report and its advised budget allocations, there was unlikely to be a significant effect but advised that the Secretary of State may wish to consider the impact of carbon equivalent emissions for the operational phase of the Proposed Development in relation to the relevant carbon budget now that it is available and the cumulative impact of emissions for the NPSNN in the context of the revised net carbon target and other projects and programmes namely RIS1/RIS2 (ER 5.7.16). The ExA also advised that the Secretary of State may also wish to consider the impact of the sixth carbon budget and the ‘Decarbonising Transport: a better, greener Britain’ (“the Transport Decarbonisation Plan”) (ER 5.7.14).

28. The Secretary of State therefore requested additional information from the Applicant with regard to the Proposed Development’s compliance with the sixth carbon budget and the direct, indirect and cumulative likely significant effects of the Proposed Development with other existing and/or approved projects on climate.

#### Sixth Carbon Budget

29. With regard to the Proposed Development’s compliance with the sixth carbon budget, the Applicant responded on 23 August 2021 to the Secretary of State’s request, setting out that the Proposed Development would contribute 0.0082% of the sixth carbon budget. The Applicant however noted that this assessment is conservative and likely to be an overestimate as the projected uptake of new electric vehicles is higher than the projections used in the national projections included in the version of Defra’s Emissions Factor Toolkit that was available at the time and used to provide the assessment. The Applicant also referenced DfT’s Transport Decarbonisation Plan published in July 2021 as outlining a number of commitments by the Government to remove all emissions from road transport to achieve the net zero target by 2050 which they argued would have a direct impact on road user emissions and was also not captured in their assessment. The Applicant also highlighted that in July 2021, the then Highways England published its own 2030/2040/2050 Net Zero highways plan that included a commitment to ensure its maintenance and construction activities become net zero by 2040 and road user emissions on the strategic road network become net zero by 2050.

30. The Secretary of State notes that the Applicant concluded in its letter of 23 August 2021 that the then predicted maximum impact on any carbon budget (including the sixth carbon budget) would be 0.0082% and that this would not have a material effect on the Government’s ability to comply with carbon budgets. In response to the Secretary of State’s follow up request of 22 December 2021 for additional information relating to the cumulative effects of the scheme on climate, the Applicant provided updated figures on the impact of the scheme on each of the carbon budgets using the newly available Emissions Factor Toolkit v11 which took account of the higher predicted uptake rates of electric vehicles. The

Applicant also presented the results of its sensitivity test to reflect the policies in the Transport Decarbonisation Plan. The Secretary of State notes that the figures set out in the Applicant's latest assessment show that the Proposed Development's contribution to any carbon budget will be a maximum of 0.0061%. The Secretary of State notes that this figure is a lower impact on each of the carbon budgets than that considered by the ExA except in relation to the third carbon budget where the impact is now assessed as being slightly higher than that considered by the ExA (0.0352Mt CO<sub>2</sub>e in contrast to 0.0334mt CO<sub>2</sub>e).

31. The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government's wider policies around net zero such as 'The Net Zero Strategy: Build Back Greener' ("Net Zero Strategy"), published by Government in October 2021 sets out policies and proposals for decarbonising all sectors of the UK economy to meet the net zero target by 2050. It is against this background that the Secretary of State has considered the Proposed Development. The Secretary of State notes the Applicant's most recent assessment of the Proposed Development's impact on the carbon budgets takes account of the Transport Decarbonisation Plan and that no other party has questioned this assessment.

32. The Secretary of State acknowledges the importance of climate change at the local, national and international level and the contribution GHGs make to this. Section 6.2 of the latest IEMA guidance "Assessing Greenhouse Gas Emissions and Evaluating their Significance" ("the IEMA Guidance") notes that "*The 2050 target (and interim budgets set to date) are, according to the CCC, compatible with the required magnitude and rate of GHG emissions reductions required in the UK to meet the goals of the Paris Agreement, thereby limiting severe adverse effects*". This guidance also sets out that, "*Carbon budgets allow for continuing economic activity, including projects in the built environment, in a controlled manner*".

33. The ExA refers to a significance threshold of 1% of a given carbon budget used by the Applicant (ER 5.7.13). The Secretary of State considers that there is no set significance threshold for carbon. The latest IEMA guidance at section 6.1 refers back to three overarching principles in its original 2010 guidance that it considered to be particularly relevant in considering significance: GHG emissions from all projects will contribute to climate change, the largest interrelated cumulative environmental effect; the consequences of a changing climate have the potential to lead to significant environmental effects on all EIA topics; and that GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit and as such any GHG emission or reductions in these might be considered significant. The latest IEMA guidance states that it builds on those principles noting: when evaluating significance, all new GHG emissions contribute to a negative environmental impact, but some projects will replace existing development or baseline activity that has a higher GHG profile and the significance of a project's emissions should therefore be based on its net impact over its lifetime, which may be positive, negative or negligible; where GHG emissions cannot be avoided, the goal of the EIA process should be to reduce the project's residual emissions at all stages; where GHG emissions remain significant, but cannot be further reduced, approaches to compensate the project's remaining emissions should be considered.



34. The IEMA guidance considers that the crux of significance is not whether a project emits GHG emissions, nor even the magnitude of GHG emissions alone, but whether it contributes to reducing GHG emissions relative to a comparable baseline consistent with a trajectory towards net zero by 2050 (section 6.2). The IEMA guidance addresses significance principles and criteria in section 6.3 and Figure 5 and advises (amongst other things) that: a project that follows a 'business-as-usual' or 'do minimum' approach and is not compatible with the UK's net zero trajectory, or accepted aligned practice or area-based transition targets, results in significant adverse effects; a project that is compatible with the budgeted science-based 1.5 degree Celsius trajectory (in terms of rate of emissions reduction) and which complies with up-to-date policy and 'good practice' reduction measures to achieve that has a minor adverse effect that is not significant - such a project may have residual emissions but it is doing enough to align with and contribute to the relevant transition scenario to keep the UK on track towards net zero by 2050 with at least a 78% reduction by 2035 and thereby potentially avoiding significant adverse effects; and a project that achieves emissions mitigation that goes substantially beyond the reduction trajectory, or substantially beyond existing and emerging policy compatible with that trajectory, and has minimal residual emissions, is considered to have negligible effect that is not significant and such a project is playing a part in achieving the rate of transition required by nationally set policy commitments.

35. The Secretary of State notes that the scheme will result in an increase in carbon emissions but that the view reached by the ExA is that it will not be so significant that it would materially impact on the ability of Government to meet its carbon reduction targets (ER 15.3.11). The Secretary of State does not consider that net zero means consent cannot be granted for development that will increase carbon emissions. The Secretary of State considers that, as set out in paragraph 5.18 of the NPSNN, it is necessary to continue to evaluate whether (amongst other things) the increase in carbon emissions resulting from the Proposed Development would have a material impact on the ability of Government to meet its carbon reduction targets. As set out above, the carbon budgets should meet the goals of the Paris Agreement meaning a proposal which is compatible with the 2050 target and interim carbon budgets is consistent with the approach to addressing the severe adverse effects of climate change. The Secretary of State considers this aligns with the approach to significance set out in the most recent IEMA Guidance. The Secretary of State considers that the approach set out in the NPSNN continues to be relevant in light of international obligations and domestic obligations related to reducing carbon emissions that have come into force since the NPSNN was designated. The Secretary of State notes that the carbon budgets are economy-wide and not just targets in relation to transport. The scheme's contribution to overall carbon levels is very low and the Secretary of State agrees with the ExA that its contribution will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets.

36. In relation to mitigation, the Secretary of State notes that, with regard to construction the Applicant's ES sets out that these impacts will be mitigated through the CEMP. Emissions relating to the operational phase, other than vehicle usage, will be reduced where possible through measures such as the use of energy efficient lighting (see section 14.8 of Chapter 14 of the ES). The Secretary of State is content that these measures will help to reduce carbon emissions where this is possible and that such measures are secured by requirements in the DCO.

37. With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution (“NDC”) in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party’s NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK’s NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the fifth carbon budget, which covers the period 2028-2032. The Net Zero Strategy: Build Back Greener, published by Government in October 2021, sets out how the UK will therefore need to overachieve on the fifth carbon budget to meet its international climate targets and stay on track for the sixth carbon budget. This strategy sets out the action Government will take to keep the UK on track for meeting the UK’s carbon budgets and 2030 NDC and establishes the UK’s longer-term pathway towards net zero by 2050. The Secretary of State is content that consenting the Proposed Development will not impact on the delivery of this strategy and will not lead to a breach of the UK’s international obligations in relation to the Paris Agreement or any domestic enactments or duties.

38. Overall, the Secretary of State considers that: over time the net carbon emissions resulting from the operation of the scheme will decrease as measures to reduce emissions from vehicle usage are delivered; the magnitude of the increase in carbon emissions resulting from the Proposed Development is below 0.01% of any carbon budget and therefore small; and there are policies in place to ensure these carbon budgets are met, such as the Transport Decarbonation Plan and NH’s own Net Zero Highway Plan published in July 2021. The Secretary of State is satisfied that the scheme is compatible with these policies and that the small increase in emissions that will result from the scheme can be managed within Government’s overall strategy for meeting net zero. The Secretary of State considers that there are appropriate mitigation measures secured in the DCO to ensure carbon emissions are kept as low as possible and that the scheme will not materially impact the Government’s ability to meet its net zero targets.

#### Assessment of Cumulative Impact of GHG emissions

39. The Secretary of State sought additional information from the Applicant on 9 August 2021 on the cumulative impact of GHG emissions. Following the Applicant’s response of 23 August 2022, the Secretary of State made a further request for information relating to this matter on 22 December 2022. The Applicant responded to this on 26 January 2022.

40. The Secretary of State notes the Applicant’s responses set out that the assessment of cumulative impacts of the scheme on climate was undertaken in line with DMRB guidance. The Applicant sets out that an assessment of GHG emissions (assessed as carbon dioxide equivalent emissions and referred to here as carbon emissions) with regard to construction and operational effects of the Proposed Development is included in [Chapter 14](#) (Climate) of the ES. The information contained in Chapter 14 sets out that the assessment of carbon emissions from the Proposed Development was separated into emissions during construction and emissions during operation. With regard to construction, the carbon assessment includes an assessment of construction activities, embodied carbon in raw materials, transportation of materials to site and land use change. The assessment relating to the operation of the scheme includes emissions from motorised users and maintenance.

41. The Secretary of State also notes that as stated in the Applicant’s response of 23 August 2021, the Applicant’s ES sets out that the study area adopted for the carbon

emissions assessment covers all direct carbon emissions (those arising from construction and operational activities undertaken within the Proposed Development's boundary) and indirect carbon emissions (those associated with construction materials and the transportation of materials and waste). The spatial extent of this assessment comprises the area of construction works falling within the Proposed Development's boundary and with regard to operational carbon emissions, the study area includes both direct emissions arising from energy use within the Proposed Development's boundary as well as emissions from road users on the road network within and beyond the Proposed Development's boundary, as set out in the Proposed Development's traffic model contained in the Transport Assessment Report.

42. The Secretary of State notes that the Applicant's response of 26 January 2022 set out that the traffic model used to support the scheme assessment is inherently cumulative with regard to operational carbon emissions. This is because traffic models include data on the emissions resulting from the Proposed Development and the adjoining Strategic Road Network and the local road network as well as other schemes promoted by the Applicant in the vicinity of the scheme that have a high certainty of being progressed. The Applicant also sets out that this was informed by discussion with the local planning authority and took account of national Government regional growth rates.

43. With regard to operational carbon, the Applicant's approach to assessing the impact on carbon emissions is to consider the changes in carbon emissions resulting from the Proposed Development by comparing changes in the road traffic on the Strategic Road Network and local road network between the 'without scheme scenario' and the 'with scheme scenario', with the former providing the baseline for assessment. The Applicant considers that this takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Applicant considers that as both the with and without scheme scenario includes all likely developments and traffic growth factors it is inherently cumulative.

44. The Secretary of State notes that the ExA suggested that a cumulative assessment should be undertaken in relation to the RIS (ER 5.7.16). The Secretary of State also notes that the Applicant has sought to rely on *R (Transport Action Network) v Secretary of State for Transport and Highways England* (2021) EWHC 2095 in their response of 23 August 2021 to the effect that the total amount of GHG emissions from the schemes listed in RIS2 is de minimis in the context of appropriate comparators for assessing the effect on climate change. However, the Secretary of State notes the context of that case and the Court's conclusion that a RIS is essentially a high level strategy document, rather than an environmental-decision making document which was required to be supported by an environmental assessment of the type required for the Proposed Development.

45. The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level. Furthermore, the Secretary of State considers that whilst an assessment at RIS level would provide a cumulative assessment of the RIS schemes that are planned or being delivered and the combined emissions from the RIS2 schemes are considered to be de minimis, it would not capture development in the surrounding area to the Proposed Development that could also have an impact. The Secretary of State also

notes that the impact and effect of carbon emissions on climate change, unlike other EIA topics, is not limited to a specific geographical boundary and that the approach that needs to be taken to assess the cumulative impact of carbon emissions is different than for other EIA topics. Noting this and that there is no defined distance for assessing the impact of carbon emissions, the Secretary of State considers that the Applicant's approach to assessing the impact of the Proposed Development on carbon is acceptable as it takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Secretary of State considers that the assessment is proportionate and reasonable in relation to the information the Applicant would have access to to enable the impacts of carbon to be understood and accounted for in the decision-making process. The Secretary of State considers that the Applicant's approach overall, to both the assessments of the Proposed Development's impact on carbon emissions and its cumulative impact is adequate, as journeys will not begin and end within the Proposed Development's boundary.

46. With regard to assessing the cumulative impact of the emissions on climate and the scale used in this assessment, the Applicant has set out that carbon budgets (which as set out above aim to limit the significant effects of climate change) are only set out at a national scale and that these are themselves cumulative as they are a sum of carbon emissions for a range of sectors. The Applicant considered that it was unable to produce a baseline at a local or regional scale and that there was therefore no reasonable basis upon which it can assess the effects of carbon emissions for anything other than at the national level. The Secretary of State accepts that the only statutory carbon targets are those at a national level and notes that neither the Applicant nor any other party has suggested that there are non-statutory carbon targets at any other level that may need to be considered.

47. As well as being a requirement of the NPSNN, the Secretary of State considers that assessing a scheme against the carbon budgets is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation. This is because carbon budgets account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.

48. Overall, the Secretary of State considers that the information provided by the Applicant with regard to the impact of the scheme on carbon emissions (including the cumulative effects of carbon emissions from the scheme with other existing and/or approved projects in relation to construction and operation) is sufficient to assess the effect of the development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge.

49. With regard to the cumulative impact on climate adaptation, the Applicant noted that the "In-combination climate change impact assessment" included in the ES did not identify the potential for significant combined impacts of future climate change and the scheme on identified receptors in the surrounding environment.

50. In its response of 23 August 2021, the Applicant supplemented this assessment with an additional assessment to consider whether other strategic transport infrastructure beyond the boundary of the scheme, which may, when subject to climate impacts, have consequences that exacerbate likely significant effects. The Applicant concluded that the assessment demonstrated that the Proposed Development will improve the resilience of

the Strategic Road Network to the effects of climate change. The Secretary of State notes that this was not disputed by any party.

51. Overall, the Applicant set out in its response of 23 August 2021 that the cumulative effects of the scheme in relation to climate vulnerability were assessed as part of their original ES as set out above, and there would be no significant cumulative climate vulnerability effects associated with the scheme. The Secretary of State accepts this conclusion.

### Conclusion

52. The Secretary of State is satisfied that both the assessment in the ES and the Applicant's responses to the Secretary of State's consultation questions relating to climate have been drafted by competent experts. The Secretary of State considers that the information provided by the Applicant in response to its consultations is 'any other information' for the purposes of the EIA Regulations as it, builds on previously provided information, and that parties have been given sufficient opportunity to comment on this. The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted.

53. The Secretary of State is aware that all emissions contribute to climate change. Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK's trajectory towards net zero. The Secretary of State therefore considers the Proposed Development's effect on climate change would be minor adverse and not significant and this assessment aligns with the IEMA guidance. The Secretary of State is satisfied that that the scheme complies with the NPSNN, will not lead to a breach of any international obligations that result from the Paris Agreement or Government's own policies and legislation relating to net zero.

54. Given that the scheme will increase carbon emissions, it is given negative weight in the planning balance. However, the Secretary of State considers that weight also needs to be given to the Transport Decarbonisation Plan that will mean operational emissions reduce over time and that in relation to climate change adaptation the Proposed Development attracts positive weight in the planning balance.

### **Biodiversity, Ecology and the Natural Environment**

55. The Secretary of State notes the policy framework relating to biodiversity, ecology and the natural environment as set out in ER 6.2, the Applicant's case set out in ER 6.3 and the position of Interested Parties set out in ER 6.5.

56. The Secretary of State notes that the ExA having reviewed the ES, is satisfied that the Applicant has undertaken a thorough and rigorous characterisation of the natural environment and geological assets affected by the Proposed Development, both directly and indirectly (ER 6.7.1).

57. The ExA considered that in the absence of any evidence to the contrary, there would be no significant adverse effects on nationally designated sites (in this case Sites of Special Scientific Interest) (ER 6.7.3, and 15.3.14). The Secretary of State notes that there would however be adverse effects on locally designated wildlife sites, the Lower Pool Site of Biological Importance/Local Wildlife Site (“SBI/LWS”) and the Brookfield Farm, Shareshill LWS and SBI with regard to direct and indirect effects. This would be from the physical loss of habitat and from on-going operational effects because of the location of the Proposed Development (ER 6.7.4). These effects could not be mitigated but the ExA were satisfied that they would be compensated for at an appropriate level (ER 6.8.1 and ER 15.3.14).

58. The Secretary of State notes that there are two areas of ancient woodland within the site, Whitegreaves Wood and Brookfields farm (ER 6.3.30). Following changes to the application there would no longer be any direct loss of ancient woodland but as some of the development would be within 15m of the ancient woodland, the ExA stated that it would be reasonable to assume that this ancient woodland would effectively be lost due to effects on the rooting systems and increases in air pollution (ER 6.7.8). The ExA noted that such indirect effects cannot be avoided and consent for the Proposed Development should not therefore be granted unless the need for and benefits of the Proposed Development outweigh the loss (ER 15.3.16). The Secretary of State is satisfied that the potential impact on ancient woodland is outweighed by the overall benefits of the scheme. The Secretary of State notes that as an irreplaceable resource the loss of ancient woodland cannot be mitigated but is satisfied that the Applicant has sought to provide compensation near to the two ancient woodland locations, in a ratio of 7:1 which is agreed with Natural England (“NE”) (ER 6.7.9).

59. The Secretary of State notes discussion took place around the location of the compensatory habitat for bats and that whilst the Applicant maintained that there would be no significant effect on bats from the location of the mitigation habitat on the west side of the mainline, the ExA concluded that the significance of the adverse effects would be greater (ER 6.7.24 and 6.7.29). The ExA, utilising the Applicant’s own level of impact descriptive criteria as set out in Table 8.3 of Chapter 8 of their ES, concluded that there would be effects of moderate adverse significance on bats. The Secretary of State notes again that consent should be refused unless the benefits of the Proposed Development outweigh the harm (ER 15.3.16). The Secretary of State agrees with the ExA’s assessment of harm but is satisfied that this is outweighed by the overall benefits of the scheme set out in paragraph 121 (ER 15.4.10).

60. The Secretary of State notes that concern was raised that the precautionary approach that had been followed by the Applicant with regard to Great Crested Newts (“GCN”) had led to there being more mitigation provided as part of the Proposed Development than was necessary, particularly with regard to the number of ecological ponds (ER 6.7.33). The Secretary of State notes that the October changes (changes to the application accepted in October 2020) included a more robust assessment of GCN populations taking account of surveys undertaken in 2020. The ExA noted that although a 500m zone to consider the effect on GCN represents a cautious approach, an appropriate precautionary approach has been taken by the Applicant with appropriate mitigation provided (ER 6.7.34 and 15.3.14).

61. The Secretary of State is content that there would no unacceptable effects on other habitats and protected species (ER 6.8.1). The ExA have concluded that following

completion of the Proposed Development there would be a significant positive effect as a result of the development on biodiversity as a whole as evidenced by the offsetting matrix. Taking all relevant documents and policies into account, the Secretary of State agrees with the ExA's conclusions as set out in ER 6.8.1 and is content with the ExA's consideration that the effect would be beneficial and should be given moderate weight and would accord with the United Nations Environmental Programme Convention on Biological Diversity of 1992. The Secretary of State has had regard to that Convention in accordance with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (ER 6.7.39 and 6.7.40).

### **Cultural Heritage including Archaeology**

62. The Secretary of State notes the case for the Applicant on this matter as set out in ER 7.3 and for other Interested Parties in ER 7.2 and 7.5. The Secretary of State notes that the baseline conditions and identification of heritage assets within the study area are set out in the ES and that the Applicant identified a list of designated and non-designated heritage assets in Appendix 6.1 of the ES with the ES Chapter setting out a detailed description of the assets, including their significance (ER 7.7.1). The ExA considered that information provided in the ES is sufficiently comprehensive to take account of the significance of heritage assets and to understand the impacts of the Proposed Development on significance (ER 15.3.17). The Secretary of State has no reason to disagree with this.

#### Hilton Park

63. The Secretary of State's notes that the area of greatest dispute was around the Hilton Park, its assessed significance, the impact of the Proposed Development on Hilton Park and the potential effects of the proposed mitigation. The ExA noted that the conclusions drawn in respect of these matters and in terms of Hilton Park overall, flow into matters related to the significance and effect of the Proposed Development on certain designated built assets. These designated built heritage assets are located within the Park and it forms their setting and the conclusions in respect of Hilton Park therefore have implications in terms of those heritage assets' significance and the effect of the Proposed Development thereon (ER 7.7.4). The Secretary of State notes the ExA's view that Hilton Park is not a Registered Park and Garden, and it is not therefore a designated heritage asset in the context of paragraph 5.123 of the NPSNN but that they concluded, based on SSC's definition, that it is reasonable to conclude that Hilton Park can be considered to be a non-designated heritage asset in the context of paragraph 5.125 of the NPSNN (ER 7.7.5).

64. The Secretary of State notes that the Applicant ascribes a medium value to the Park, but that this was questioned by Allow, due to the association with Repton, a late 18<sup>th</sup> Century landscape gardener. The Secretary of State notes the ExA's consideration of this and conclusion that they are satisfied that the Applicant has ascribed a reasonable value to the asset on the basis of the current information and condition of the Park, its designations and historic associations (ER 7.7.12).

65. The Secretary of State notes that the park has already been subject to development which has affected its significance. The ExA set out that this must be considered in the understanding of its current significance (ER 7.7.10). The ExA acknowledge that the

Proposed Development would result in the introduction of further development within the historic park and would result in the removal, alteration and severance of important elements that contribute to the significance of the historic park (ER 7.7.13).

66. The Secretary of State notes that it was argued that the Applicant had failed to properly consider the additional impact of their proposed mitigation works and that an alternative location for this was suggested (ER 7.7.14-7.7.18). The Secretary of State is content that the Applicant considered different options for delivering this mitigation and its impact and that the Historic Buildings and Monuments Commission for England accepted that there would be harm resultant from the Proposed Development, including from the additional planting, but considered the proposed planting to the west of the mainline was the least intrusive on the historic parkland setting (ER 7.7.16).

67. The Secretary of State notes the Park has already been affected by previous development and overall, the ExA concluded that the effect on the Park, a historic landscape that is a non-designated heritage asset, would, in ES terms be a moderate level of significance and that this would translate into a less than substantial harm in planning terms (ER 7.7.18). The Secretary of State agrees with this assessment.

68. The Secretary of State also notes and agrees with the ExA's conclusion that with regard to designated assets, the Proposed Development would also result in less than substantial harm to the following: Hilton Hall (Grade I), The Conservatory (Grade I), The Coach House and Stable Block (Grade II), The Gate Piers (Grade II) and the Portobello Tower (Grade II) through harm to Hilton Park which contributes to their setting and therefore their significance (ER 7.8.2, ER 15.3.18). The Secretary of State notes that the ExA have not identified any instances where, during construction or operation, the Proposed Development is likely to result in substantial harm to or loss of significance of any designated heritage asset (ER 15.3.20).

69. The Secretary of State notes the ExA concluded that on the Applicant's assessment there is sufficient evidence for the Secretary of State to conclude on archaeological remains as set out in NPSNN paragraphs 5.128 and 5.129. The Secretary of State agrees with the ExA that the evidence demonstrates that there would be no significant effect on archaeological remains with the only effects being those identified in respect of non-designated assets including crop marks and ditches but that this would be of limited or negligible effect (ER 7.7.33, ER 15.3.21).

70. The Secretary of State notes that during the Examination Mr Williams raised concerns that the Applicant had not properly considered and investigated the potential for Kettle Hole's and Holocene deposits (ER 7.5.11). Overall, the ExA was satisfied that there are no documented cases of Kettle Holes in the vicinity of the Proposed Development and application site (ER 7.7.41). The Secretary of State agrees with the ExA's conclusions that there is no substantial evidence to conclude that the Proposed Development would result in damage or destruction of Kettle Holes within the Order limits (ER 7.8.2, ER 15.3.21).

## Conclusion

71. The Secretary of State agrees with the ExA's assessment that the need for and the benefits of the Proposed Development would outweigh, in each case, the harm that was identified in relation to designated heritage assets. He also agrees with the ExA that harm



to undesignated heritage assets, including the harm to archaeological assets, would be outweighed by the public benefits of the Proposed Development (ER 15.4.1).

72. The Secretary of State is satisfied with the ExA's view that an appropriate balance has been struck with regard to the provision of tree planting to the west of the mainline in the vicinity of Hilton Hall and the potential effect in terms of the effect on bats (ER 15.4.2). Taking account of the public benefits, the Secretary of State is satisfied with the ExA's conclusion that there is clear and convincing justification for the harm that would result, both individually and collectively, upon designated and undesignated heritage assets. The Secretary of State is satisfied that matters concerning the historic environment would accord with the relevant policy provisions of the NPSNN (ER 15.4.3).

### **Green Belt**

73. The Secretary of States notes the case for the Applicant on this matter as set out in ER 8.3 and for other interested parties in ER 8.4. The Secretary of State notes that paragraph 5.164 of the NPSNN confirms that for the purposes and protection of the Green Belt reference should be made to the Framework (ER 8.2.1). The Framework is therefore an important consideration. The Applicant has identified that the site lies within the West Midlands Green Belt and this is confirmed by SSC and is identified in its Core Strategy (ER 8.6.1).

74. Paragraph 5.178 of the NPSNN notes that national network projects located in the Green Belt may be inappropriate development and that inappropriate development is by definition harmful to the Green Belt and that there is a presumption against it except in very special circumstances. The Secretary of State notes the ExA's conclusions that the Proposed Development would amount to inappropriate development in the Green Belt and would not be covered by any of the exceptions that are set out in paragraphs 145 and 146 of the Framework (ER 8.6.2 to 8.6.4 and ER 15.3.22). The Secretary of State notes that the ExA have also concluded that the Proposed Development will result in harm to the openness of the Green Belt, in terms of both its spatial and visual qualities, and would pose a conflict with one of the five purposes for including land within the Green Belt, as set out in paragraph 144 of the Framework (ER 8.6.21), namely assisting in safeguarding the countryside from encroachment (ER 8.7.2).

75. Like the ExA, the Secretary of State attaches substantial weight to this harm. The ExA noted that there will be a need to assess whether there are the very special circumstances referred to in paragraph 5.178 of NPSNN to justify the inappropriate development. The very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (ER 8.7.1, ER 15.4.5). The Secretary of State notes the ExA's analysis of this matter set out at ER 15.4.4-15.4.11 and like the ExA gives significant weight to the benefits of the scheme set out at in ER 15.4.8 which include delivery of Government policy and programmes, benefits from a decrease in congestion and improved journey times, the conformity with local Development Policy and allocations for delivery of transport infrastructure and the economic and social benefits from improved connectivity and improved reliability of journeys.

76. The Secretary of State, like the ExA is also satisfied that alternatives have been considered to achieve connection between the M54 and M6 that could have less impact on

the Green Belt but that all would fall within the Green Belt and that slight movements of the junction would also not reduce its impact (ER 8.3.9 and ER 15.4.8). The ExA noted that several of the structures that would impact on the Green Belt openness would replace existing structures that already impact the Green Belt's openness to varying degrees (ER 15.4.9). The Secretary of State agrees with the ExA that the potential harm to the Green Belt, and any other harm, would be clearly outweighed by the other considerations set out above in paragraph 75 and that they amount to very special circumstances (ER 15.4.10). The Secretary of State is therefore satisfied that very special circumstances exist to justify the approval of inappropriate development in the Green Belt and that the Proposed Development would accord with the Green Belt policy set out in paragraph 5.178 of the NPSNN and the Framework (ER15.4.8 to 15.4.10).

## **Landscape and Visual Effects**

77. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Landscape and Visual Effects set out in ER 9.2, the case for the Applicants set out in ER 9.3 and the position of interested parties in ER 9.5.

78. The Secretary of State notes that the ExA concluded that it is reasonable to identify the overall landscape value in the locality of the Proposed Development as low (ER 9.7.6 and ER15.3.24). The Secretary of State notes that concerns were raised about the impact of the scheme on views from residential properties but that the ExA were satisfied that replacement tree planting and mitigation measures for screening purposes were necessary, reasonable and appropriate (ER 9.7.7-9.7.18 and 15.3.28). The Secretary of State has no reason to disagree with this.

79. The Secretary of State notes the Parish Councils and SSC raised concerns about the appearance of an existing corrugated fence that runs along the south side of Dark Lane and that the Proposed Development should take the opportunity to replace the fence with a more attractive means of enclosure. The Secretary of State notes that following discussions between the various parties and the landowner, Allow, it was agreed that a new fence would be provided and that this is confirmed in the Statement of Common Ground ("SoCG") between the Applicant and Allow. The ExA were satisfied and agreed that the proposed fencing would be a visual improvement to the exiting corrugated fencing (ER 9.7.15-9.7.18).

80. With regard to impacts on the landscape, the Secretary of State notes that the ExA concluded that as a significant infrastructure project it will have an impact and effect on the landscape but given the nature of the overall low value of the landscape, the greatest effect will be during construction which would rise to a moderate effect. He further notes that during operation, with the increasing maturity of the landscaping, the effect on landscape overall would be neutral to slightly adverse. The Secretary of State has no reason to disagree with this conclusion. Further, the Secretary of State is satisfied that the ExA consider that the Applicant has produced a design that has sought to minimise the adverse effect on the landscape to mitigate, as far as reasonable, the effects and that the Proposed Development accords with the aims of NPSNN paragraph 5.149 (ER 9.7.25).

81. With regard to visual impacts, the ExA concluded that the Proposed Development would be a significant element of engineered highway infrastructure in a primarily rural location and would therefore have harmful visual effects but that it incorporates appropriate

mitigation to reduce the overall effects. The ExA also considered that during construction the visual effects would be greater but reduced over time as construction completed and the landscape proposals matured (ER 9.7.31).

82. The Secretary of State notes that overall the ExA's concluded that due to the nature of the Proposed Development it would not be possible to avoid harm altogether to the landscape or visual receptors. The Secretary of State accepts this conclusion and agrees with the ExA that the Proposed Development incorporates suitable design and mitigation which is secured in the Order and therefore accords with the stated aim of paragraph 5.149 of the NPSNN (ER 9.7.32).

## **Noise and Vibration**

83. The Secretary of State has had regard to the ExA's consideration of Policy - the framework on noise and vibration set out in the NPSNN, the Noise Policy Statement for England, the Framework and PPG, the Local Plan and the World Health Organisation Guidelines (ER 10.2), the case for the Applicant in ER 10.3 and the case for other Interested Parties in ER 10.5.

84. The Secretary of State notes that the Parish Councils raised concerns that the line of the Proposed Development is not their preferred route given its proximity and its potential noise and air quality effects on residents in Dark Lane and Park Road but gave no analysis or scientific assessment of the potential effect of the Proposed Development in this regard. They simply assert that they would wish to have such effects minimised (ER 10.7.1-10.7.2).

85. The Secretary of State notes one objector accepted the Proposed Development will not increase the noise impact on properties along the A449 but is concerned that the Proposed development did not take the opportunity to address the pre-existing situation in a more fundamental way, including consideration of de-trunking the A449. The Secretary of State agrees with the ExA that the Proposed Development achieves its objectives and the concerns raised with regard to de-trunking are outside the scope of the Proposed Development (ER 10.7.3).

## **Construction**

86. The Secretary of State notes there is the potential for combined significant effects from construction noise and vibration during the construction works at receptors located in close proximity to the works along the section of A460 which would be modified by the Proposed Development, at the eastern end of Dark Lane, along Hilton Lane and at Brookfield Farm (ER 10.7.20).

87. The Secretary of State notes that with regard to construction, overall the ExA accepts that there will be significant adverse effects on various receptors in close proximity to the works associated with the Proposed Development. In many instances these will be for short periods of time with the exception of the relatively intense period around the three-week closure and works associated with the junction 1 works on the M54. The ExA considered that the Construction Environmental Management Plan ("CEMP") provides for appropriate means to mitigate and reduce as far as possible the adverse effects noting it requires effective communication and liaison with the local community. Given the nature and scale of the proposed works, the Secretary of State agrees with the ExA that the levels

of effects, whilst significant, have been minimised as far as possible and measures put in place to seek to mitigate the effects. These are secured through requirement 4 and the proposed CEMP (ER 10.7.21).

### Operational effects

88. The Secretary of State notes that the Applicant divides these effects into short-term and long-term changes. The short-term change being the change between the DS and DM scenarios for the year of opening 2024 and the long-term changes being the difference between the DM scenario at 2024 and the traffic noise levels with the Proposed Development in operation in 2039 (ER 10.7.22).

89. The Secretary of State notes that the ExA agreed with the Applicant's conclusion in the ES that five residential buildings on Hilton Lane west of the Proposed development and one residential building at Brookfield Farm are identified as experiencing significant adverse effects from operational traffic. He further notes that thirty-seven residential buildings close to the existing A460 bypassed by the Proposed Development and 11 residential properties along Old Stafford Road (outside the calculation area) are identified as experiencing a significant beneficial effect. The effect on the other properties within the calculation area experience effects which are identified as not significant. The Secretary of State has no reason to disagree with this (ER 10.7.25 to 10.7.34).

90. Overall, the Secretary of State notes that he ExA considered that the Applicant's approach to noise and vibration assessment is generally acceptable in line with the NPSNN (ER 10.8.1 and ER 15.3.30). The Secretary of State acknowledges that the Proposed Development would not totally avoid significant adverse impacts on health and quality of life from noise. The Secretary of State agrees with the ExA that there would be some remaining significant effects, but that these would primarily relate to construction activity, would mostly be for short durations and that the mitigation measures proposed and secured in the Order would reduce these effects. The Proposed Development would mitigate and minimise other adverse impacts on health and quality of life from noise relating to the Proposed Development and would contribute to improvements to health and quality of life through the effective management and control of noise, where possible (ER 10.7.38). The Secretary of State agrees with the ExA's conclusions set out in ER 10.8.1 and ER 10.8.2 that the Proposed Development would overall meet the aims of the NPSNN and the significant adverse effects on a small number of properties, given the limited duration, should be afforded moderate negative weighting in the overall planning balance.

### **Socio-Economic Effects**

91. The Secretary of State notes that the NPSNN promotes the delivery of environmental and social benefits as part of new schemes and requires any adverse impacts to be mitigated in line with the principles set out in the Framework and the Government's planning guidance (ER 11.2.1). The Secretary of State also notes the Applicant's case set out in ER 11.3 and the case for Interested Parties set out in ER 11.5.

### Employment and social facilities

92. The Secretary of State notes the ExA's view that it is clear that the Proposed Development would have a direct detrimental effect on employment in the area from the

loss of the fishing lakes, the use of land for car boot sales, and from the reduction in land use for agriculture but quantifying it was not clear (ER 11.7.1). The ExA however concluded that the direct loss of employment opportunities on the application site would be more than offset by the enhancement of business opportunities from the improved connectivity to the area. (ER 11.9.1 and ER 15.3.37).

#### Best and Most Versatile Agricultural (BMV) Land

93. The Secretary of State notes there would be a loss of agricultural land described as the Best and Most Versatile (“BMV”). The Secretary of State notes the concerns raised by NE (ER 11.7.14-11.7.19) but that the ExA concluded that requirement 4 in the Order requires the Applicant to consult with NE in respect of a matter relevant to its function. As the effect on BMV land is relevant to NE’s function, the ExA are satisfied that the detailed design of the Proposed Development could allow for less harm than is currently identified through discussions between the Applicant and NE. The Secretary of State agrees with the ExA’s conclusion that the loss of BMV land should be given moderate weight against the Proposed Development, and that this would be of greater significance than identified by the Applicant (ER 11.7.19-11.7.20).

#### Mineral reserves

94. The Secretary of State notes that the Proposed Development passes through a Mineral Safeguard Area (ER 11.3.34). Paragraph 204 of the Framework makes clear that policies should encourage the prior extraction of such minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place (ER 11.2.6). The Secretary of State notes that the ExA accepted the evidence of the Applicant that the prior extraction on the mainline would delay the Proposed Development and there may be environmental objections. The Secretary of State agrees with the ExA that the non-prior use of minerals in this Minerals Safeguarding Area is neutral in the consideration of the Proposed Development as the land affected would be used for environmental mitigation and drainage ponds which would not sterilise development of the area in the future, should it be necessary (ER 11.7.21-11.7.23 and ER 15.3.39).

#### Future development potential

95. The Secretary of State notes that there are objections relating to two areas of land, to the south of M6 junction 11 and to the north and west of M54 junction 1, with regard to whether the design of the Proposed Development would prevent future development. The Secretary of State notes that the provision of the Proposed Development would clearly have an effect on whether land could be developed, but the ExA concluded this predominantly relates to compensation and was not a matter for the Examination (ER 11.7.24-11.7.26).

97. The Secretary of State notes that Nurton, in particular, is seeking a reassurance that NH would not object to a proposal for a further bridge across the main line but that NH are not willing to give such an assurance. The Secretary of State agrees with the ExA’s consideration that NH’s approach is appropriate in that the law, policy and guidance may all change by the time that any proposal was brought forward and to give any assurance may fetter discretion at that time (ER 11.7.27).

98 Overall, the Secretary of State agrees that the positive economic and social benefits of the Proposed Development weigh in favour of the Order being made (ER 15.3.40).

## **Traffic and Transport**

99. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Traffic and Transport set out in ER 12.2, the case for the Applicant set out in ER 12.3 and the position of Interested Parties in ER 12.5.

### General

100. The ExA set out that there was effectively no opposition to the principle of the Proposed Development from any participants in the Examination and that the ExA considered that the current A460 is unsuited for its current purpose of linking traffic between Wolverhampton, Telford and Shrewsbury and the north. It was noted that that the mix of local and longer distance traffic puts pedestrians and other vulnerable road users in close proximity to traffic and that there is a high proportion of HGVs using the route that this adds to risks (ER 12.7.1). It is noted that one objector did not consider the Proposed Development to be bold enough in scope in terms of reducing the impact of traffic on local communities (ER 12.7.4) but the Secretary of State notes and agrees with the ExA that in general terms, the Proposed Development would meet its objectives (IR 12.7.16).

### Weight restriction on Cannock Road

101. The Secretary of State notes that local community representatives considered that there should be weight restrictions on some roads post-development (ER 12.7.21). Whilst some were not controversial, effectively redefining the areas of existing restrictions in the vicinity of the application site, the Secretary of State notes the discussion around whether a weight restriction would be justified on Cannock Road. He notes that the Applicant considered such a restriction was not necessary as traffic on Cannock Road would be reduced by approximately 88% following the Proposed Development (ER 12.7.21 and 12.7.22). M6 Diesel was also against the proposal principally for socio-economic reasons and the potential effect on its business (ER 12.5.34). Both argued that SCC should use its powers to bring such a restriction forward once the Proposed Development opens if it considered it necessary (ER 12.5.38).

102. While the M6 Diesel site would be by-passed by the link road, alternative provision at the motorway service area at Hilton Park between M6 junctions 10A and 11 is also by-passed. The Secretary of State notes that although the Applicant considers that the site is not a "destination in its own right" the ExA consider that the nature of the facility is that it is and would be just that. This is because effectively the vast majority of the HGV traffic post-development on Cannock Road south of M6 Diesel would be travelling to or from the M6 Diesel site in Saredon (ER 12.7.21 to 12.7.24).

103. The Secretary of State notes that while there would be an increase in distance for traffic travelling via the M6 Diesel site from M6 junction 11 to M54 junction 1 and vice versa compared with having to return to M6 junction 11 were a weight restriction on Cannock Road to be imposed, he agrees with the ExA's consideration that this increase would not be excessive (ER 12.7.25).

104. The Secretary of State also notes that the Applicant considers that the imposition of a weight restriction could result in HGV traffic driving to the outer limits of the restriction and not being able to turn. However, the Secretary of State notes that the ExA consider that with appropriate advance signage this would be unlikely to happen and that traffic travelling from the south would be able to continue west along The Avenue, which does not have an existing weight restriction, and from the north would be able to turn through the M6 Diesel site. Whilst the Applicant also considered that Weight Restrictions would be challenging to enforce and were unlikely to be supported by the Police, the ExA said that enforcement would be no different from any other weight restriction, of which there are already existing examples in the area, and that they had no evidence that the Police would object to such a proposal (ER 12.7.26 and ER 12.7.27). The ExA concluded that the benefits to the local community of further significantly reducing HGV traffic south of the M6 Diesel site in terms of safety, convenience, noise reduction and air quality improvements, and reductions in severance to local communities is such that a weight restriction is appropriate. The Secretary of State agrees with this and accepts the changes to the Order to this effect (ER 12.7.25).

#### Signage relating to M6 Diesel

105. The Secretary of State notes that M6 Diesel (Saredon Filling station) considered that signage to it should be installed on the M6 junction 11 so as to avoid confusion with the gyratory and consequential potential highway risks (ER 12.5.39). The Applicant considered that M6 Diesel is not a motorway truckstop or service area and cannot be signed from the mainline of either motorway. The ExA noted that M6 Diesel was not requesting this, only on the gyratory and considered that providing signage on the M6 junction 11 gyratory would result in more convenience for all users of the gyratory, and if included within the overall signage design would not lead to visual clutter or harm. The Secretary of State agrees with this conclusion and the ExA's associated amendments to the Order (ER 12.7.30-12.7.31).

#### Other matters

106. The Secretary of State notes that SCC requested that Shareshill layby located to the south of Hilton Lane on the east side of Cannock Road be closed. The Secretary of State notes the changes to Cannock Road (including the weight restriction discussed above) would be likely to result in less traffic passing the layby and that it is therefore less likely to be used as a parking area. The Secretary of State agrees with the ExA's view that there is no need as part of the Proposed Development to close the layby and its closure is not needed to meet the objective of the Proposed Development (ER 12.7.33-12.7.35).

107. With regard to Non Motorised User ("NMU") Routes, the Secretary of State notes the original NMU route north/south through M54 junction 1 (12.3.35-42) and that some parties wished to see enhancements to the NMU routes between Featherstone and the south of M54 junction 1. He further notes that the ExA agree with them that the original arrangements requiring pedestrians, in particular, to travel effectively in the 'wrong direction' would be counter intuitive to most users who would therefore be more likely to utilise vehicles. The ExA highlighted that while a direct link would reduce the distances to be travelled, such a route needs to have the appearance of being safe for any users and also convenient. The alternative bridge and underpass routes that the Applicant investigated are considered not to be appropriate for these reasons. The Secretary of State agrees with the ExA's consideration that the ultimate solution proposed by the Applicant of

a pedestrian route to the Featherstone west roundabout from, effectively, opposite the junction of The Avenue with Cannock Road, would be an effective compromise and would appropriately mitigate the effects of the Proposed Development on pedestrians in this area (ER 12.7.36-12.7.39). The Secretary of State notes the other matters relating to NMUs set out in 12.7.40-12.7.51 and agrees with the ExA that no other changes are required to the NMU routes to make the Proposed Development acceptable (ER 12.8.1).

108. The Secretary of State notes that M6 Diesel has expressed concern about traffic being able to easily exit its site, as it would have to turn right across the flow of traffic which at present can cause delays both to those exiting the site and on the A460 when HGVs slowly exit. However, with the significant reduction in traffic on Cannock Road, the ExA considered that this would not be a problem post-development, as conflicts would infrequently occur. The Secretary of State has no reason to disagree with this. The Secretary of State also agrees with the ExA that the Environmental Mitigation Plans, together with appropriate consultation mechanisms in the Order and the Outline Environmental Management Plan, would ensure that undesirable fly-parking and fly-tipping would be unlikely to take place. (ER12.7.50-12.7.51).

### Conclusions

109. Taking all the relevant documents and policies into account, the Secretary of State agrees with the ExA's conclusions as set out in ER 12.8.1. The Secretary of State also agrees that the Proposed Development would deliver a significant benefit to the strategic road network of which significant weight is attached (ER 15.3.41) and that taking all matters in to consideration, traffic and transportation matters weigh substantially in favour of the Order being made (ER 15.3.46).

### **Water Environment**

110. The Secretary of State notes the ExA's assessment of the Policy frameworks relating to Water Environment set out in ER 13.2, the case for the Applicant set out in ER 13.3 and the position of Interested Parties in ER 13.5.

### General approach and analysis

111. The Secretary of State notes that overall, the ExA, are satisfied with the general approach, baseline and analysis of the Flood Risk Assessment ("FRA"), drainage strategy, potential for contamination and Water Framework Directive Assessment. There have been no substantive matters left unresolved between the Applicant and main Interested Parties in this regard. The Lead Local Flood Authority ("LLFA") and the Environment Agency ("EA") confirm, in their respective SoCG's with the Applicant, that outstanding issues were resolved (ER 13.7.1).

112 The Secretary of State notes the discussion around the flood risk associated with works impacting Watercourse 2, Lower Pool and Watercourse 5 (ER 13.7.2-13.7.16) and that risks will be minimised and mitigated through the Order and that the Proposed Development would meet the appropriate tests in the NSPNN with regard to flood risk (ER 13.8.1).



113. The Secretary of State notes that although the majority of the Proposed Development site is within Flood Zone 1 the Proposed Development alignment passes through Flood Zone 2 and Flood Zone 3 areas. The NPSNN paragraph 5.105 advises that if there is no reasonable available sites in these Flood Zones then national networks infrastructure projects can be located in Flood Zone 3, subject to the Exception Test. In this case the project is for a linear infrastructure connecting two points. The majority of the Proposed Development is across Flood Zone 1 but includes Flood Zone 2 and 3 areas. The ExA noted that these include areas located close to junction 11 of the M6 and which cannot be avoided by the Proposed Development. The Proposed Development is therefore acceptable in the context of the Sequential Test if it meets the Exception Test (ER 13.7.17).

114. The Secretary of State notes that the information presented within the FRA further demonstrates that mitigation measures have been incorporated into the design to ensure that the new road will be at a low risk of flooding and would be safe for the lifetime of the development. Given the limited effect on flood risk, this risk is significantly outweighed by the sustainability benefits to the community that would result from the Proposed Development. The Secretary of State agrees with the ExA that on this basis the Proposed Development would meet the two elements of the Exception Test as set out in paragraph 5.108 of the NPSNN (ER 13.7.18-13.7.19).

#### Water Framework Directive (“WFD”)

115. The Secretary of State notes that in the context of the application the Applicant has assessed seven water courses that are part of the catchment of two water bodies designated under the WFD, the River Penk from Source to Saredon Brook and Saredon Brook from Source to River Penk (ER 13.7.27).

116. The Secretary of State notes that the EA and the LLFA are satisfied with the WFD assessment and that the Proposed Development would be WFD compliant. The Secretary of State agrees with the ExA that he has no evidence before him to reach a different conclusion and is therefore satisfied that the Proposed Development would be WFD compliant (ER 13.7.29-13.7.31) and would not result in a significant detriment to the overall condition and value of the potentially affected water bodies (ER 13.8.1).

#### **Habitats Regulations Assessment**

117. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State (as the Competent Authority) is required to consider whether the scheme would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site (ER 14.1.4). The Development is not directly connected with or necessary to the management of any European Site considered within the Applicant’s assessment (ER 14.3.2). The Secretary of State must therefore undertake an Appropriate Assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects, cannot be ruled out (ER 14.4.1). In the light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a European Site, unless there are no feasible alternatives or imperative reasons for overriding public interest apply.

118. The Secretary of State notes that the Applicant provided a HRA No Significant Effects Report (“NSER”) as part of the application which was subsequently updated (ER 14.3.1). The Secretary of State notes that the NSER identified two European sites as being relevant considerations in terms of the Habitats Regulations, which are located 5.9km east and 6.5km north of the Proposed Development, and that these were screened into the assessment on the basis that they were susceptible to changes in air quality:

- The Cannock Chase Special Area of Conservation (“SAC”); and
- The Cannock Extension Canal SAC (ER 14.3.5).

119. In its Relevant Representation, NE stated that satisfactory information had been submitted to allow them to advise the Secretary of State that the Proposed Development would have no likely significant effects (“LSE”) on the Cannock Chase SAC but raised concerns in relation to the Cannock Extension Canal SAC and indirect impacts on air quality resulting from the Proposed Development (ER 14.4.9-14.4.10). The Secretary of State notes that discussion took place between NE and the Applicant and further information was provided and that it was confirmed by NE at Deadline 4 that they agreed with the Applicant’s conclusion that there would not be any LSE on the Cannock Extension Canal SAC. This was confirmed in the final SoCG submitted by the Applicant at Deadline 8 (ER 14.4.24-14.4.25).

120. The Secretary of State notes that the ExA concluded that the correct European sites and qualifying features had been identified for the purposes of the assessment (ER 14.4.5). The Secretary of State also notes that the ExA having given careful consideration to all relevant evidence and tested the position on HRA questions, said that they are satisfied that there are no likely significant effects of the Proposed Development on any European sites or their qualifying features (ER 14.4.26). The Secretary of State agrees with the ExA’s view that there is no need to undertake an Appropriate Assessment (ER 14.6.1).

## **Overall Conclusions**

121. As set out above at paragraph 109, the Secretary of State agrees with the ExA that the Proposed Development would make an important contribution to the improvement and enhancement of the existing strategic road network, meeting one of the key objectives of the NPSNN. As set out above and highlighted by the ExA, significant economic benefits would result from the Proposed Development, along with other benefits in terms of overall improvements for air quality. Like the ExA, the Secretary of State attaches very significant weight to the benefits of the Proposed Development and compliance with a key policy objective of the NPSNN (ER 15.4.13).

122. The Secretary of State notes the ExA’s conclusions that subject to consideration of the effect on the Sixth Carbon Budget, the Carbon Budget Order 2021, the ‘Decarbonising Transport: a better, greener Britain’, and the cumulative effects of carbon emissions, there is a convincing case for development consent to be granted (ER 15.4. 22). The Secretary of State’s consideration of all these matters are set out above. The Secretary of State is satisfied that taking all matters into consideration, carbon emission matters are not a reason for refusing the Order.

123. The Secretary of State notes the ExA’s overall conclusions on the impacts of the Proposed Development at ER 15.4.17-15.4.18 and agrees with the ExA that although some

harmful impacts are likely to result, these are considered to be within the scope of the relevant policy provisions in the NNNPS (ER 15.4.20). The Secretary of State is also, like the ExA, satisfied that the Applicant has taken a reasonable and proportionate approach in seeking to minimise harm arising from the Proposed Development both during the construction and operational phases (ER 15.4.15). The ExA concluded and the Secretary of State agrees that the benefits of the Proposed Development, particularly in terms of addressing existing congestion, improving safety and promoting economic benefits for the region, would outweigh the impacts the ExA identified in relation to the construction and operation of the Proposed Development. Consequently, the potential harm is substantially outweighed by the benefits of the Proposed Development in meeting the law and Government policy as set out in section 104 of the 2008 Act and the NPSNN (ER 15.4.21). The Secretary of State's consideration of all these matters are set out above. The Secretary of State agrees that taking all relevant matters into consideration, there is a convincing case for Development Consent.

### **Compulsory Acquisition ("CA") and Related Matters**

124. Section 122 of the 2008 Act enables a DCO to include powers of compulsory acquisition of land. Section 122(2) requires that the land to be compulsorily acquired must be required for the development to which the development consent relates, is required to facilitate or be incidental to that development, or land which is to be given in exchange for the Order land. Section 122(3) of the 2008 Act requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. Section 123 of the 2008 Act requires that one of three procedural conditions must be met, namely: (i) the application for the order included a request for CA of the land to be authorised, (ii) all persons with an interest in the land consent to the inclusion of the provision, or (iii) the prescribed procedure has been followed in relation to the land. In addition, a number of general considerations from the former Department of Communities and Local Government ("DCLG") CA guidance need to be addressed (ER 16.5.1-16.5.4).

125. The Secretary of State notes the ExA's consideration of the powers sought by the Applicant for the CA and Temporary Possession ("TP") of land and the imposition of Permanent Rights over land in Chapter 16 of its Report.

126. The Secretary of State notes that the ExA addressed the situation of ten individual objections outstanding at the end of the Examination in ER 16.8.3-16.8.87. The Secretary of State notes that a SOCG was signed with Allow Limited and Ian Simkin and Adrian Simkin but matters remain unresolved in respect of whether CA and TP of land is justified (ER 16.8.3 and 16.8.32). The Secretary of State also notes that there are unsigned SoCG's between Barry Jones and Valerie Jones, Elizabeth Stella Whitehouse and Stella Arblaster, Michael John Alfred Byard, Nigel Simkin and Paul Simkin, William Bibbey and Nurton Development (Hilton) Limited and their objections remain unresolved. In relation to the objection from Danielle Leigh Killingworth the Secretary of State notes that at the close of Examination, the ExA noted that the Applicant was continuing to discuss matters with the objector. The Secretary of State notes in respect of all cases relating to individual objections, that the ExA are of the view that there is a compelling case in the public interest for the CA, TP with Permanent Rights or TP of the plots of land in question and that it is justified to enable implementation of the Proposed Development. The ExA also concludes that the tests and conditions set out in section 122 and section 123 of the 2008 Act would be met (ER 16.11.1). The Secretary of State agrees with that view.

127. The Secretary of State notes the ExA's conclusion that were development consent to be granted, the ExA would be satisfied that there would be a need to acquire the rights and interests in the CA land, and on that basis the Proposed Development would comply with section 122(1) and (2) of the 2008 Act (ER 16.9.3). The ExA was satisfied that the Applicant has sought to acquire land by negotiation, and has modified the Proposed Development by way of material and non-material changes to reduce the extent of the land for which it seeks CA or TP in accordance with paragraph 8 of the DCLG Guidance (ER 16.9.4). The ExA also concluded that there is adequate funding in place to ensure delivery of the Proposed Development (ER 16.9.6). The Secretary of State agrees with those conclusions.

128. With regard to Special Category Land, the Secretary of State notes that the National Trust has agreed in a land agreement with the Applicant and confirmed in a Planning Obligation under section 106 of the Town and Country Planning Act 1990 that it is content for its land to be utilised for compensation planting (ER 16.8.64). The Secretary of State also notes that plot 3/7b belonging to the National Trust is included in the application site (ER 16.2.20), but that no objection has been made by the National Trust meaning s130(2) of the 2008 Act does not apply (ER 16.8.65). The Secretary of State notes the ExA's consideration of plot 1/2, which is owned by a Statutory Undertaker, Severn Trent Water Limited and which would be impacted by the Proposed Development but that the ExA consider that this would not affect Severn Trent's statutory function. The ExA were therefore satisfied that it could be acquired and not replaced without the serious detriment to the carrying out of the undertaking (ER 16.8.66) and the Secretary of State has no reason to disagree with this.

129. The Secretary of State notes that there are no Crown interests in land which is subject to CA (ER 16.2.13).

130. In respect of Human Rights considerations, the Secretary of State notes that the Applicant acknowledges that the Order engages a number of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") but submits that such interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest (ER 16.10.1). The Secretary of State notes the ExA's considerations that in each case while rights would be interfered with, that interference would be proportionate and justified in the public interest, and that the CA and TP with Permanent Rights and TP would be compatible with the Human Rights Act and the ECHR (ER 16.10.5).

131. The Secretary of State has had regard to the benefits of the Development and is satisfied that with regard to the request for CA, Permanent Rights and TP powers there is a compelling case in the public interest and the CA powers sought would accord with section 122(2) and (3) of the 2008 Act (ER 16.11.1).

### Protective Provisions

132. The Secretary of State notes that during the Examination Representations were made over the form of Protective Provisions to be contained in Schedule 9 to the preferred Order and these are addressed in Chapter 17 of the Report. The Representations were from Cadent Gas Limited, South Staffordshire Water Plc, Severn Trent Water Limited and

Western Power Distribution. The Secretary of State notes that agreement was reached between South Staffordshire Water and the Applicant on 23 April 2021 which enabled them to withdraw their Representation. The Secretary of State consulted the Applicant and Cadent Gas Limited, Severn Trent Water and Western Power on 9 August 2021 seeking an update on agreement of the Protective Provisions. The Applicant confirmed in their response of 23 August 2021 that agreements had been reached with all three Parties. On the 21 September 2021 the Secretary of State consulted those parties seeking confirmation that agreements had been reached. The Secretary of State notes that Severn Trent Water confirmed in their letter of 10 August that an agreement had been reached and their representations were withdrawn. Cadent Gas Limited confirmed in their letter of 6 September that agreement had been reached and they were withdrawing their representations and Western Power Distribution confirmed in their letter of 1 October that agreement had been reached and they were withdrawing their objections.

### **Late Representations (outside formal consultation)**

133. Since the close of the Examination the Secretary of State has received a number of late representations, all of which are published on the Planning Inspectorate's website alongside this letter.

134. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the ExA's report.

### **General Considerations**

#### Equality Act 2010

135. The Secretary of State has had regard to the public-sector equality duty and the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic or persons who do not (section 149(1) of the Equality Act 2010) (ER 11.8.1).

136. The Secretary of State notes that the ExA agrees with the Applicant that due to the nature of the project there would be no positive or negative effects for those with protected characteristics of sex, religion or belief, race, sexual orientation, gender reassignment, pregnancy and maternity, and marriage and civil partnership. The Secretary of State also notes that the ExA agree with the Applicant that the Proposed Development would have a positive effect on those with the protected characteristics of age and disability for the reasons set out in ER 11.8.3-11.8.4 and agrees with this conclusion.

137. Overall, the Secretary of State does not consider that a decision to grant development consent would have significant differential impacts on any of the protected characteristics referred to in section 149(7) of the Equality Act 2010. On that basis there is no breach of the public sector equality duty (ER 18.2.12).

#### Natural Environment and Rural Communities Act 2006

138. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”) must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme on Biological Diversity of 1992, when granting development consent.

139. Secretary of State notes that the ExA has had regard to the 2006 Act and the biodiversity duty in the relevant sections of the Report (ER 3.4.6). In reaching a decision to grant development consent, the Secretary of State has had due regard to conserving biodiversity.

### **The Secretary of State’s overall conclusions and decision**

140. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

### **Modifications**

141. The Secretary of State has made the following modifications to the Order:

- article 2 (interpretation) – the definition of ‘electronic transmission’ has been amended to reflect the position taken by the Secretary of State;
- article 2 (interpretation) – the definition of the ‘Secretary of State’ has been removed as this is an unnecessary definition;
- article 2 (interpretation) – the definition of ‘undertaker’ has been amended to reflect ‘National Highways Limited’;
- article 6 (limits of deviation) – the text in the tailpiece of that provision has been amended regarding the wording of the environmental effects;
- article 8(4)(b) and (c) (consent to transfer benefit of Order) – the Secretary of State has understood that the intention is for either Severn Trent Water Ltd and South Staffordshire Plc (or both) to obtain the powers to undertake Work No. 69(1);
- article 9 (application of the 1991 Act) – paragraph (8) has been removed. The Secretary of State notes that this provision appears to be unprecedented. While reference to precedents have been set out in the explanatory memorandum none of them have a provision that is the equivalent to paragraph (8). The explanatory memorandum details that the provision removes the need for a permit to be obtained for the works authorised by the Order. It is further sets out that given the scale of the works proposed by the Order that it is appropriate for those works to be regulated by the specific authorisation in the Order. However the Secretary of State is aware that many of the highways applications for a development consent order have a corresponding scale of works and it is unclear to the Secretary of State why this Order should be distinguished from the Orders which have not felt the need to include a provision that is the equivalent to paragraph (8);
- article 10 (construction and maintenance of new, altered or diverted streets and other structures) – paragraph (6) has been removed. The Secretary of State is unclear why this provision is needed. The explanatory memorandum sets out an explanation in relation to paragraph 3(b). However it seems to the Secretary of State that paragraphs (1) to (3) clearly set out the responsibilities for maintenance

and when those responsibilities are to start and on that basis the Secretary of State does not regard the inclusion of this paragraph as being necessary;

- article 11 (classification of roads etc.) – paragraph (8) has been reworked. The Secretary of State notes that this provision appears to seek to create a new traffic regulation order but without making reference to the Road Traffic Regulation Act 1984. It is under this Act that road traffic regulation orders on local highways are usually made. Speed limits on local highways (other than on restricted roads) are usually set by speed limit orders made under section 84 of that Act. This has resulted in the table in Part 7 of Schedule 7 also being reworked;
- article 23 (compulsory acquisition of rights and imposition of restrictive covenants) – paragraph (6) has been removed. The Secretary of State notes that this provision is unprecedented. The explanation provided in the explanatory memorandum is that this provision is to ensure the undertaker's powers to create rights extends to the power to create rights for the benefit of third parties such as statutory undertakers. This is to ensure that statutory undertakers continue to have appropriate rights of maintenance for their apparatus where that apparatus has been diverted into alternative third party land. The explanatory memorandum cites precedents for article 23 but those precedents do not include a provision equivalent to paragraph (6). The Secretary of State is not sufficiently satisfied by the provided explanation on the need for such a provision.
- Schedule 3 – The table in Part 7 has been amended to take account of the amendments made to article 11(8). The Examining Authority inserted Part 8 to make provision for the weight limit on Cannock Road. The Examining Authority noted that as a result of this change, the Classification of Roads Plans will need to be amended as Point 4.37 is shown but Point 5/8 will need to be added.

### **Challenges to decision**

142. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

### **Publicity for decision**

143. The Secretary of State's decision on the application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully

**Rosalind Wall**

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the statement of reasons (decision letter) is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The decision documents are being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/m54-to-m6-link-road/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655)**