

WEST MIDLANDS INTERCHANGE – DEADLINE 4 SUBMISSION

As an interested party to the examination of the West Midlands Interchange DCO, Highways England attended three Issue Specific Hearings during the week commencing 3 June 2019. Our written submissions of the oral case put forward at these hearings follows.

Preamble

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.

Issue Specific Hearing 2: Accessibility and Transport

Agenda Item 3: Rail Connectivity

We have previously made comment on the current situation where assessment of a ‘no rail terminal scenario’ beyond the 186,000m² cap has not been conducted. The trip rates developed by comparative assessment of other sites included a relative quantum of rail linked and rail served warehousing which is reflected in the proposals advanced in the draft order. The applicant is considering the process by which an assessment could be conducted that addresses our concerns, the process for review by ourselves and approach by which the likelihood of implications for the SRN and potential for impact on the current ES will be assessed. Given this lack of evidence the ability of the applicant to vary or delay the timing of delivery of an active rail terminal remains of concern to us.

We have correspondence from the applicant confirming that operation of ‘tugmaster’ vehicles is not contemplated on the SRN. We are content with this response from the applicant.

Agenda item 6: Likely traffic effects on A449 south of Station Drive

The VISSIM traffic model provides clarity as to the operation of the A449 mainline at this location. In the required ‘with development’ tests the traffic assessment shows no severe impacts from the development. The matter of the banned right turn at the A449 / Station Road junction has been canvassed by representors. We have reviewed the traffic modelling which indicates if the right turn at this junction into Station Road remains unmitigated it will have a severe impact on the operation of the A449 mainline with queues backing to the A449 mainline from the right turn filter lane. On this basis a developer led mitigation scheme is necessary to satisfy our concerns. The applicant proposed the right turn ban after its consideration of the

options available and the traffic modelling, including the applicant's mitigation scheme, indicates that the severe impacts at this junction are mitigated. Should the applicant propose an alternative mitigation proposal after reviewing the representations made, we shall need to be satisfied that any such alternative meets our requirements for the safe and effective operation of the A449.

Agenda item 8: Proposed operation and enforcement of proposed HGV ban on A449 north of Gailey Roundabout

We have already indicated that the SRN is the appropriate place for development traffic from WMI. The A449 north of Gailey Roundabout was detrunked by the A449 Trunk Road (A5 Gailey Roundabout to the A34 Queensway, Stafford) (Detrunking) Order 2002. The management of the proposed HGV ban on A449 north of Gailey Roundabout therefore is a matter for Staffordshire County Council to comment upon.

Highways England supports the use of a suitable technological solution to the matter of enforcement which is at the heart of the HGV management plan. Any technology installed on the SRN will require approval from Highways England and subsequent agreement to the design of the installation(s) as with the other trunk road works.

Agenda item 9: Highway mitigation measures identified in paragraph 4.1.1 of Statement of Common Ground between FAL and HE [REP2-008]

The applicant's proposed highway mitigation measures have been agreed with Highways England and subject to detailed assessment through a series of agreed traffic models. The mitigation plans as proposed meet the requirements of DfT Circular 02/2013.

The case for the relocation of the A5 lay-by was made by WSP, on behalf of the applicant, during the consultation for Departure from Standard (ID 81075) associated with the design of the lay-by on the A449. This included evidence to support the size of the proposed lay-by, based on predicted usage. Further details are available in a technical note prepared on behalf of the applicant. This technical note is referred to in para. 5.1.8. of the SoCG between Highways England and the applicant (APP-744) and it is suggested that the applicant may wish to enter this document into the Examination process as evidence.

Agenda item 10: Measures proposed to avoid increase in off-site HGV parking as a result of the proposed development

Highways England notes that the existing SRN clearway orders do not apply a prohibition against parking on the verge, they only apply to the carriageway. We note that parking controls in the relocated and existing A449 and A5 laybys will be reinforced, in particular in relation to management of overnight parking to control matters of amenity for our neighbours. This formed an element of our agreement to a departure from standards for the relocation of the lay-by currently located on the A5 to the A449. The wide verges of the SRN on the A449 and A5 leave open the option of uncontrolled and indiscriminate parking by HGVs and other vehicles. This leads to significant safety concerns created by uncontrolled parking – reductions in sighting distances on the main carriageways by indiscriminately parked vehicles, damage to SRN assets

by vehicles accessing and egressing the verge, and potential for the depositing of mud and detritus on the live carriageway. On this basis, and the known pressures on formal roadside facilities which are a matter for market forces (as per DfT Circular 02/2013 Annex B), it is probable that indiscriminate verge parking will occur without a suitable prohibition. We would expect to see the existing orders amended to address this and Schedule 9 of the dDCO updated in this regard.

Agenda item 11: Phasing of new access roads, associated infrastructure and highway mitigation works (with reference to Appendix 14 to Applicant's Response to FWQs [REP2-012])

The draft RSA Stage 1 has identified an issue at M6 junction 12 that is under consideration. Although no capacity issues are created by the development at this junction, sighting distances on the northbound off-slip may require works to be conducted by the applicant to mitigate the issue raised in the RSA-1. We are continuing to engage with the applicant to resolve this matter.

Issue Specific Hearing 3: Environmental Matters

Agenda item 3: Air Quality

In principle, Highways England is receptive to accommodating a developer-led mitigation scheme on the M6 (subject to feasibility and detailed design), but would prefer a scheme that involved mitigation to the affected properties, if possible, such as mechanical ventilation.

Agenda item 4: Noise

Highways England has raised concerns over the potential for a significant residual impact on properties adjacent to the A5 as a result of development traffic on the SRN. Highways England notes receptors affected by increased volumes of traffic on the SRN, associated with the development, as being eligible for the BNIS, as set out in the ES Vol 1 Chapter 13A Addendum on Noise and Vibration (APP-737). Following a question from the ExA during the hearing, regarding the potential source of noise for receptors living on canal boats, the Applicant has confirmed that reassessment of impact at Gailey Wharf will be as a result of operations within the development.

Agenda item 6: Landscape and visual effects

Highways England acknowledge receipt of the revised landscape mounds drawings from Waldeck Engineering (on behalf of the Applicant) and will respond upon their potential impact upon SRN interests (highway visibility and boundary impacts) as soon as reasonably practicable.

Issue Specific Hearing 4: Draft Development Consent Order

Q Ref: 1.3 (Article 2) - Following the discussion at ISH1 the applicant has opted not to make any revision to the definition of "verge". Do SCC and HE agree that no revision is required?

Highways England is content with the proposed definition for *verge* although suggest it may be preferable for the definition to refer to “*highway*” rather than “*road*”.

Q Ref: 1.11 (Articles 9, 11, 13, 17, 21 and 22) – Are any changes needed to these clauses in response to HE’s concerns re deemed consent as set out in its Deadline 1 response [REP1-008]?

We strongly feel that changes *are* required to ensure that Highways England is not subject to deemed consent which would result in a significant risk to public safety. We have previously made representations on why deemed consent is incompatible with our statutory safety duties. Our submissions on this topic are unchanged. We refer you to Article 37(2) to the [draft Reinforcement to the North Shropshire Electricity Distribution Network DCO](#) where, in that case, the applicant has listened to Highways England’s safety concerns and agreed for Highways England to be specifically excluded from the deemed consent provisions. For the avoidance of doubt, we do not object to an obligation not to unreasonably withhold or delay consent.

Please note, we understand that Article 9 does not apply to the SRN and if that is the case we do not request any changes in respect of that Article.

Q Ref: 1.13 (Schedule 1, Part 1) – A number of amendments/ additions have been made to the description of Works Nos. 1, 4, 6, 7 and 10a...(ii) Are any further revisions to the Works descriptions required?

The current drainage strategy (APP-450) seeks to make use of an existing culvert beneath the A449 (see Outlet A on drawing 1516-0425-WDK-SI-D-331-004 Rev P11 in Appendix C). Highways England asserts that the culvert forms part of the highway drainage system and therefore the proposed connection would be contrary to Government policy (DfT Circular 02/2013 para. 50) and the Design Manual for Roads and Bridges (DMRB) Volume 4, Section 2, Part 1 HD 49/16 para. 2.4 - 2.8. Whilst Highways England acknowledges there is an existing land drainage connection and that discharge flows from the development are to be attenuated, Highways England refer to common law principles of the Riparian Owner, which require the downstream owner to accept water from higher land in its 'natural state'. The definition of 'natural state' is the unaffected path of water runoff from a field, ground water or a spring. In contrast the proposed development seeks to artificially manage surface water runoff from the creation of impermeable surfaces, via gutters, drains, swales etc. By definition, the water would no longer be in its 'natural state' and as such Highways England has no responsibility to accept such water into its drainage system. The concern to Highways England is that the drainage strategy (as proposed) places a liability on Highways England to accommodate the water and ensure the maintenance of the drainage system does not lead to flooding, either on the highway or within the development. This is another safety concern and additional liability for the public purse created by the development.

Highways England therefore requests an amendment to Works No. 7 sub-paragraph (s) to reference the provision of a new culvert in this location.

Q Ref: 1.22 (Requirement 16) – Have HE’s concerns re the potential for on-site landscaping works to interfere with the safe operation of the SRN (point 5 or REP1-008) been resolved?

Highways England have only recently received updated landscaping drawings from the Applicant in this regard. These need to be fully reviewed and therefore a response on this issue will be issued as soon as reasonably practicable.

Q Ref: 1.25 (Schedule 2, Part 2) – (ii) Is the flexibility provided by paragraphs (4) and (6) appropriate and acceptable given HE’s submissions that there has been no transport assessment of the traffic effects of the occupation of more than 147,000 sq. m of building floorspace on the Site? (iii) is the word “expeditiously” in paragraphs 5 & 9 sufficiently clear to allow for the enforcement of these provisions? (iv) if they are to be treated as requirements do all of the provisions set out in Part 2 meet the relevant tests.

The flexibility offered by the current drafting could result in a delay in providing the rail terminal (or no rail terminal being provided at all). As this scenario has not been assessed within the transport assessment this could result in adverse effects on the SRN and associated environmental impacts. These unknown impacts are therefore of concern to Highways England. It is noted that Article 45(1) would not permit any agreement being granted which would give rise to any significant adverse effects on the environment not identified at the time this Order is made or in any updated environmental information supplied under the 2017 EIA Regulations and this goes some way to addressing our concerns in this regard. However, it is noted that paragraph (4) of Part 2 does not require any approval or agreement and therefore Article 45(1) would not bite. This could therefore result in the development operating outside of what has been assessed in terms of transport and environment and this is not acceptable to Highways England.

Given that Highways England were involved in agreeing the quantum of acceptable floorspace that is referenced in paragraph (3) and given any deviation from such may have implications on the SRN we feel it is important that any agreement to deviate is not solely in the hands of the local planning authority. We are strongly of the view that technical judgements on matters and impacts created as relating to a proposed delay of the rail terminal’s provision is a matter that must require agreement by the local planning authority as well as other relevant bodies including Highways England.

The section headed *Rail Infrastructure* within Part 2 is extremely important to Highways England given the potential implications for the SRN. We therefore have a significant interest in ensuring that the provisions are enforceable. There is particular concern in this regard over the use of terms such as; “*matters outside the control of the undertaker*”, “*as soon as reasonably practicable*” and “*expeditiously*” which all have a high degree of uncertainty attached to them with regards their meaning. It is not considered that the current drafting of these requirements would meet the relevant tests.