



The Planning Inspectorate

Application by Gloucestershire County Council for an Order Granting Development Consent for the M5 Junction 10 Improvement Project (Ref TR010063).

Notification of the date, time and attendance instructions for ISH2 was provided in the Examining Authority's (ExA's) Rule 6 letter dated 7 May 2024.

Agenda for Issue Specific Hearing 2 (ISH2) dealing with matters relating to the draft Development Consent Order (dDCO): Thursday 6 June 2024 at 10:00am.

Date: Thursday 6 June 2024

Arrangements Conference from: 9.30am

Participants must join the Arrangements Conference in order to register and be permitted access to the virtual method of attending the Issue Specific Hearing

Meeting start time: 10.00am

Venue: Blended event via Microsoft Teams¹ and at the Leonardo Hotel Gloucester Road Cheltenham GL51 0TS

Access and parking: The Leonardo Hotel has 200 on-site parking spaces available which will be free for attendees at a first come first serve basis.

Where necessary breaks will be provided during the ISH in recognition of the fatigue associated with on-screen communication during virtual and blended events.

The event will be livestreamed and a link for watching the livestream will be posted on the project page of the National Infrastructure Planning website closer to the event date.

¹ Full instructions on how to join online or by phone will be provided in advance of the meeting to those who register to participate.
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Interested Parties (IPs) and members of the public who wish to observe the event can therefore view and listen to the Hearing using the livestream, or the recording, after it has concluded.

Participation, conduct and management of the Hearing.

The Examining Authority (ExA) has identified the matters to be considered at this ISH, and those on which it requires further information, and these are set out in this agenda. It is intended that the scope of the ISH will be limited to those matters. However, the ExA may wish to raise matters arising from oral submissions and pursue lines of inquiry in the course of the discussions which are not listed on the agenda. The actual agenda on the day including the order of items may be subject to change at the discretion of the ExA.

Oral submissions on other matters or from persons who are not IPs may only be heard at the discretion of the ExA. However, reliance should not be placed upon the exercise of that discretion and attention is drawn to the opportunity for any such submissions to be made in writing by **Deadline 1, 18 June 2024**.

The ExA invites and would particularly like to hear from the following IPs during this Hearing:

- The Applicant;
- Gloucestershire County Council as County Planning and Highway Authority;
- Cheltenham Borough Council;
- Tewkesbury Borough Council;
- National Highways;
- National Grid Electricity Distribution;
- National Grid Electricity Distribution (West Midlands), and
- Wales and West Utilities

Those IPs listed above are those from whom the ExA would particularly like to hear from on this topic. By way of clarification, IPs who are not included in that list, but who have specifically requested to speak at this ISH will also be sent a joining link. They are reminded that the ISH will be livestreamed in the usual way.

Participation in the Hearing is subject to the ExA's power to control the Hearing. It is for the ExA to determine how hearings are to be conducted, including the time allowed at the Hearing for the making of a person's representations. IPs may be invited to make oral representations at the Hearing² (subject to the ExA's power to control the Hearing), on the specific issues being examined at the event, as set out in this agenda. The Hearing will be managed in the interests of ensuring that the submissions of invited persons are fully heard within the allotted time.

² Section 91 Planning Act 2008
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Oral representations should be informed by the Relevant Representations, Written Representations and Local Impact Reports made by the person by whom (or on whose behalf) the oral representations are made.

However, representations made at the Hearing should not simply repeat matters previously covered in a written submission. Rather, they should draw attention to those submissions in summary form and provide further detail, explanation, and evidential corroboration to help inform the ExA.

The ExA may ask questions about representations or ask the Applicant or other parties to comment or respond. The ExA will probe, test and assess the evidence through direct questioning of persons making oral representations. Questioning at the Hearing will therefore be led by a member of the Panel, supported by other Panel members.

All participants are advised that written summaries of their oral submissions at this Hearing should be submitted at **Deadline 1, 18 June 2024**.

The Hearing will run until the ExA is content that all matters on the agenda have been addressed.

Arrangements Conference

Invitees attending virtually will receive a joining link or telephone number in a separate email, shortly before the Hearing. Please join the Arrangement Conference at the appointed time for the Hearing. The Case Team will admit you from the Lobby and register your attendance. The Arrangements Conference allows procedures to be explained and will enable the Hearing to start promptly.

About the Hearing relating to the draft Development Control Order (dDCO)

The main purpose of this ISH is to undertake an examination of the dDCO. This is the Order which the Secretary of State would make if he decided to grant consent for the application. The discussion will principally be informed by the draft DCO submitted by the Applicant following the receipt of s51 advice [AS-003]. Discussion on this aspect of the hearing is 'without prejudice'; this means that parties may make contributions to improve the quality of the draft DCO without invalidating their own positions of support or opposition to the Proposed Development as a whole.

Irrespective of its recommendation, the ExA is required to present a draft DCO to the Secretary of State. Discussion about the specifics of the draft DCO does not indicate that the ExA has made up its mind about the application. The hearing into the draft DCO is likely to be of a technical nature and will be based on the specific wording of the Order.

Detailed Agenda for Issue Specific Hearing 2 (ISH2)

1. Welcome, introductions and arrangements for the Hearing

Reference will be made in Agenda items 2-6 to the Applicant's submissions in particular:

- dDCO [APP-031] now updated [AS-003 and tracked AS-004]
- [APP-032] Explanatory Memorandum
- [APP-033] Consents and Agreements Position Statement
- [APP-035] Statement of Reasons, now updated [AS-005]
- [APP-036] Funding Statement
- [APP-062] Environmental Statement. The Assessment of Alternatives
- [APP-135] Planning Statement

2. The Draft DCO

- The Applicant will be asked to provide a very brief overview of each part of the dDCO and explain the approach taken to include/explain the extent of the associated development and how this is defined and meets with the Guidance for Associated Development³.
- The Applicant will be asked to briefly highlight changes which have been made to the dDCO since the original submission version.
- The ExA will then ask questions in respect of Articles, Schedules and Requirements of the dDCO, seeking responses where appropriate from the Applicant and Interested Parties (IPs). In this respect, amongst other items, the ExA would wish to ask questions on the following:

Articles

Part 1 Preliminary

(i) Article 2 Interpretation

- The justification for the definition of commence and the inclusion of pre-construction and ecological works.
- Whether reference to the County Planning Authority should be added.

(ii) Article 3 Disapplication of legislative provisions

- The justification for Article 3(1)(a) of the draft DCO which seeks to disapply section 23 of the Land Drainage Act 1991.

³ Guidance on associated development applications for major infrastructure projects DCLG April 2013
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- The progress of discussions between the Applicant and the drainage authorities.

Part 2 Principal Powers

(i) Article 5 (2) Development Consent etc.

- The justification for Article 5(2) of the dDCO and the extent of 'adjacent'

(ii) Article 7 and Article 47 planning permission and inconsistent planning permissions

- Justification for and explanation of the two articles and the relative timings of when they would take effect.

(iii) Article 8 Limits of Deviation

- The extent of and justification for the limits of deviation (LoD) set out in the draft DCO, including those in respect of the Strategic Road Network (SRN), Flood Storage and Flood compensation areas.
- The consistency of the LoD with what has been assessed in the ES in respect of flood storage and flood compensation.
- Justification for the term 'materially worse adverse'
- How the LoD as drafted corresponds with the ES in respect of the River Chelt Bridge and Withybridge underpass.

(iv) Article 10 Consent to transfer of benefits

- Consideration of whether there should be an exception applied to the SRN?

Part 3 Streets

(i) Article 11 Street Works

- What is the justification for the departure from the model provision which would allow for interference with any street?
- Should consent be required from National Highways for works on land forming part of the SRN?

(ii) Article 12 Application of the 1991 Act

- Clarify the role of the Highway Authority and Street Authority as explained in the Explanatory Memorandum (EM) [APP-032] paragraph 4.42.

(iii) Article 13 Construction and maintenance

- Clarification of what would form part of the SRN

(iv) Article 14 Classification of roads

- Clarification of the consequences if Protective Provisions with National Highways are not agreed

(v) Article 17 Access to works

- Does the wording in the dDCO align with the explanation in the EM para 4.68 and is there justification for the extension of the powers as sought?
- Does there need to be further restriction as suggested by National Highways in their Relevant Representation [RR-026] to exclude this power from the SRN?

Part 4 Supplemental Powers

(i) Article 18 Discharge of water

- Refers to Joint Planning Board, Internal Drainage Board and Urban Development Corporation – are any of these relevant to this scheme?

Part 5 Powers of Acquisition

(i) Article 24 Compulsory acquisition of rights and imposition of restrictive covenants

- Justification for the approach that would allow the undertaker to impose restrictive covenants, acquire existing rights and create new rights over all the land, rather than specific plots described in the Book of Reference and whether all parties have been notified on this basis.

(ii) Article 30 Rights under or over streets

- Should subsoil and airspace be excluded for the SRN?

Schedule 1 Authorised Development

- Justification for the structure of the dDCO in respect of Works and clarity of what might be regarded as associated development.

Schedule 2 – Requirements

- Justification for the undertaker being the appropriate organisation responsible for the discharge of and determining body in respect of Requirements.

(i) 3. Environmental Management Plan (EMP)

- Requirement 3 (2) (a) the EMP 2nd Iteration – justification for whether ‘substantially’ can be regarded as sufficiently clear and precise?
- Requirement 3 (2) (c) if this does not correspond with the REAC – what does it refer to? and where are the details set out?
- Requirement 3 (2) (e) justification for working hours and the list of exclusions including explanation for and clarification of Sunday working?
- Requirement 3 (4) Justification or explanation of the relationship to the Strategic Road Network and the role of National Highways.

(ii) 4. Consultation

- Requirement 4 (3) does this mean the undertaker can set aside responses if either the cost or the engineering practicality is identified as an issue. If this is a correct understanding of the Article as drafted and is this position justified?

(iii) 5. Landscaping

- Requirement 5 (3) Justification for and explanation of the language around ‘must be based on’ the Environmental Master Plan.

(iv) 6. Landscaping and Ecological Management Plan

- Justification for the 5-year maintenance period particularly in light of reference within the ES to maintenance of 15 years for certain areas e.g. woodland.
- Whether there should be an amendment to ensure replacement planting is at the expense of the undertaker.

(v) 8. Land and groundwater contamination

- Requirement 8 (4) justification for the undertaker determining that remediation is necessary.

(vi) 9. Archaeology

- Requirement 9 (6) Seek an explanation how this would work in practice?

(vii) 11. Detailed Design

- Justification for the wording of ‘materially worse adverse’
- Justification for the wording ‘is compatible with’ and whether this is sufficiently precise and clear?

- Whether the Requirement as drafted provides sufficient safeguards and control in respect of design and links to all the necessary plans and documents?
- Whether there is a need for a 'design code' which would establish the approach to delivering the detailed design specifications such as bridges and fencing and choice of materials to be secured by a draft DCO requirement.

(viii) 12. Surface and foul water drainage

- Justification for the wording 'reflecting the mitigation measures' in chapter 8
- Should there not be provision for maintenance for the lifetime of the proposed development as in Requirement 13?
- The EMP Requirement does not refer to drainage or flood compensation areas so how is the maintenance of these to be secured?

(ix) 13. Flood Compensatory Storage (FCS)

- The Work Nos that include flood compensation, 3e, 5n, and 6d, so is it appropriate that every part would require an approval of this detail?
- Justification for the relationship between the detailed FCS to be submitted and approved and how this relates to the FRA or plans?
- Justification for and explanation of who should be the approval authority and if the Environment Agency should also be involved.

(x) 14. Noise mitigation

- Explanation of the locations where each of these mitigation matters would be expected to be provided and how the dDCO secures this mitigation and ensures future maintenance of these measures.

(xi) 15. Highway Lighting

- Explanation of what controls are in place for the construction period as this would appear to be exempted by 15(4)
- Justification for approach to the SRN and whether the County Planning Authority is the appropriate body for approval.

Part 2 Procedure for discharge of requirements

- (i)** Whether there should be an amendment to this clause to include bodies in addition to the County Planning Authority and if there is justification for departing from the Planning Inspectorate Advice Note 15.

3. Schedule 9 – Protective Provisions

- To obtain an update on progress between parties regarding protective provisions and an explanation of any important differences of view and a timescale for resolution, in particular the detailed concerns of:
 - National Highways;
 - National Grid Electricity Distribution;
 - National Grid Electricity Distribution (West Midlands), and
 - Wales and West Utilities.

4. Consents, licences and other agreements

- The Applicant will be asked to provide an update of progress and timescales for completion. The ExA will then ask questions, including discussing whether any legal agreements are proposed and if there is an indicative timescale for finalising them.
- The ExA will ask for views from the Applicant and IPs on the linkages and relationship between the dDCO and the Licences required and the need or otherwise for matching requirements or similar in each set of controls.
- The ExA will seek clarification in respect of Letters of No Impediment (LONI)

5. Statements of Common Ground

- The ExA will ask the Applicant to provide an update on Statements of Common Ground relevant to the dDCO.
- The ExA will ask for an update on Progress on Principal Areas of Disagreement Summary Statement (PADSS) with National Highways.

6. Review of issues and actions arising

- The ExA will address how any actions placed on the Applicant are to be met and consider the approaches to be taken to the examination of the dDCO and any changes to it, in the light of issues raised.

7. Any other matters

8. Closure of the hearing