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Your Ref: M20 Junction 10a – TR010006
Our Ref: TWA 8/1/21

1 December 2017

Dear Sirs,

PLANNING ACT 2008: APPLICATION FOR THE PROPOSED M20 JUNCTION 10a DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:-

- the Report dated 1 September 2017 of the Examining Authority (“ExA”), Dr Mike Ebert, who conducted an examination into the application made by Highways England (“the Applicant”) for the M20 Junction 10a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- representations received by the Secretary of State following the close of the examination; and
- responses to further consultation undertaken by the Secretary of State in respect of the application.

2. The application was accepted for examination on 11 August 2016 and examination was completed on 2 June 2017. The examination was conducted on the basis of written evidence submitted to the ExA and by a series of hearings held in the locality of the proposals. The ExA also undertook a number of site inspections.

3. The Order as applied for would grant development consent for the creation of a new interchange Junction 10a on the M20 motorway in Kent, east of the existing Junction 10 in Ashford. It would incorporate a new two-lane dual carriageway link road to join the new junction to the existing A2070 Southern Orbital Road (Bad Munstereifel Road); a new pedestrian/cycle bridge over the M20 to the east of the new Junction 10a providing a link between Kingsford Street on the south side of the motorway and the A20 on the north side; a new footbridge to replace the existing footbridge over the A2070 at Church Road; and a new retaining wall at Kingsford Street. The Secretary of State is content that the proposals qualify as a Nationally Significant Infrastructure Project under sections 14(1)(h) and 22(1)(b), (3) and (4) of the 2008 Act.

4. The application also included an alternative scheme which, in addition to the above, included the provision of new access in the form of a roundabout from the proposed A2070

link road to the proposed Stour Park Development site, located immediately south of the proposed A2070 link road (“Alternative Scheme”).

5. Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s report of Findings, Conclusions and Recommendations to the Secretary of State (“the Report”). The main features of the proposal and the site are set out in Section 2 of the Report, the ExA’s findings and conclusions are set out in Sections 4 to 8, the ExA’s views on the Development Consent Order and related matters in Section 9 and the ExA’s overall conclusions and recommendation are in Section 10 of the Report.

Summary of the ExA’s recommendations

6. For the reasons set out in the Report, the ExA recommended that the Order be made, in the form set out in Appendix D to the Report.

Summary of Secretary of State’s decision

7. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“the 2009 Regulations”) – which apply to this application by virtue of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Secretary of State’s consideration

8. The Secretary of State’s consideration of the ExA’s Report, the representations, responses to consultations and all other material considerations are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the ExA’s findings, conclusions and recommendations as set out in the Report and the reasons for the Secretary of State’s decision are those given by the ExA in support of the conclusions and recommendations. All paragraph references, unless otherwise stated, are to the ExA’s Report (“ER”) and references to “requirements” are to those in Schedule 2 to the Order, as set out in Appendix D to the ER.

9. The Secretary of State notes that the ExA set out that in considering the recommendation to grant development consent the Secretary of State may wish to satisfy himself on the following points (ER 10.2.1):

- any updated air quality plan that may come into force after the close of the examination;
- the planning agreement between the Applicant and Friends Life Limited (“FLL”);
- a side agreement between the Applicant and Southern Gas Networks (“SGN”) providing protection to SGN is in place;
- the status of the agreement between the Applicant and FLL, whether FLL’s objection to compulsory acquisition and temporary acquisition is now withdrawn and whether agreement has been reached to enable SGN to install and maintain a diverted high pressure gas main using a 9m strip of land outside the Order limits.

10. The matters relating to air quality are set out at paragraphs 19-25 of this decision letter. With regard to the planning agreement between HE and FLL, the Secretary of State notes that this relates to a piece of land HE are seeking compulsory purchase powers over but that FLL objected to as they are required under a planning obligation (linked to their application for

the Stour Park Development) with Kent County Council (“KCC”) to use it to deliver a turning loop. FLL confirmed that KCC had agreed to deliver this turning loop and that an agreement had been put in place to transfer part of this land to KCC. The Secretary of State notes the ExA’s comments on this matter (ER 8.5.44) and the letter submitted on behalf of KCC and Ashford Borough Council (“ABC”) to the Secretary of State of 1 November 2017, in response to the Secretary of State’s consultation letter of 25 October 2017. The Secretary of State is satisfied that this agreement is in place. With regard to the last two points, the Secretary of State’s consideration of these matters is set out below at paragraphs 41-42. The Secretary of State is therefore satisfied with regard to all the matters raised by the ExA as points on which the Secretary of State might wish to be satisfied in considering the recommendation.

Legal and policy context, and need for the proposed development

11. The Secretary of State notes that under section 104 of the 2008 Act he must decide this application in accordance with the designated National Policy Statement for National Networks (“NPSNN”), subject to certain exceptions which are not relevant in this case (ER 3.2.1-13). The Secretary of State has also had regard to the joint Local Impact Report submitted within the statutory timetable by KCC and ABC (ER 4.1.14-16) who support the proposed development as a key transport requirement in support of future development south of Ashford (ER 4.3.5). The Secretary of State shares the ExA’s conclusion that the proposed development conforms with the NPSNN, the National Planning Policy Framework and local plans and would deliver the additional capacity which is needed to support economic development at a local and regional level (ER section 4.2, 4.3.6-7, 4.3.13, 7.2.4). He further shares the view that the Applicant had assessed alternatives adequately (ER 4.4.12, 4.6.1, 8.9.7) and it was appropriate for them to have promoted the scheme applied for, with the Alternative Scheme referred to in paragraph 4 above.

12. The Secretary of State notes that some changes were made to the application documents by the Applicant during the examination. The ExA’s consideration of these changes is set out at ER 1.7.1-2. The Secretary of State agrees with the Examining Authority that the changes do not constitute a material change to the application. The Secretary of State is also satisfied that, taking into account the further minor drafting changes to the Order recommended by the ExA and discussed later in this letter, the scheme has not changed to the point where it is a different application. The Secretary of State is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order in the form recommended.

13. The Secretary of State agrees with the ExA in being satisfied that the Environmental Statement, together with the other environmental information submitted by the Applicant during the Examination, was adequate and that it met the requirements under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (ER 4.4.3). The Secretary of State confirms that, in coming to his decision to make the Order, he has taken into consideration all of the environmental information in accordance with regulation 3(2) of the 2009 Regulations. For the purposes of regulation 23(2)(d)(iii) of the 2009 Regulations, the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of the proposed development are those secured in the requirements including the Construction Environmental Management Plan (“CEMP”) and its subsidiary plans, that would be secured by requirement 3 (ER 4.4.4-12). Having regard to regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, in relation to European and nationally protected species and conservation of biodiversity, the Secretary of State has had regard to his duties under the Natural Environment and Rural Communities Act 2006.

Findings and Conclusions in Relation to the Potential Impacts of the Development

Traffic and Transport (ER Section 5.2)

14. The Secretary of State has considered the ExA's assessment of the impacts of the proposed development on traffic and transport. The Secretary of State shares the ExA's view that the Applicant has applied an appropriate and recognised traffic modelling and forecasting methodology. The Secretary of State agrees with the ExA that the proposed development, if implemented, would improve traffic flow and reduce journey times in accordance with the NPSNN (ER 5.2.54-55, 7.3.2-3). The Secretary of State recognises the concerns raised regarding parking for construction works and delivery vehicles and, like the ExA, is content that the CEMP and Traffic Management Plan, secured by requirements 3 and 11, will ensure that this is adequately controlled (ER 5.2.27, 7.3.4).

15. The Secretary of State notes that concerns were raised about 'rat running' but that the ExA was satisfied that the issue had been appropriately resolved for the benefit of all parties, with requirement 3 incorporating provision for a turning loop at the junction of Highfield Lane and Kingsford Street, which would be delivered by KCC outside the Order provisions (ER 5.2.30-33). Following the close of examination, the Secretary of State has received and considered post-examination material from the Village Alliance about the provision of the turning facility; and about non-motorised user safety on the A20 at the north end of the new Kingsford Street bridge. Following consultation on behalf of the Secretary of State, responses to that material have been received from the Applicant, and jointly from KCC and ABC, in turn commented upon by the Village Alliance. In relation to the turning facility KCC and ABC advised that should rat-running along Highfield Lane and Kingsford Street become an issue in relation to the construction of Junction 10a and subsequent roadworks, KCC would seek to ensure that the turning circle was constructed in parallel with the M20 works. The Secretary of State accepts the Applicant's view that the provision of a turning facility was outside the M20 scheme's scope, as there was no justification from traffic modelling to require its incorporation in that scheme. The Applicant set out in their Statement of Common Ground with KCC that they considered that the severance of Highfield Lane from the A20 immediately north of the Highfield Lane/ Kingsford Street junction will reduce the attractiveness of rat running as the new link road would offer a more effective alternative. The Secretary of State has no reason to disagree with this and is satisfied that the provision of a turning facility is a matter for KCC to consider as local highway authority (which KCC accepts), so the Secretary of State need not add further provision in relation to this in the DCO than exists already in the version at Appendix D to the ER.

16. As far as non-motorised user safety is concerned and in particular the safety concerns raised by the Village Alliance, the Secretary of State notes that this issue was considered at examination. He shares the ExA's conclusion that the Applicant's approach in particular to the post-scheme monitoring as part of the Road Safety Audit procedure (mandatory for all Highways England schemes), and agreed with KCC (the highway authority) was a reasonable and proportionate approach (ER 5.2.43-46, 5.2.59, 7.3.5). The Secretary of State also agrees with the ExA that during operation, with the agreed mitigation in place, highway networks overall would benefit from the implementation of the proposed development (ER 5.2.58, 7.3.6).

Road Safety (ER Section 5.3)

17. The Secretary of State notes the ExA's consideration of road safety issues. The Secretary of State shares the ExA's view (ER 5.3.28, 7.3.9) that the proposed development

would achieve a good level of safety, noting that no parties challenged the findings of the Applicant's Road Safety Audit, Safety Plan or Safety and Hazard Log (ER 5.3.15-5.3.21). The Secretary of State notes that concern was raised about safety on the northbound M20 approaching Junction 10, where there is a bend in the motorway. The Secretary of State, having considered the evidence, considers there is not an undue safety risk on the northbound M20 in the vicinity of the proposed development (ER 5.3.22-5.3.27). The Secretary of State also agrees with the ExA that the Applicant has taken opportunities to improve road safety through the introduction of proportionate measures in accordance with the NPSNN (ER 5.3.28). (Matters relating to safety on Kingsfold Street and Highfield Lane, and for non-motorised users on the A20 at the north end of the proposed Kingsfold Street bridge are dealt with in paragraphs 15-16 above.)

Noise and Vibration (ER Section 5.4)

18. The Secretary of State notes that concern was raised about ambient noise levels, construction working hours particularly with regard to Pilgrims' Hospice and vibration effects on nearby Grade I and Grade II listed buildings. The Secretary of State notes that the ExA reported satisfaction with the Applicant's assessment approach to noise and vibration and proposals for mitigation (primarily noise attenuation barriers, bunds, planting and low noise surfacing), which would be secured through requirement 3 (ER 5.4.21-22, 5.4.39 – 5.4.42, 7.3.10). The Secretary of State notes that the ExA reported that as a result of the proposed development, the overall number of properties suffering noise or vibration effects at or above the 'significant observed adverse effect' level was forecast to reduce. The ExA noted the Applicant's commitment to producing a Noise and Vibration Monitoring Strategy (ER 5.4.27, 7.3.11), and that they had established a relationship with the Pilgrim Hospice to ensure that the impact of the works on the hospice was minimised wherever possible (ER 5.4.34). The Secretary of State is therefore content that the proposals accord with the NPSNN.

Air quality and emissions (ER Section 5.7)

19. The ExA accepted that the Applicant's assessment of air quality impacts had been carried out using the appropriate methodology using conservative long-term trends data to allow for uncertainties in traffic and air quality modelling and assumptions about vehicle performance (ER 5.7.20-21, 5.7.79-80, 7.3.15). The ExA accepted that with mitigation achieved through the CEMP and the Traffic Management Plan, construction air quality impacts would be minimised and acceptable (ER 5.7.40, 5.7.81, 5.7.85, 7.3.16). As regards air quality once the proposed development is in operation, the ExA was satisfied with the Applicant's assessment that the proposed development was unlikely to trigger an exceedance of the EU limit values (ER 5.7.45-51, 5.7.85, 7.3.17). Noting the Secretary of State's consideration of the updated air quality plan set out in paragraph 21-25 below, the Secretary of State agrees with the ExA's views with regards to air quality and emissions.

20. The Secretary of State notes that ABC has not declared an air quality management area within the Borough but that ABC and other interested parties made the case for air quality monitoring to be secured as an additional requirement in the Order similar to that in the M4 Junction 3 to 12 smart motorway Order. The Secretary of State notes the Applicant's argument against such an additional requirement (ER 5.7.64- 66) and agrees with the ExA that the circumstances are different for the two schemes and the criteria used for the M4 Order do not apply here. The ExA noted that monitoring was already taking place in the vicinity of the M20 and although not secured in the Order, the Applicant had committed to post-completion evaluation of the development, including air quality impacts. The Secretary of State therefore agrees with the ExA that an additional requirement for monitoring is not called for (ER 5.7.82-84, 7.3.18-19).

21. As set out in ER 5.7.9, the UK government has a statutory obligation to fulfil the requirements of the EU Ambient Air Quality Directive 2008 (“AQD”). This is transposed into domestic law through four sets of regulations¹ (“the Air Quality Regulations”). If a pollutant level exceeds any of the relevant limits or target values, the Air Quality Regulations require the relevant competent authority to prepare and implement an Air Quality Plan in their respective area to address the exceedance. Accordingly, with regards to NO₂ (Nitrogen Dioxide) a joint air quality plan was prepared by Defra, the Scottish Government, the Welsh Government and Northern Ireland’s Department for the Environment. The plan, entitled “*Improving air quality in the UK: Tackling nitrogen dioxide in our towns and cities*”, was published in December 2015 (“the 2015 AQP”). Following a successful legal challenge by ClientEarth in November 2016 a further joint UK plan, “*The UK plan for tackling roadside nitrogen dioxide concentrations*”, was published on 26 July 2017 (“the Updated AQP”). A draft of this was published in May 2017 and the ExA concluded that this had not changed the position with regard to air quality in the vicinity of the development (ER 5.7.56). The final Updated AQP was however published after this and the ExA highlighted that it would need to be taken into account in the Secretary of State’s decision (ER 5.7.57, 7.3.19).

22. The Secretary of State has considered the Applicant’s evidence on NO₂ emissions in the light of the Updated AQP. The Secretary of State notes that the modelling carried out by the Applicant using Defra’s Pollution Climate Mapping (PCM) model referred to at ER 5.7.47 demonstrated that NO₂ concentrations are, and are forecast to be, less than the legal limit of 40 µg/m³ with the scheme in place. Although the Applicant has not used the most up to date emission factors data in their Air Quality Assessment, the Secretary of State considers that it is unlikely that limit values at this section of the M20² would be exceeded if this data was taken into account. The reason for this is because the projected increase in concentration is small and the resulting projected concentration measurement for 2018 (the opening year), which includes the impact of the scheme, is still sufficiently far below 40ug/m₃ that should the updated emission factors be taken into account it is unlikely that the legal limit of NO₂ concentrations would be exceeded.

23. With regard to local authority monitoring locations, the ExA noted (ER 5.7.64) that there are five receptors with concentrations of the modelled annual mean NO₂ concentration greater than 40µg/m³ in the opening year. However, all changes as a result of the proposed development would be less than 0.4µg/m³ and therefore imperceptible.

24. The NSPNN requirements with regard to air quality and the circumstances when the Secretary of State should refuse consent after taking into account mitigation measures include:

- where a development would result in a zone/agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or
- where a development would affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.

¹ Air quality is a matter of devolved competence and as such each of the home nations have their own set of regulations which implement the requirements of the AQD: Air Quality Standards Regulations 2010 (SI 2010/1001), Air Quality Standards (Scotland) Regulations 2010 (SSI 2010/204), Air Quality Standards Regulations (Northern Ireland) 2010 (SR 2010 No. 188) and Air Quality Standards (Wales) Regulations 2010 (SI 2010/1433 (W. 126)).

² The modelled section of the M20 in the national PCM modelling results used for “*The UK plan for tackling roadside nitrogen dioxide concentrations*”, is approximately 3km west of the proposed Junction 10a.

25. The Secretary of State notes that the Development is in zone 31 (south east) which is currently reported as non-compliant with the EU limit values. The Secretary of State is satisfied that the criterion in the first test is not applicable as the Development will not result in a zone/agglomeration that is currently compliant with the AQD becoming non-compliant. The Secretary of State also agrees with the ExA that the criterion in the second test is not met as the Development will not affect the worst link in the zone and will not cause any link to become the worst link. The Secretary of State also notes that whilst zone 31 is non-compliant, neither ABC or Shepway District Council (which are in the air quality study area for the proposed Development) or Maidstone Council (sited along the M20 corridor north of the Development) have been identified in the updated AQP as exceeding the EU limit values for NO₂. The Secretary of State is therefore satisfied that although the Applicant has not used the most up to date emission factors data in their Air Quality Assessment, it is reasonable for this to be relied upon, for the reasons set out above, and concurs with the ExA that overall the proposed Development meets the tests in the NPS 5.3-5.15, taking account of the Updated AQP (ER 7.3.19). The Secretary of State is also satisfied that additional monitoring is not required beyond that already carried out and continuing by the local authority under its air quality management duties imposed by Part IV of the Environment Act 1995.

Water environment and flood risks (ER Section 5.8)

26. The ExA noted that the Environment Agency (“EA”) had confirmed by the end of examination that it considered the Applicant’s assessment for the purposes of the Water Framework Directive to be adequate (ER 5.8.27, 5.8.51, 7.3.20). The ExA also noted that the EA had agreed the final Flood Risk Assessment on the basis that requirement 14 (flood compensatory storage) would be included in the Order (ER 5.8.36-38, 5.8.52, 7.3.21), and that requirements 3 and 8 would attend satisfactorily to mitigation of any land and groundwater contamination issues (ER 5.8.43, 5.8.53, 7.3.22). The Secretary of State notes that the EA raised concerns about access to the Aylesford Stream which it stated that it required at all times for maintenance and incident management purposes. The Secretary of State notes that this was agreed at the end of the examination and agrees with the ExA that the protective provisions for EA in Schedule 9 to the Order appropriately resolve this issue (ER 5.8.44-46). The Secretary of State is content, for the reasons reported by the ExA, that the impacts on the water environment and flood risk have been adequately assessed and that the proposed mitigation measures are sufficient and secured.

Biodiversity and ecological conservation (ER Section 5.9)

27. The ExA noted that the Applicant, EA, Natural England and local authorities had reached agreement on biodiversity issues (ER 5.9.47, 7.3.24). The Secretary of State agrees with the ExA that there is no reason to disagree with their view. The Secretary of State notes the ExA’s consideration of the impact of the Development on Hatch Park Site of Special Scientific interest (“SSSI”) and the ExA’s conclusion that there would be no significant adverse effects on the SSSI (ER 5.9.15-20). The Secretary of State also notes that the ExA was content that the impact on non-statutory designated sites had been addressed by the Applicant and that with the proposed mitigation secured in the Order (including mitigation of the effects of the Development on Ashford Green Corridor Local Nature Reserve and Highfield Lane Nature Reserve) (ER 5.9.21-27), the Development would have only minor impacts on habitats (ER 5.9.29-35, 7.3.26). The Secretary of State has no reason to disagree with the ExA on any of these matters. The Secretary of State also notes that European Protected Species licences are required in respect of some species prior to the commencement of any development and that ‘Letters of No Impediment’ have been issued by Natural England in respect of draft mitigation licence applications for

dormice, great crested newts and badgers (ER 5.9.38, 5.9.48, 7.3.25). The Secretary of State notes that there was some concern raised with regard to great crested newts (ER 5.9.39 – 5.9.44), but agrees with the ExA that the issues raised would be adequately addressed through the proposed mitigation (ER 5.9.49). Overall, the Secretary of State agrees with the ExA that matters relating to biodiversity and ecological conservation have been sufficiently considered by the Applicant with appropriate mitigation secured in the Order (ER 5.9.47).

Health (ER Section 5.11)

28. The Secretary of State shares the ExA's satisfaction with the Applicant's Health Impact Assessment elements of its environmental documentation (ER 5.11.5) and the ExA's view that sufficient mitigation measures are proposed (ER 5.11.18-23). These matters are primarily dealt with under other headings in this letter, as was the case in the ER, and are not repeated here.

Historic environment (ER Section 5.12)

29. The Secretary of State notes that the Applicant's ES concluded that both construction and operation of the Development have the potential to have significant adverse effects on the setting of the Grade I listed St Mary's Church at Sevington, as well as the settings of Grade II listed buildings in Sevington and Kingsford Street (ER 5.12.14). The Secretary of State also notes that concern was raised about the impact the Development would have on the audibility of the bells at St Mary's Church (ER 5.12.22).

30. The ExA concluded that with the protection secured by the requirements, including the mitigation measures in the outline CEMP, the impacts on heritage assets would be minimised. It was however noted that there was the potential for a residual significant adverse effect during operation on the setting of St. Mary's Church, in terms of visual impacts (including lighting), noise, cumulative impacts and viability. It was also noted that there was the potential for a moderate to large temporary significant effect on the settings of four Grade II listed buildings (ER 5.12.14, 5.12.28, 5.12.45, 7.3.30). The Secretary of State agrees with the ExA that the public benefit of the proposed development would outweigh the harmful impacts remaining (after mitigation, in the form of bunds, acoustic barriers, a reduction in speed limit on the A2070, and screen planting) on the significance of the identified heritage assets, and that the viable use of St. Mary's church would not be compromised (ER 5.12.46, 5.13.61-65). The Secretary of State notes that there is potential for only very slight impacts on the setting of Mersham Conservation Area, which would be adequately mitigated (with mitigation secured through requirement 3) (ER 5.12.17) and that requirement 9 secures an archaeological watching brief to KCC's satisfaction (ER 5.12.18-19).

Landscape and visual impacts (ER Section 5.13)

31. The ExA noted (ER 5.13.18) that the Applicant's assessment had identified significant adverse impacts on Landscape Character Area 3 Mersham Farmland arising from the construction of the proposed development but concluded that these impacts would be temporary, reducing as screening arising from tree planting was established and that by design year 15 there would be no significant residual effects on landscape character (ER 5.13.52). In considering this subject the ExA found that, with the landscaping scheme based on the Environmental Masterplan, secured by requirements 5 and 6, the impact on the landscape (including the impact of lighting) would not be so significant as to weigh against the proposed development (ER 5.13.55-56). The Secretary of State agrees with this, and with the ExA's conclusion that the proposed development will have a minimal impact on Kent

Downs AONB (ER 5.13.57-59). The ExA noted that there would be significant adverse visual effects on some residential receptors and St. Mary's Church, Sevington (as discussed above), during construction and in the initial years of operation until mitigation planting had established. The Secretary of State agrees with the ExA that the Applicant has demonstrated considerable efforts in seeking to mitigate any harmful effects as far as possible and that these effects would be experienced in an area already dominated by transport infrastructure. The Secretary of State therefore agrees with the ExA that the effects would be reasonable and proportionate (ExA 5.13.60-5.13.65, 7.3.34-35) and are not so significant as to weigh against the scheme.

Socio-economic impacts (ER Section 5.15)

32. The ExA noted that the proposed development would provide significant potential to support economic growth in the Ashford and the Kent economies; address congestion and improve road network performance and resilience (leading to economic and social benefits to users) (ER 5.15.29, 7.3.37). The Secretary of State notes that concern was raised that access to Pilgrims Hospice would be restricted during construction meaning that the Hospice may need to close the site during the construction period. The ExA was satisfied that with the mitigation secured through requirements in the Order, construction of the proposed development would at no point necessitate closure of the hospice and that access to the Hospice would be safeguarded (ER 5.15.13-14, 5.15.31). The Secretary of State notes that there will be a loss of businesses (including Wyevale Garden Centre) and agricultural land but agrees with the ExA that this is proportionate, in the public interest and would be appropriately compensated (ER 5.15.32). The Secretary of State also agrees with the ExA that adverse impacts on non-motorised users during construction would be adequately mitigated and that they would benefit from an improved network once construction had been completed (ER 5.15.32).

Combined and cumulative impacts (ER Section 5.16)

33. The ExA considered that the Applicant's methodology and identification of other developments for inclusion in the assessment of cumulative impacts was sound, and not contested by local planning authorities (ER 5.16.35, 7.3.40). The Applicants had assessed that there would be no significant cumulative effects during construction or operation (ER 5.16.12-15). The ExA had pursued in examination whether the proposed Operation Stack lorry park that was at the time being pursued under the Highways Act 1980 should have been considered as part of the cumulative assessment undertaken by the Applicant, but was satisfied by the Applicant's conclusion that the effects would be negligible both during construction and operation (ER 5.16.18-34, 5.16.36). The Government announced on 15 November 2017 that their proposals for an Operation Stack lorry park at Stanford West would be withdrawn. The Secretary of State notes that a further permanent scheme is likely to come forward in the future but as details of this are still to be worked up, no further assessment of the cumulative impacts is called for at this time. The Secretary of State therefore agrees with the ExA that the cumulative impacts of the proposed development and other relevant developments have been properly considered (ER 5.16.37).

Habitats Regulations (ER Chapter 6)

34. The Secretary of State for Transport is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations"), which transpose the Habitats Directive (92/43/EC) into UK law, for transport applications submitted under the 2008 Act. The Habitats Regulations require the Secretary of State to consider whether the proposed development would be likely, either alone or in combination

with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 61(1) of the Habitats Regulations to address potential adverse effects on site integrity. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

35. The Secretary of State notes that the ExA concluded that, taking into account the views of interested parties and particularly Natural England (ER 6.4.2), sufficient information had been provided by the Applicant to allow the Secretary of State to conclude that likely significant effects on European sites during the construction and operation of the proposed development could be excluded for the project alone and in combination with other plans or projects (ER 6.6.1, 7.4.1, 7.6.4). The Secretary of State agrees with this conclusion and is satisfied that it is not necessary to carry out an Appropriate Assessment pursuant to regulation 61(1) of the Habitats Regulations in relation to the proposed development.

Overall conclusions on the case for development consent (ER Chapter 7)

36. The Secretary of State notes the ExA's conclusion at 10.1.1 and that in reaching the overall conclusions for the granting of development consent that the ExA has had regard to the NPSNN, the development plan, the National Planning Policy Framework, the Local Impact Report (paragraph 11 above, ER 7.5.2) and all other matters which the ExA considers to be both important and relevant. The Secretary of State considers that there is a compelling need for the proposed development and agrees with the ExA that it would assist in delivering a well-functioning Strategic Roads Network (ER section 7.5.3). The ExA noted that during construction there would be some harmful effects, in particular in terms of noise, air quality and visual amenity, but that these would be temporary and mitigated as far as possible through the controls secured in the Order and other legislation (ER 7.5.4). In operation, the ExA concluded that the proposed development would initially have limited impact on landscape and visual amenity, but the growth of newly-planted vegetation (secured through the Order) would, in time, mitigate these impacts. The ExA however noted that St. Mary's Church would continue to be adversely affected by the proposed development (ER 7.3.30, 7.5.5).

37. The ExA concluded that the strategic benefits of the proposed development would outweigh any adverse impacts and potential harm, and that development consent should be granted for both the main and Alternative Scheme (paragraph 4 above, ER 7.6.1-2, 7.6.5). The Secretary of State agrees that for all the reasons given by the ExA and set out in this letter, development consent should be granted, subject to the changes which the ExA has incorporated in the Order at Appendix D to the ER and to the further minor changes referred to in paragraph 51 of this letter. In relation to the Alternative Scheme, which (under the terms of the Order) could only proceed if planning consent had been granted for the Stour Park development, the Secretary of State notes that ABC granted outline planning permission on 13 September 2017.

Compulsory acquisition and related matters (ER Chapter 8)

38. The Secretary of State has considered the compulsory acquisition powers sought by the Applicant in accordance with sections 120, 122, 123, 127, 131, 132 and 138 of the 2008 Act, the Human Rights Act 1998 and relevant guidance.

Individual objectors (whose objections had not been withdrawn by close of examination)

39. In relation to the Executors of Marianne Clunies-Ross and others, the ExA found that the compulsory acquisition or temporary possession powers sought over their land were in the case of each plot necessary, proportionate and justified in the public interest, and would be subject to compensation (ER 8.5.13-16). The ExA reached the same conclusion in respect of the land-holdings of Wyevale Garden Centre (ER 8.5.17-20), and of Mr S J Ramsay (ER 8.5.55). The Secretary of State concurs with the ExA's view in all three cases.

40. With regard to the temporary possession of land forming the access road to the Pilgrims Hospice, the ExA noted the particular sensitivity of this site, given the Hospice's function for the local community, but noted the adverse effects would occur for a prescribed and temporary period, which needed to be weighed against the major economic and social benefits of the proposed development (ER 8.5.33). At the close of the Examination, the Hospice set out a number of issues that it wished the ExA to consider to ensure suitable conditions were in place (ER 8.5.29) in order to secure its withdrawal of objection to the temporary possession powers. The ExA was satisfied that these would be secured through the CEMP and Traffic Management Plan, secured by requirements 3 and 11 (ER 8.5.32). The ExA concluded that the interference (by temporary possession) with the Hospice's landholding would be proportionate and justified, and appropriate in the face of Human Rights considerations (ER 8.5.34-5). The Secretary of State agrees.

41. The Secretary of State notes that whilst the objection from FLL was still outstanding at the close of the examination, FLL have since (by letter of 25 July 2017 from Aviva Investors on their behalf) withdrawn unequivocally its objection to compulsory acquisition of its land.

Statutory undertakers' interests (ER Section 8.6)

42. With respect to Sections 127 and 138 of the 2008 Act (which relate to statutory undertakers' interests) the ExA noted that a Statement of Common Ground had been agreed between SGN and the Applicant. A side agreement between these two parties had been completed on 25 May 2017 (ER 9.7.1-3), and by a post-examination agreed joint statement dated 12 October 2017 the parties confirmed to the Secretary of State that no amendments to the draft Order in consequence were required (answering the ExA's concern at ER 9.7.3). The parties also confirmed in that joint statement that an agreement had been concluded on 24 July 2017 between the Applicant and FLL, and to SGN's satisfaction, regarding access to a 9 metre offset area outside the Order limits needed for access during the proposed development for installing a high pressure gas main. The Secretary of State is satisfied that the matters set out by the ExA at ER 9.7.7-13 have been resolved. No other electricity, gas, water or sewerage undertakers, and no electronic communications code network operators made representations (ER 8.6.4-5).

43. The EA sustained objection to the drafting of Part 3 of Schedule 8 to the Order (for their protection) in three respects (ER 8.6.6-14). The first was in relation to flood risk activity permits. The ExA and the Secretary of State agree with EA that, consonant with general legislation, such a permit should be deemed to have been refused if no reply has been given to the Applicant by EA within 2 months (ER 8.6.7, 8.6.10 first bullet, 8.6.11). With regard to the second point, the Secretary of State agrees with the ExA in disagreeing with the EA about the need to make specific reference to '*any partial obstruction*' in paragraph 23(6)(b) of Schedule 8, as EA has to approve plans in any case for specified works and they must be carried out to EA's satisfaction which should afford sufficient protection to the EA (ER 8.6.8, 8.6.10 second bullet, 8.6.12). In relation to the third point, the Secretary of State also

shares the ExA's view that a separate indemnity provision need not be included in Part 3 of the Schedule due to the obligation on the Applicant to repay to the EA any costs, charges, damages and losses reasonably incurred by the EA (ER 8.6.9, 8.6.10 third bullet, 8.6.13).

44. In the light of the foregoing, the ExA, and in turn the Secretary of State, are content that the statutory tests in sections 127 and 138 of the 2008 Act are met (ER 8.6.14, 8.9.13).

Special category land (ER Section 8.7)

45. With regard to the tests in Sections 131 and 132 of the 2008 Act, in relation to the timely and appropriate provision of replacement open space land to substitute for such land to be permanently acquired for the proposed development, the ExA was content (ER 8.7.11-14, 8.9.14) that the proposed replacement land provisions satisfied the s.131/132 tests. The Secretary of State agrees with this conclusion. Accordingly, the Order will not be subject to special parliamentary procedure.

Overall conclusions in respect of compulsory acquisition

46. The Secretary of State agrees with the ExA (ER 8.4.8-9, 8.9.9-16) that the proposed development satisfies the tests in s.122(2) and (3) of the 2008 Act, namely that the land proposed to be compulsorily required is needed, and that there is a compelling case in the public interest to acquire the land for the proposed development, outweighing the private loss that would be suffered by affected persons. The Secretary of State agrees with the ExA that there are no reasonable practicable alternatives to the proposed development (paragraph 11 above) or to the compulsory acquisition or temporary possession elements in it (ER 8.9.7). The Secretary of State shares the ExA's view that funding will be available and adequate (ER 8.4.11-17, 8.9.8).

47. The Secretary of State notes the ExA's consideration of those provisions of the Human Rights Act 1998 and European Convention on Human Rights which are relevant to this application for development consent (ER Section 8.8, 8.9.15). Like the ExA, the Secretary of State is satisfied that any interference with human rights is proportionate in so far as the public benefit of the proposed development will outweigh any private losses after allowance for the compensation which will be payable. Those affected by compulsory purchase have had a fair and public hearing of their objections, and written representations have been included in the ExA's consideration and reporting to the Secretary of State. The Secretary of State particularly notes (as recorded in ER 8.8.2) that this is the case for the owner and occupiers/tenants of Highfield Bungalow, who will be deprived of their home if compulsory acquisition powers are granted, but that none of these persons objected.

48. As for the public sector equality duty the Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010. He has concluded in the light of the ExA's findings and conclusions as detailed in the ER that the potential impacts of the proposed development are not likely to result in any significant differential impacts on any of the protected characteristics referred to in section 149.

49. In conclusion, the Secretary of State is content that it is appropriate to grant the compulsory purchase and temporary possession powers sought in the order, for the reasons summarised by the ExA at ER 8.9.9-17.

Draft Development Consent Order and related matters (ER Chapter 9)

50. The Secretary of State has considered the ExA's assessment of the Order in chapter 9 of the ER. He is satisfied that, subject to the qualifications referred to in the following paragraph, the Order set out at Appendix D to the ER is appropriate and acceptable for the purposes of the scheme. This includes agreeing with the ExA's conclusions in respect of each of the three points of drafting contention between the Applicant and EA, detailed in paragraph 43 above.

51. The Secretary of State is making a number of minor and other textual amendments to the Order set out in Appendix D to the ER in the interests of clarity, consistency and precision. The other textual amendments refer to amendments made to Part 5 and Schedule 6 to the Order contained in Appendix D to ensure the provisions are aligned with legislative changes that have been made. He considers that none of these changes, either individually or taken together, materially alter the effect of the Order.

Representations since close of examination

52. Late representations were received from the Village Alliance regarding safety concerns. The Secretary of State's consideration of these matters are set out above at paragraph 15. Post-examination correspondence was also received from Aviva Investors on behalf of FLL confirming withdrawal of their objection as set out above at paragraph 41. On 28 September 2017 a letter on behalf of the Secretary of State was sent to the Applicant, SGN and FLL to seek clarity on the status of the side agreements referred to at ER 9.7.1-3, and ER 9.7.7-13. The outcome is reported in paragraph 42 above. On 25 October 2017, a letter on behalf of the Secretary of State was sent to the Applicant, ABC and KCC, seeking advice in response to correspondence to the Secretary of State from a representative of the Village Alliance. This is reported at paragraph 15-16 above.

Secretary of State's overall conclusions and decision

53. For all the reasons set out in this letter and the ExA's Report, the Secretary of State considers that there is a clear justification for authorising the proposed development. The Secretary of State has therefore decided to accept the ExA's recommendation at ER 10.2.2 and grant development consent, subject to the changes referred to at paragraph 51 above. The Secretary of State is satisfied that none of these changes constitute a material change. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order as now proposed.

Challenge to decision

54. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

55. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Natasha Kopala

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The M20 Junction 10a Development Consent Order 2017 (as made) is being published on the Planning Inspectorate website at the following address:-

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/m20-junction-10a/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).