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Ms Morag Thomson
Marrons Shakespeares
By email

Your Ref:

Our Ref: TR050002

Date: 20 November 2014

Dear Ms Thomson

Planning Act 2008 (as amended) – Section 51

Application by Roxhill (Kegworth) Ltd for an Order Granting Development Consent for the East Midlands Gateway Rail Freight Interchange

Advice in response to Pre-Examination submissions

Thank you for your letters and enclosures of 10 and 18 November 2014.

In relation to the 10 November submissions, these are in response to the points set out in our letter of 19 September. They will be passed to the Examining Authority (ExA), once appointed, for consideration. The ExA will make a procedural decision regarding the documentation and this is likely to be done alongside the letter under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2009 (as amended) concerning the arrangements for the Preliminary Meeting. The letter and attachments will be published at the same time.

Turning to your letter and enclosures of 18 November, these appear to raise some fundamental matters concerning the extent of proposed changes to the application. I would advise that no material is submitted as tabulated in the enclosure provided with the letter of 18 November 2014 until you have considered and responded to the Inspectorate about the following.

The first matter is the proposed change affecting the extent of the Order limits. Our view is that such a change to the Order limits would be material in the sense that the formal procedures for accepting a change to an application would therefore apply and the ExA will need to consider your request to amend your application on behalf of the Secretary of State.

Any decision to accept a change to an application for development consent will be made in accordance with the principles of fairness and reasonableness as set out in case law (*Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43*

P & CR 233). To enable these requirements to be met, details and evidence of any associated consultation exercise concerning the proposed additional land should be provided.

It is not clear whether the additional land enclosed by the proposed extension of the Order limits is intended to be subject to compulsory acquisition (CA) in whole or part. If CA applies, you will be aware of the prescribed procedure for handling proposals to include the CA of additional land. Additional land is defined in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended) (the CA Regs) as land which it is proposed shall be subject to CA and which was not identified in the book of reference submitted with the application.

Your letter states that the proposed closure of the railway crossing and the footpath diversion does not affect any new land interests. You need to provide evidence therefore that all those who have an interest in the additional 1.78 ha of land to be included within the Order limits have consented to this, and if applicable, to its proposed CA. Where a person with an interest in the additional land does not consent to the inclusion of a provision authorising its CA, the prescribed procedures set out in regulations 5 to 19 of the CA Regs apply. In the situation that these regulations do apply in this case, the statutory timescales set out for consultation would pose some major challenges to the current intended timetable for examination of the application, which I return to at the end of this letter.

In addition, in relation to a proposed change affecting the extent of the Order limits, Regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 would appear to apply, with the requirement for an appointed ExA to suspend an examination where it is of the view that an environmental statement should contain further information, and providing for subsequent notification and consultation requirements. It is therefore essential that you provide evidence showing the consequences of the proposed extension to the Order limits for the environmental statement as submitted.

Most of the other items set out in the table accompanying your letter of 18 November 2014 appear to be as a consequence of the proposal to extend the Order limits or are factual updates. However, in relation to the minor changes to highway works set out in section 3 of your letter, a similar concern arises about any consequences for the environmental statement as submitted, and you are advised therefore to provide appropriate evidence to clarify the position.

Responses to the points above should be provided before the submission of any of the material set out in the table enclosed with your letter. You will appreciate that receiving the evidence and clarifications in response to this advice has a direct bearing on settling the arrangements for commencement of the examination. The current intention is to issue the appointed ExA's Rule 6 letter in the week commencing 15 December 2014, and looking to a Preliminary Meeting in early January. Plainly, this will not be possible if the procedures set out in regulations 5-19 of the CA Regs need to be complied with first, hence the urgency in submitting the documentation as advised.

If you have any questions or require clarification in relation to the content of this advice, please do not hesitate to contact me in the usual way.

Kind regards

Richard Price

Richard Price
National Infrastructure Case Manager

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.