

Our ref: 20015068  
Your ref: West Midlands Interchange

Planning Inspectorate  
West Midlands Interchange

Operations Directorate  
The Cube  
199 Wharfside Street  
Birmingham  
B1 1RN  
[www.highways.gov.uk](http://www.highways.gov.uk)

Direct Line: 0300 470 3045

Via Email:

12 March 2019

Dear Sir / Madam,

## **WEST MIDLANDS INTERCHANGE HIGHWAYS ENGLAND DEADLINE 1 SUBMISSION**

As an interested party to the examination of the West Midlands Interchange DCO we make the following comments in respect of Deadline No 1. In addition to this statement we have prepared a summary submission as requested by the Examining Authority (ExA).

Highways England has been appointed by the Secretary of State for Transport as a strategic highway company under the provisions of the Infrastructure Act 2015 - and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN).

The SRN is a national asset and as such works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity. The SRN in close proximity to the site comprises the A5, A449 trunk roads and M6 and M54 motorways.

### **Deemed Consent**

At the DCO issue specific hearing we raised the principle of deemed consent as a fundamental issue for Highways England.

Highways England is a strategic highway company operating under the terms of the Infrastructure Act 2015 including a licence issued by the Secretary of State for Transport.

Section 5(2) of the 2015 Act provides that; “...*a strategic highways company must also, in exercising its functions, have regard to the effect of the exercise of those functions on—*

*(a) the environment, and*

*(b) the safety of users of highways”*

Section 4.2 of the License (dated April 2015) indicates that “*Without prejudice to the general duties on the Licence holder under section 5 of the Infrastructure Act 2015, the Licence holder **must**, in exercising its functions and complying with its legal duties and other obligations, act in a manner which it considers best calculated to: .....(e) Protect and improve the safety of the network.....”.*

Only Highways England as the licensed highway authority can determine the safety implications of any development proposition that introduces changes to its network. This duty is non-delegable to third parties as only Highways England under section 5(2) of the 2015 Act and its license has the locus to carry out this function. Our statutory duty to have regard to the safety of users of our highways is negated by the very principle of deemed consent.

We set out below our views on the DCO Articles in which the applicant seeks to use deemed consent to negate the approval processes that we are bound to operate by statute and the terms of our operating license. In addition, we reference the operation of the Protective Provisions under a deemed consent scenario.

Article 9(2) – this article provides for deemed consent to the works in Works No 5 in so far as it allows variation in the make-up of streets. Importantly for Highways England, Works No 5 includes “...*(b) works comprising the interfaces with Works Nos. 4 and 7”*, Works No 4 being the trunk road works. The ability of the applicant after a fixed period at to vary at will the physical interfaces with the trunk road is unacceptable to Highways England given that this approach would result in a situation where the safety implications of such a variation would not be subject to detailed assessment by Highways England.

Article 11(5) provided deemed consent for the temporary stopping up of streets. Although no trunk roads are, at this stage, within the scope of the Article, the principle that stopping up and the associated consequences are within the control of the Highway Authority is negated by the deemed consent approach.

Article 13(3) provides for deemed consent to be granted for proposed new accesses after a fixed period of time. Highways England in addition to its stated position on design

approvals for accesses raised in previous correspondence has specific policy obligations imposed by the DfT in respect of new accesses on the trunk road network. DfT Circular 02/2013 contains a general presumption against new trunk road accesses being approved, although a '*graduated and less restrictive approach to the formation or intensification of use of access*' may apply on a case by case basis for a Trunk Road that is not a route of near motorway standard.

The assessment of such proposals must be made their merits and is a matter for Highways England regarding the core function of the network and safety of such proposals. Any requirement to deviate (depart) from this policy are not within Highways England's gift (being under DfT control) and such the principle of deemed consent forms a direct challenge to government policy which is not a matter for this DCO or this examination.

Article 17(7) provides for deemed consent for an unlimited ability to make, amend or revoke traffic orders not included in Schedule 9. Traffic Orders have direct implications for road safety, indeed the primary legislation in this area, the Road Traffic Regulation Act 1984 section 1(1)(a), provides that a Traffic Regulation Order (TRO) may be imposed by the Traffic Authority for "*.....(a) avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising.*". The ability for deemed consent to occur in the making of Traffic Orders explicitly conflicts with our duty to ensure the safety of the SRN. Delegation of this duty to a third party is expressly unacceptable.

Article 21(9) provided deemed consent for the discharge of water into the systems of statutory water undertakers. Highways England although not a statutory water undertaker does have policy requirements imposed by DfT Circular 02/2013 not to accept water run off that may arise due to any change of use from development land. As such, we contend that the general application of this Article is unacceptable given our specific duties under this policy.

Article 22(6) allows for deemed consent to access the highway for invasive surveys to be conducted. The implications for road users of such surveys are significant with temporary closures and traffic management measures expected with attendant safety concerns which only a fully approved working regime can manage. The integrity of our asset is key to the discharge of our statutory safety responsibilities. Deemed consent of invasive works compromises the necessary control that our statutory duties require. As such, deemed consent for these works is inappropriate and not in accordance with the statutory requirements placed upon us.

The Protective Provisions have been drafted in such a way to mirror a standard Section 278 agreement and largely reflect the process that Highways England would expect a developer to follow should it wish to carry out work on the SRN. As the highway

authority for the SRN and the body that will become responsible for those works on completion, it is considered absolutely vital that Highways England has a role to play in both the design of those works and how they are carried out. Highways England is a competent network operator with a tried and tested asset protection team in place to address these issues and therefore the appropriate body to ensure that these works are designed and carried out safely and correctly.

The Protective Provisions have in general been agreed on the basis that they ensure that no work is either accepted as an appropriate design, or constructed on site, if it would not be compliant with the Design Manual for Roads and Bridges. Deemed consent is not workable with this requirement. These provisions are written to ensure the safety of the travelling public is paramount with only suitable work being taken forward and implemented for use. Should deemed consent apply in terms of design and specification work then the risk of unsuitable work being constructed on site and the likelihood of adverse safety incidents occurring increases. This is something that Highways England cannot tolerate as highway authority and network operator with statutory obligations to protect the safety of the SRN.

## **Response to issues raised at the Open Table Hearing / DCO Issue Specific Hearing**

### **1. Development Phasing (Raised by South Staffordshire District Council)**

We noted the comments from South Staffordshire District Council on the phasing of the development authorised by the DCO with particular regard to the timing of the rail terminal being available for use. At the DCO Issue Specific Hearing we recorded that the availability of the rail terminal is an essential element of the basis on which the traffic analysis supporting the DCO application has been conducted.

We note that a stand-alone assessment of the traffic implications of the Phase1 development of 147,000m<sup>2</sup> has been conducted and accepted by Highways England. This assumes no rail traffic being present and the A449 to A5 link road not opened until the 147,000m<sup>2</sup> cap is exceeded.

Beyond the development quantum set for Phase 1, the rail terminal forms an integral element of the transport equation for the assessment of the traffic impacts of the development in accordance with the requirements of DfT Circular 02/2013 “The strategic road network and the delivery of sustainable development”. Rail transport at the comparator sites selected by the applicant and agreed with Highways England was active at the time of their assessment. The trip generation and distribution analysis at the WMI site therefore reflects the data collected from the comparator sites including an active rail link and terminal.

The traffic mitigation package submitted by the applicant is directly related to the assessments made which include an active rail terminal.

On this basis, the concerns of South Staffordshire Council over the certainty that an active rail terminal will be in place are well founded due to the unforeseen and unassessed consequences on the Strategic Road Network should a rail terminal not materialise. It is therefore a concern for Highways England that the rail elements of the proposal are brought forward in a timely manner as the standalone implications of further phases of the non-rail connected development have not been assessed. Our license duty to provide effective stewardship of the long-term operation and integrity of the SRN is placed in significant doubt if unforeseen traffic consequences occur due to the lack of an active rail terminal.

## **2. Definition of “street authority” and “relevant street authority”** Examining Authority [ExA] Matter 1.5)

We believe that this is an important distinction, given the close interaction between Highways England and Staffordshire County Council highway networks. It will be important in situations where approval is essential from one or both street authorities to be clear as to which (or both) authority’s approval is necessary.

## **3. Definition of ‘verge’** (ExA matter 1.7)

A verge within the Highways Act 1980 has a specific legal status. Whilst the issue in question here is of minimal concern to Highways England it is necessary to consider the verge as a distinct element of the highway given this particular status.

## **4. Approval by the LPA of highway design changes and any other matters that may affect the safety or boundary of the highway** (ExA matter 1.11)

We are clear that whilst changes to the DCO may be necessary and dealt with by the Local Planning Authority there is a need for any highway related matters, or matters with potential implications for the highway, to be subject to approval in consultation with the relevant Highway Authority. This should be carried out in accordance with general principals applying to public consultations and specifically the requirements to consult Highways England contained within Schedule 4(g)(h)(i) of the Development Management Procedure Order.

## **5. Scope of Landscaping works** (ExA matter 1.42)

We have concerns with regards to the on-site landscaping works at the site boundary that are not currently subject to the Schedule 13 Protective Provisions, Part 2. There is potential for the site boundary landscape works to interfere with the safe operation of

the SRN. DfT Circular 02/2013 has specific policy requirements for the treatment of site boundaries that we must adhere to. Whilst these requirements have generally been complied with, we have identified in the most recent plans an issue that relate to design of earth bunds which will require further confirmation that there are no safety issues that arise. On this basis we ask that in the specific case of SRN boundary treatment approval for the designs should be secured from Highways England prior to work commencing and that Protective Provisions in Schedule 13 Protective Provisions, Part 2 apply to such proposals.

## **6. Railfreight coordinator (ExA matter 1.57)**

We note that Staffordshire County Council raised the matter of the Railfreight Coordinator's role and that we raised the matter of the timing of the coordinator's appointment. Given our commentary on the rail context within which the road traffic assessments have been conducted we are of the view that the coordinator is an essential role and should be in place as soon as work on the delivery of the rail terminal elements of the development commences. This will ensure that effective marketing of the new rail facility is in place and the predicted rail mode share can be promptly achieved.

## **7. New dedicated motorway junction (raised by Mr Lawrence, 28/02/19)**

We examined this possibility in early consultation with the applicant and concluded that due to the inability for a dedicated junction to meet the relevant policy requirements and standards as set out in the Design Manual for Roads and Bridges (DMRB) a new junction is not a feasible proposition.

The policy position is clearly set out in DfT Circular 02/2013 "The strategic road network and the delivery of sustainable development", paragraphs 40 and 41 which state; *"Where appropriate, proposals for the creation of new junctions or direct means of access may be identified and developed at the Plan-making stage in circumstances where it can be established that such new infrastructure is essential for the delivery of strategic planned growth."* Paragraph 42 amplifies paragraphs 39 and 40; *"Where the strategic growth test cannot be met there will be no additional junctions with, or direct means of access to, motorways and other routes of near motorway standard other than for the provision of signed roadside facilities for road users, maintenance compounds and, exceptionally, major transport interchanges.* In our view the strategic growth test has not been made and would not necessarily be appropriate for a single development of the type proposed by WMI; therefore Circular 02/2013 paragraph 42 is engaged precluding on policy grounds a new junction.

The practicable opportunity to deliver a new motorway junction would also appear to be undeliverable in engineering terms. The DMRB sets standards that define the minimum

distances between junctions on the Strategic Road Network. Standard TD22/06 paragraph 4.35 requires that for Rural Motorways, the desirable minimum weaving length must be 2 kilometres. At this location the M6 is classified as a Rural Motorway. The distances between M6 junction 11a and 12 are – Northbound 1.81km and southbound 1.48km providing no space for a new motorway junction.

**8. Operational Traffic Matters** (raised by a number of speakers at the open table and issue specific hearings)

We are preparing a detailed submission for Deadline 2 on the matters raised in the ExA's questions which in turn reflect a majority of the traffic related matters raised by participants at the Open Table and Issue Specific hearing sessions on 27/28 February.

### **Progress on outstanding matters between the applicant and ourselves**

As noted in our previous correspondence a small number of matters remain outstanding between the ourselves and the applicant. We provide a commentary below to ensure the ExA is informed of the latest position.

#### **1. Road Safety Audit.**

We are continuing to progress the completion of the RSA stage 1 with the applicant. Should this be finalised to our satisfaction in due course we shall write to the ExA to confirm our position.

#### **2. Drainage strategy**

We are awaiting a further submission of design information from the applicant to address the outstanding issues following a meeting with the applicant's technical advisors. On receipt, we shall review this information and advise the ExA of any change in our position.

#### **3. HGV management plan**

We have reviewed the latest draft of this document (Revision C) and have indicated to the applicant a small number of matters to be addressed. We await the applicant's confirmation of these through issue of a further revision.

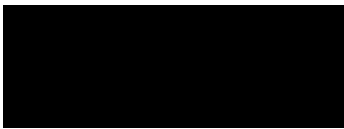
#### **4. Bond and surety matters**

We have engaged with applicant's legal advisors and stated our position. We now await the further draft DCO to be issued by the applicant at Deadline 3 with regard to the proposed bond and surety levels.

## **Closing observations**

We look forward to continuing to work with the applicant to resolve the remaining outstanding matters. As part of this work we are intending to make further submissions to ExA as the examination progresses including a commentary on the Deadline 3 submission of a further draft of the DCO.

Yours sincerely



**Neil Hansen, Asset Manager**

Highways England | The Cube | 199 Wharfside Street | Birmingham | B1 1RN

Email: [Neil.Hansen@highwaysengland.co.uk](mailto:Neil.Hansen@highwaysengland.co.uk)