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Chris Beattie  
Highways and Infrastructure  
Gloucestershire County Council

Your Ref:

Our Ref: TR010063

By email

Date: 21 August 2024

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Dear Chris Beattie,

## **Planning Act 2008 (as amended) – Section 89**

### **Application by Gloucestershire County Council for an Order Granting Development Consent for the M5 Junction 10 Improvements Scheme**

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

Thank you for your letter dated 12 August 2024 and the information setting out the intention to make changes to the application. The letter has now been published on the project page of the national Infrastructure Planning website.

The letter states that, the Applicant has followed the guidance from The Planning Inspectorate's 'Advice Note 16: How to request a change which may be material' (AN16), identifies the nature of the changes proposed and advises of the Applicant's intention to request that the changes described can be accepted.

The Notification identifies eight proposed changes and sets out the detail of these in Section 13. An indicative timetable is included at Section 11, and this anticipates a formal request for changes, in accordance with Step 4 of AN16, to be made by 3 September 2024. Section 7 sets out the consultation the Applicant proposes to undertake and how this would be reported.

The Applicant seeks advice from the Examining Authority (ExA) on the procedural implications of the proposed changes and on the need, scale and nature of the consultation to be carried out.

#### **Materiality of the proposed changes**

In the Applicant's view the proposed changes are not material, and taken together, the changes are not considered to constitute a material change to the project.

It is ultimately for the ExA to decide whether a proposed change is material and the ExA does not at this stage have sufficient information to reach a view as to materiality. It is, however noted that the Applicant acknowledges that proposed change No. 8 would lead to changes to land rights being sought and while it is indicated that no more land would be subject to Compulsory Acquisition (CA) the changes sought require additional permanent rights and as such the CA Regulations would be engaged.

It is not clear from what has been set out so far whether the Applicant has the written consent from all of those parties with land interests to the changes proposed. The Applicant should therefore make clear how the procedures under Regulation 5 to 19 of the CA Regulations could be accommodated within the examination timetable.

The Applicant has not made any comment as to whether there would be any change as to land of which Temporary Possession (TP) is sought and this should be clarified.

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

- the information identified in the latest guidance set out under Step 1 – The Change Notification, **Information to include in a change notification**<sup>1</sup> ;
- if landowner consent is not received and the CA Regulations are engaged, the information prescribed by Regulation 5 of the CA Regulations and clarification that the procedural requirements of the CA Regulations can be met; and
- evidence that any new or different environmental effects have been adequately assessed, subject to publicity and that any consultation bodies have been consulted.

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

## Consultation

Whether or not the proposed changes are material the ExA considers that, in order to ensure fairness, appropriate and proportionate consultation should be carried out and be in line with the Regulations for EIA and CA as set out by the Applicant.

It is not clear to the ExA why this would not commence until around 2 October 2024, but if the consultation period cannot commence earlier than this date, it appears that the Examination Timetable may need to be adjusted to accommodate each of the steps necessitated by the CA Regulations.

In these circumstances the Applicant should consider if it is possible to bring forward the consultation period as it appears that otherwise it may not be possible to accommodate

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<sup>1</sup> [Nationally Significant Infrastructure Projects: Changes to an application after it has been accepted for examination - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118422/nationally-significant-infrastructure-projects-changes-to-an-application-after-it-has-been-accepted-for-examination.pdf)

either the necessary time to notify of hearings, or for the time allowed for Affected Parties to request hearings to be held.

As such it is clear that the Applicant will need to set out how it anticipates the procedures under regulations 6 to 19 of the CA Regulations could be accommodated within the examination timetable.

The ExA agrees that the consultation must engage all those persons identified in the Planning Act 2008 under section 42 (a) to (d) who would be affected by the proposed changes (giving a minimum of 28 days) including any section 42 persons not originally consulted on the application but who may now be affected by the proposed changes.

The Applicant also proposes, and the ExA agrees, that the public should be consulted through formal notification and publication in appropriate newspapers. The ExA also agrees that site notices should be posted. The ExA consider the Applicant should ensure that access to physical documents is available for those who are unable to access material online.

The Applicant should submit a Consultation Statement, and the ExA recommends that this:

- lists the persons (affected by the changes) under section 42 (a) to (d) who have been consulted (identifying particularly any new persons i.e. those who were consulted in relation to the proposed change but not in relation to the original application);
- identifies (within the above list) those section 42 (d) persons who are “affected persons”, meaning those persons over whose land Compulsory Acquisition powers will be exercised. It is noted that as the CA Regulations are engaged the Applicant will also need to update the details in respect of the affected land;
- provides justification as to why any person under section 42 (a) to (d) is not affected by the proposed changes and has not therefore been consulted (if any);
- provides copies of any newspaper notices or site notices; and
- appends as an annex any consultation responses received.

If the ExA decides to accept the changes (whether or not material), all Interested Parties will need to have an opportunity to make representations on the changed application in writing or orally at Hearings during the Examination.

### **Timing implications**

The Applicant, in Section 7 of the Notification letter, identifies an indicative programme setting out a number of the steps to be undertaken with consultation ending on 1 November and a further 14 days for the Applicant to provide an updated Consultation Report.

This would currently not appear to recognise that if the CA Regs are engaged, as appears to be accepted, that while a period to allow Relevant Representations would run until 1 November (Regulation 7), the ExA would then need to consider if a further assessment of issues would need to be undertaken (Regulation 11), and then subsequently consider how this should be examined.

Regulation 12 would also need to be considered in respect of considering the future Examination Timetable and inviting written representations.

Each of these elements then allows for Interested Parties or Affected Persons to request a further Open Floor Hearing (OFH) or Compulsory Acquisition Hearing (CAH) and a period of 21 days would be required for people to consider whether this should be requested.

In the event that a hearing was requested appropriate notice periods of those hearings would then need to be accommodated (Regulations 15 and 16).

In addition to these constraints, the Applicant would need to provide Certification that they had undertaken the appropriate consultation and notification. It is not apparent whether or where this is included within your current schedule. The ExA are unlikely to be able to commence with issuing a Rule 8(3) letter amending the examination timetable (which appears to be needed based the current understanding of the proposed changes) in advance of this.

The ExA cannot stress enough the importance of meeting the above-mentioned timescales and, whilst ensuring the consultation still comply with the CA Regulations, the importance of submitting the Certificates of Compliance, as required by Regulation 9 of the CA Regulations, promptly after the close of the consultation period (ie as early as possible the day after the close of the consultation period) and significantly earlier than the 10 working days allowed. Failure to submit the Certificates of Compliance promptly following the close of the consultation period may make it impossible to facilitate hearings in line with the necessary notice periods.

Even, in the event that the Rule 8(3) letter confirms that there has been no change to the identified issues to be examined, it still must facilitate the provision to allow the request for OFH or CAH. There appears to be a very limited window where meeting the obligations of the Regulations coincides with the current schedule indicated, should the consultation period end in November as currently specified.

The letter indicates that the Applicant considers there are two days of hearings available, it will be important to clarify where this could be accommodated, as currently this is not clear how these might be achieved.

Please note that any acceptance of the proposed Changes would be made on the basis that all the processes can be completed in the required time prior to the close of the Examination and in accordance with any revised Examination timetable that may be published in due course.

If this is not achieved, then we will not be in a position to take the change request into account in our recommendation report to the Secretary of State as it will not have complied with the relevant statutory procedures.

The Applicant is also advised that it is, of course, possible that the ExA may consider the proposed changes are not acceptable as a change or that there is insufficient time within the timetable to accommodate the proper examination of the changes.

The Applicant is therefore asked to ensure that all documentation submitted to support the change request is submitted as a discrete and separate contained set of information with each document clearly identified in both the document heading and the file name as relating to the change request. If this documentation is provided alongside other changes

to the Application that would otherwise be forthcoming those other changes to the original documentation not including the proposed changes as a result of the change request should also be submitted as separate versions and identified as such.

This will in effect retain the ability of the Application to proceed if the change is not accepted and the documentation should clearly allow for that eventuality.

Yours faithfully

*Edwin Maund*

**Edwin Maund**  
**Lead Member of the Examining Authority**

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