

M5 Junction 10 Improvements Scheme

draft DCO and Schedules Change Log

TR010063 - APP 9.21

Regulation 5 (2) (b)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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Infrastructure Planning Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

M5 Junction 10 Improvements Scheme Development Consent Order 202[x]

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Regulation Number:	Regulation 5 (2) (b)
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Version	Date	Status of Version
Rev 0	March 2024	Section 51 Advice

1. Draft DCO Change Log

Table of Amendments to the DCO		
Article/Requirement/ Schedule Number	Amendment	Reason
Section 51 Submission – Submitted 22 March 2024		
Article 47	<p>Entire article added as a new article 47 to read:</p> <p>Inconsistent planning permissions</p> <p>47—(1) As from the date on which the authorised development is commenced any conditions of a planning permission granted pursuant to Part 3 (control over development) of the 1990 Act, whether express or otherwise, which relate to land within the Order limits or land adjacent to the Order limits shall cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2.</p> <p>(2) As from the date of this Order where planning permission, whether express or otherwise, is granted whether prior to or after the date of this Order pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for—</p> <p>(a) development which is consistent with the authorised development save that its impact has not been assessed in the environmental statement and</p>	<p>Article 47(1) allows the development authorised by the DCO to take precedence over the conditions of any planning permissions granted which are inconsistent with the authorised development. The provision applies from the date on which the Scheme is commenced in order that the Scheme has certainty over the ability to proceed whilst not unnecessarily constraining other consents granted under the Town and Country Planning Act 1990.</p> <p>The Article also provides that where planning permission is granted in respect of land within the Order limits for development which is consistent with the authorised development, but the environmental impacts exceed those assessed in the environmental statement, or it is for development which is unrelated to the authorised development, then the implementation of that consent will not render development pursuant to the Order incapable of further implementation. This wording is deemed necessary and considered prudent following the Supreme Court ruling in Hillside</p>

	<p>assessment has been carried out in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017⁽¹⁾ or the Town and Country Planning (Environmental Impact Assessment) Regulations 2017⁽²⁾ prior to the grant of the planning permission; or</p> <p>(b) for development unrelated to the authorised development</p> <p>the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order</p> <p>(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act, whether express or otherwise, following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of section 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.</p>	<p>Park v Snowdonia National Park Authority [2020] EWCA Civ 1440 so as to allow for a discrete planning permission to be granted and implemented, whether for part of the Scheme or not, for which a separate environmental impact assessment has been carried out, without the undertaker losing the ability to continue to construct the remainder of the Scheme.</p> <p>The Article also provides that development carried out pursuant to a planning permission following implementation of the Scheme pursuant to the DCO would not result in breach of the Order, therefore removing the risk of criminal liability pursuant to sections 160 and 161 of the 2008 Act in circumstances where development which has been appropriately assessed and consented can be carried out on land within the Order limits without impact on the Scheme. This includes any development authorised by a general development order as well as an express planning permission.</p> <p>The Article has its basis on provisions included in the Northampton Gateway Rail Freight Interchange Order 2019 and West Midlands Rail Freight Interchange Order 2020, Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024, and the Slough Multifuel Extension Order 2023 and follows the approach adopted in the application for the Hinckley National</p>
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(1) S.I. 2017/572

(2) S.I. 2017/571

		Railfreight Interchange Order, Rampion 2 Offshore Wind Farm Order.
Schedule 5	References to Sheet 12, 13, and 16 amended to include references to the reciprocal inset sheets 12A, 13A, and 16A	To provide clarity of reference when reviewing land plans which were amended to include additional insets to aid comprehension.
Schedule 7	References to Sheet 12, 13, and 16 amended to include references to the reciprocal inset sheets 12A, 13A, and 16A	To provide clarity of reference when reviewing land plans which were amended to include additional insets to aid comprehension.

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