

Our Reference: SHARE/ 75023890  
Your Reference: West Midlands Interchange

Patrick Thomas  
Asset Manager

The Planning Inspectorate  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

The Cube  
199 Wharfside Street  
Birmingham B1 1RN

Direct Line: 0300 4703407

16 July 2019

via Email:

[WMInterchange@planninginspectorate.gov.uk](mailto:WMInterchange@planninginspectorate.gov.uk)

Dear Sirs

## **WEST MIDLANDS INTERCHANGE DCO - DEADLINE NO. 6 SUBMISSION**

Following Issue Specific Hearing 6 on the draft DCO Highways England makes the following post hearing submissions.

### **Amendments to existing TROs to prohibit verge parking**

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.

Should the DCO be made and the SRFI delivered this will increase the number of vehicles, particularly HGVs, in the area. The Site-wide HGV Management Plan (document AS-040) is based on the premise that HGV routing and parking falls under its scope. The Plan is intended (among other things) to *“provide a strategy for the management of road based HGVs to and from the Site together with the methods and measures by which these will be achieved”*. A prohibition on verge parking in the locality of the site is entirely consistent with the Plan’s desired outcomes that seeks to prevent off-site parking. Without such prohibition(s) these outcomes could be undermined.

On this basis, and the known pressures on formal roadside facilities, it is probable that indiscriminate verge parking will occur without a suitable prohibition. We would therefore expect to see the existing orders amended to address this and we support the principle of the applicant’s amendments to Schedule 9 of the dDCO in this regard. We do however require further discussion with the applicant on the extent of the amendments.

## **Site drainage and the use of the culvert beneath the A449**

Highways England wishes to reiterate its objection to the current drainage strategy which proposes to use the existing culvert that crosses the A449 at grid reference E:391075, N:309946. This culvert is maintained by Highways England and forms part of the highway drainage system. Highways England does not support the use of this culvert to drain the site and will not give approval for it to be used as currently proposed. Highways England has asked the applicant to amend the description of Works No. 7 sub-paragraph (s) to reference the provision of a new culvert in this location. Without this amendment this issue remains an impediment to the scheme being delivered.

## **Protective provisions – cash surety and bond**

Highways England has requested that the protective provisions provide for a 150% bond together with £150,000 cash surety. The draft DCO refers to a 120% bond and £50,000 cash surety. This is not acceptable to Highways England.

When developers seek to carry out work on the SRN Highways England routinely requires 200% security to protect the public purse. Because the security is based on an estimated cost of the works a buffer above 100% is necessary to ensure adequate protection is in place. Whilst there is discretion to secure a lower percentage below the standard 200%, this is entirely dependent on the confidence Highways England has in the costs estimating. Despite a number of exchanges on this issue with the applicant Highways England does not have sufficient confidence in the applicant's estimating to request a bond any lower than 150%.

In addition Highways England requires a £150,000 cash surety to ensure it does not have to find money from its own budget to fund any emergency measures whilst awaiting call in of the full bond. Given the extent of the works required, and the need to build on-line, it is considered that the temporary traffic management alone will be very expensive and is something that will need funding to remain in place in such circumstances. £150,000 is therefore considered to be a reasonable sum for these purposes.

## **Requirements Part 2 – Rail Infrastructure**

Highways England's concern with regards to Rail Requirement 4 (RR4) relates to the possibility of the rail terminal being delayed or not being delivered at all. These scenarios have not been modelled and therefore the impact on the SRN is unknown. The applicant agreed to produce further technical evidence in terms of traffic impacts to support its position on delayed delivery of the rail terminal. We have received this material within Technical Note No 41 (dated 3<sup>rd</sup> July 2019) prepared by WSP on behalf of the applicant. Upon review we have concluded that the assessments undertaken for a 'without rail terminal' scenario in terms of traffic generation, distribution, assignment of traffic and impacts on the SRN are inadequate. We are therefore unable to reassess the position we set out in our Deadline 4 and 5 submissions (Documents REP4-016 and REP5-045) that indicated no evidence of the SRN traffic impacts beyond the pre-rail terminal development cap of 187000m<sup>2</sup> has been presented and agreed.

As was stated at the ISH, Highways England remains concerned with the updated drafting to RR4. Given that Highways England was involved in agreeing the quantum of acceptable floorspace that is permitted prior to the rail terminal, and given any deviation from such may have implications on the SRN, we feel it is important that any agreement to deviate from what has been agreed is not solely in the hands of the local planning authority. We are strongly of the view that technical judgements on matters and impacts 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.

Whilst we note that RR4(2) provides for the local planning authority to consult with Highways England RR4(1) and RR4(6) contain no such requirement. RR4(6) is a particular concern because as drafted the local planning authority could agree for the use of the rail terminal to be discontinued without any requirement to even consult with Highways England. We reiterate our concerns at only having the role of a consultee. We request that RR4(1), RR4(2) and RR4(6) all be updated to refer to not just 'consultation' with Highways England but also ensuring Highways England provides its 'approval'. Wording recently agreed with the applicant for the *Reinforcement to North Shropshire Electricity Distribution Network DCO*, following similar discussions in respect of that scheme, is as follows ([Requirement 11](#)):

11.—(1) No authorised development is to commence until, following consultation with Highways England, details of the construction traffic management for the temporary use of the existing A5(T) access and of the construction method for the installation of the underground cable under the A5(T) have been submitted to and approved by the relevant planning authority following written confirmation of approval by Highways England. The authorised works must be carried out in accordance with the approved details under this requirement.

The applicant in that case is due to submit its final preferred DCO on 19 July 2019 and the examination is scheduled to close on 31 July 2019.

At the ISH reference was made by the applicant to guidance which states that the law and policy relating to planning conditions, imposed on planning permissions under the Town and Country Planning Act 1990, will generally apply when considering Requirements to be imposed in a DCO. This was considered justification to resist Highways England's request to have a greater role in any decision making under a Requirement. It is difficult to make a direct comparison given that the Town and Country Planning Act regime has largely removed the use of tailpieces on conditions enabling amendments by agreement with the local planning authority. Nevertheless it is our view that including the amendment we have requested to RR4 would conform with the Town and Country Planning Act regime recognising the statutory role Highways England has in respect of decision making for development affecting trunk roads.

Whilst not directly comparable it should be noted that the Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Town and Country Planning (Development Affecting Trunk Roads) Direction 2018<sup>1</sup> give Highways England a statutory role in developments that may affect the SRN. In such circumstances local planning authorities are statutorily required to consult with Highways England before granting consent for development that may affect the SRN and if they choose not to follow Highways England's recommendation (for example in respect of the imposition of a condition, or the refusal of consent) then they are required to refer the matter to the Secretary of State before issuing an approval. This gives Highways England a significant role in decision making which could impact the SRN; if a local planning authority is minded not to follow Highways England's recommendation then they must refer the matter to the Secretary of State. We do not consider it was the intention of the Planning Act 2008 regime to reduce this role in any way. Highways England is concerned that without amendments to the drafting RR4 could authorise material changes to the consent that may have significant implications for the SRN, and Highways England would be excluded from making that decision. This is considered to be inconsistent with the Town and Country

---

<sup>1</sup> enclosed

Planning Act regime and therefore cannot be considered sufficient justification for seeking to exclude Highways England from this process.

Highways England's preference is to align with what has been agreed for the *Reinforcement to North Shropshire Electricity Distribution Network DCO* whereby Highways England has to provide its approval before the local planning authority can issue its decision. Alternatively, should RR4 remain as drafted (i.e. that Highways England's role is limited to consultation) then we request that an amendment is made so that if the local planning authority is minded not to follow Highways England's recommendation then a referral must be made to the Secretary of State before they can issue an approval.

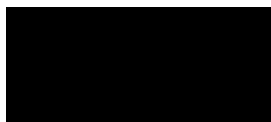
### **Road Safety Audit (RSA) process**

Discussion regarding the RSA process continues between Highways England and the applicant. To this end, Highways England is in receipt of Technical Note No. 40 (TN40), provided in support of addressing Stage 1 RSA Problem B regarding the potential increase in collisions on the SRN as a result of development traffic. We are also engaged in dialogue with the applicant regarding RSA Problem J, associated with pedestrian/cyclists crossing facilities for the A449 affected by the proposed access roundabout and A5/A449 Link Road.

### **Earth bunds**

Dialogue continues between Highways England and the applicant with regard to the construction of earth bunds adjacent to the A449 and A5 and the potential impact these bunds may have on the SRN, both in terms of highway operation and physical impact.

Yours sincerely,



**Patrick Thomas**

**Asset Manager**

Email: [Patrick.Thomas@highwaysengland.co.uk](mailto:Patrick.Thomas@highwaysengland.co.uk)