

Ref: TR010063

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Sent by email to:
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19 November 2024

Dear Mr Maund

Application by Gloucestershire County Council (the Applicant) for an Order Granting Development Consent for the M5 Junction 10 Highways Improvements Scheme

Submission from National Highways for Examination Deadline 9 (19 November 2024)

National Highways noted that 11 questions, from the Examining Authority's (ExA) written questions and requests for information (ExQ3) submission of 7 November 2024, were directed at National Highways either in full or part thereof.

For the avoidance of doubt, National Highways' responses to the ExQ3 are in respect of the Strategic Road Network (SRN) only. Gloucestershire County Council, as local highways authority, will need to respond in relation to the Local Road Network (LRN).

ExQ3 Written Questions

Q1.0.3 – Consistency of Information

Response: National Highways consider that the matters relating to consistency of information are now resolved insofar as they relate to National Highways interests. National Highways understand that the Applicant will provide updated documents at Deadline 10 and Deadline 11.

Q1.0.6 – Updated Funding Statement [REP6-005]

Response: (i) If funding from any source can be demonstrated to be available for the entirety of an agreed cost estimate, National Highways would have confidence the scheme is funded. This could be by way of a loan, through Homes England Housing Infrastructure Fund monies, Section 106 contributions or otherwise.

However, it does not provide assurance the SRN is adequately safeguarded, as in the case of default, National Highways do not currently have access to any funding to remedy the situation should they need to step in and do so. To remove this concern, National Highways has agreed a Notice to Proceed mechanism in an ancillary legal agreement with the Applicant. The departure from usual practice is possible given this is a publicly funded scheme, promoted by a Local Authority, on the Strategic Road Network. The agreement is anticipated to be signed by the close of Examination by 4 December 2024 and then National Highways concerns are addressed in this respect.

(ii) The agreement between the parties will provide the assurances and protections both parties require to allow the scheme to go ahead in full.

Q1.0.7 – Safe operation of the SRN during construction

Response: National Highways had one residual concern in respect of safety during construction, relating to the performance of the slip roads at M5 J9 and J11 whilst diversions were in place. The Applicant has provided National Highways with further evidence to support the understanding of potential queuing on the SRN as a result of closures to M5 J10 during construction. Modelling, via SATURN, shows that all M5 J9 and M5 J11 slips, with the exception of the M5 J11 southbound off-slip, have capacity and would not result in queuing on the mainline at peak times as a result of the expected increase in traffic that the closure of M5 J10 would cause.

The Applicant subsequently demonstrated through the SATURN model that by the introduction of temporary signals at M5 J11, queuing on the mainline could be avoided.

National Highways are therefore satisfied that through the introduction of suitable traffic management measures the risk of queuing on the mainline on both M5 J9 and J11 can be avoided. Further modelling, via the use of a more granular microsimulation, will be required during the detailed design stage in order to optimise the necessary mitigation. National Highways therefore seek an inclusion in the current Traffic Management Plan, to implement this required mitigation. National Highways would suggest the following: "Temporary traffic management will be implemented at M5 J9 and/or J11 in order to avoid queuing on to the mainline carriageway, beyond the slip roads. The necessary intervention will be determined as a result of modelling, at detailed design stage, via a microsimulation." The Applicant is aware of this request.

Q1.0.8 – Previous DCOs on the SRN where NH were not the Applicant

Response: National Highways note the ExA's observations from previous schemes. However, the status of National Highways position on third-party DCO projects has changed since the examples were consented. The projects cited are over a decade old and were made during the time of the Highways Agency. In 2011/12, DCOs were still in their infancy and nationally produced, standard model protective provisions

would have been used as the basis for all Statutory Undertakers. Since this time, National Highways corporate protective provisions have evolved, based on previous learning, current DCO drafting and updated safety and highways standards.

Q1.0.9 – NH Requested Bond

Response: (i) National Highways and the Applicant have agreed a Notice to Proceed mechanism which provides flexibility, including the ability for National Highways to require a bond, to allow the scheme to proceed.

(ii) National Highways do not have preference as to which elements of the scheme are constructed first. The Notice to Proceed mechanism requires funding for the works which impact the SRN to be demonstrated by the Applicant prior to those works starting, and the mechanism allows National Highways to request suitable security of that funding, if appropriate. National Highways considers the Notice to Proceed to be adequate to address its concerns.

In the event that the agreement is not concluded with the Applicant as anticipated, National Highways welcomes the ExA's proposed inclusion of a security of funding clause, to be added to the protective provisions for the benefit of National Highways.

Q1.0.10 – Scheme Cost

Response: National Highways and the Applicant have shared information to support mutual understanding of the build-up of the respective cost estimates. It is clear from this review that National Highways and the Applicant implement different approaches to commercial assurance within their respective organisations. This leads to differences in aspects such as inflation and profiling of costs that cannot be readily reconciled at this point in time.

National Highways acknowledges that the Applicant has appointed their preferred construction partner who will be tasked in preparing and submitting their out-turn estimate for the project. On receipt of this information, it will provide a more accurate budget alignment for the Applicant to work with.

National Highways has agreed a Notice to Proceed mechanism in an ancillary legal agreement with the Applicant. This requires the Applicant to demonstrate the costs of the works (or a package thereof) being proposed and to evidence the timing and certainty of funding available to meet those costs to the satisfaction of National Highways. The agreement is anticipated to be signed by 4 December 2024.

Q5.0.2 – The acquisition of Statutory Undertakers' land and removal of apparatus – s127 and 138 PA2008

Response: No National Highways operational land is proposed to be permanently acquired. The temporary possession and permanent rights which the DCO authorises to be created over National Highways interests can be accommodated

without serious detriment to the carrying out of the undertaking, providing the protective provisions are applied.

National Highways does not believe that it benefits from any rights over or under third party land that is included in the Order which may be extinguished. If such rights are found, the protective provisions prevent any detriment to the undertaking being caused and provide a mechanism to deal with any problems that may be encountered. As such National Highways is content that no issues arise for it pursuant to sections 127 and 138 of the Planning Act 2008 and the Secretary of State can be satisfied.

Q6.0.1 – Outstanding matters

Response: National Highways are working with the Applicant to update the SoCG, which we understand the Applicant intends to submit at Deadline 10. The ancillary agreement to be entered into by the Applicant and National Highways deals with the outstanding issues relating to Articles 2, 8, 10, 11, 13, 14, 17, and 30.

Following receipt of updated land plans, National Highways are satisfied that there are no public rights of way across their land which are negatively impacted by the Scheme. This deals with the residual Article 25 point.

Q6.0.2 – PADSS

Response: National Highways intend to submit an updated Principal Areas of Disagreement Summary Statement (PADSS) at Deadline 10. The PADSS item numbers set out in the question correspond with the topics raised in question Q6.0.1 of the ExA written questions.

National Highways understand that the Applicant will be submitting an updated Statement of Common Ground with National Highways for Deadline 10.

Q6.4.1 – Protective Provisions

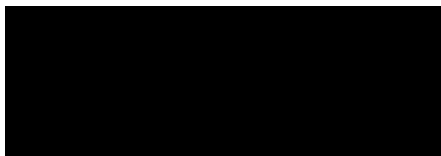
Response: The Applicant and National Highways are very close to concluding an ancillary legal agreement which will settle the matter of protective provisions for the benefit of National Highways. No matters of principle remain outstanding, but some detailed drafting points are still being discussed and finalised. For completeness, National Highways have included a copy of their corporate protective provisions to be included on the face of the Order as part of this submission.

Q15.0.3 – Motorway Junction/Slip Road Modelling

Response: Please refer to Q1.0.10 in respect to resolution of safety concerns.

If you have any queries, please do contact me at your earliest convenience.

Yours sincerely



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