



# Department for Transport

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For the attention of Robbie Owen

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Our Ref: TWA 8/1/5

30 October 2013

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED M1 JUNCTION 10A (GRADE SEPARATION) 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 of the Examining Authority, Alan T Gray MRICS DipTP MRTPI & Accredited Mediator, who conducted an examination into the application made by your clients, Luton Borough Council ("LBC") on 29 June 2012 for the M1 Junction 10a (Grade Separation) Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act").

2. The examination of the application began on 16 November 2012 and was completed on 13 May 2013. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held in Luton between 13 February and 30 April 2013.

3. The Order would grant development consent for the grade separation of M1 Junction 10a at Kidney Wood on the south side of Luton, including the removal of the existing at-grade roundabout, the widening of the M1 Spur and the A1081 Airport Way, and the construction of new slip roads and roundabouts giving access to London Road. The Order would also authorise LBC to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for the purposes of the scheme. The scheme would allow traffic to flow without interruption between the M1 Spur and Airport Way, which leads to Luton Airport and residential, commercial and industrial areas to the south of Luton.

4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in section 2 of the report. The Examining Authority's findings are set out in sections 3 to 6 of the report, and his overall conclusions and recommendation are at section 7.

### **Summary of the Examining Authority's recommendation**

5. The Examining Authority recommended that the Order be made, in the form set out in Appendix E to his report.

## **Summary of Secretary of State's decision**

6. **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.

## **Secretary of State's consideration**

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Examining Authority's report ("ER") and references to Requirements are to those in Schedule 2 to the Order, as set out in Appendix E to the ER.

## **Policy context**

8. The Secretary of State has considered and agrees with the Examining Authority's appraisal of the policy context of this scheme as set out at ER 3.8-40. In particular, he agrees with the Examining Authority that, at the national level, the National Planning Policy Framework ("NPPF") offers broad support for a scheme of this nature in that it would promote economic growth, relieve congestion and ensure the vitality of Luton town centre; and that there is no significant conflict with the NPPF (ER 3.10-11, 3.40). He notes also the specific support for the scheme in the National Infrastructure Plan and the 2011 Treasury Autumn Statement (ER 3.12-14).

9. At the local level, the Secretary of State agrees with the Examining Authority that there is little conflict between the scheme and the Luton Local Plan 2001-2011 ("LLP"), the South Bedfordshire Local Plan Review 2004, and the emerging Development Strategy for Central Bedfordshire; and that such conflict as there is can be effectively mitigated (ER 3.16-3.26, 3.40). As regards the impact of the scheme on the availability of land for a replacement stadium for Luton Town Football Club, he agrees that the scheme would not be in serious conflict with the relevant LLP policy for the reasons given by the Examining Authority (ER 3.29-34).

10. The Secretary of State notes that all of the land required for the scheme in Central Bedfordshire is designated Green Belt. Having regard to section 9 of the NPPF, he agrees with the Examining Authority that, since the scheme is local transport infrastructure and must be located at and around the existing junction which lies in the Green Belt, it would not be inappropriate development in the Green Belt. He agrees also that the scheme would accord with the Green Belt's original purpose of urban containment and that, taking into account the limited and temporary nature of the adverse visual impact of constructing the scheme, it would not detract from the openness of the Green Belt (ER 3.35-39, 4.107-109).

## **The need for and the costs and benefits of the scheme**

11. The Secretary of State agrees with the Examining Authority that the relief of traffic congestion, taken with the additional capacity for proposed development and associated economic growth, creates a sound need for the scheme, which is supported by the policy findings referred to above (ER 4.3-4). He notes that the Examining Authority has tested

the methodology and assumptions used in LBC's business case for the scheme and agrees with his conclusion that the scheme would offer net benefits to users and represents good Value for Money (ER 4.5-18).

### **Scheme design and alternatives**

12. The Secretary of State notes that during the evolution of the scheme there had been extensive and repeated consultations with stakeholders on how to meet the need for additional capacity at Junction 10a. Like the Examining Authority, he is satisfied that the options were properly considered during this process (ER 4.19-28). With regard to the representations relating to the design of the scheme the Secretary of State agrees that, for the reasons given by the Examining Authority, none of the proposed alternatives or modifications to the scheme should be pursued (ER 4.29-47).

### **Socio-economic impacts**

13. The Secretary of State notes the Examining Authority's finding that there are substantial employment sites in the area whose potential is likely to be delayed or frustrated by the lack of capacity in Junction 10a. He agrees with the Examining Authority that by contributing to improved accessibility to Luton and the strategic road network, the scheme would support economic growth opportunities and sustain regeneration through new development. He accordingly agrees that the socio-economic benefits of the scheme would contribute very significantly to the public interest (ER 4.48-59).

### **Environmental impacts**

#### ***Geology and soils***

14. The Secretary of State notes that for contractual reasons it has not been possible to identify or measure the environmental consequences of transporting by road 115,000m<sup>3</sup> of spoil from the development site. He nevertheless agrees with the Examining Authority that measures such as the Code of Construction Practice ("CoCP") and the Traffic Management Plan are capable of delivering the necessary mitigation. He agrees furthermore that the estimated total number of spoil lorries would be insignificant as a proportion of total traffic flows on Airport Way and the M1 Spur which are the routes likely to be used by such traffic (ER 4.67-4.75). In these circumstances, the Secretary of State does not consider that it is necessary at this stage to identify the exact destination or routing of spoil lorries for the purposes of reaching a decision on the scheme.

#### ***Noise and vibration***

15. The Secretary of State agrees with the Examining Authority's assessment that the scheme would give rise to no significant vibration effects during construction or operation (ER 4.76). He also agrees with the Examining Authority that satisfactory mitigation of the unavoidable noise impacts of constructing the scheme could be secured by way of the CoCP and the Construction Environmental Management Plan ("CEMP") (ER 4.77-78, 4.82). As for operational noise, given that in the long term no more than minor increases would be experienced at a few receptors, the Secretary of State agrees further that there is no need to mitigate those impacts of the scheme (4.79-83).

### ***Air quality***

16. The Secretary of State agrees with the Examining Authority that during construction implementation of the CEMP and the Dust Management Plan would effectively mitigate adverse impacts at sensitive receptors under normal circumstances. He notes also the Examining Authority's conclusion that in operation the scheme would, overall, have a slight/moderate beneficial effect on air quality at locations where baseline conditions are already within the National Air Quality Objectives (ER 4.84-88).

### ***Landscape and visual effects***

17. The Secretary of State has considered and agrees with the Examining Authority's assessment of the landscape, townscape and visual effects of the scheme and the mitigation measures proposed by LBC, as set out at ER 4.89-105. In particular, he agrees that overall the scheme would have a maximum effect on landscape character in the Opening Year of moderate significance, declining to slight by Year 15 as a consequence of the mitigation measures that would be secured by the Requirements (ER 4.89-94). He agrees also that the maximum adverse visual impact would occur at Newlands Farm which lies very close to the scheme, where the impact would be substantial/moderate adverse in the Opening Year, reducing to slight/negligible by Year 15 once mitigation planting had matured (ER 4.96-99). The Secretary of State accordingly agrees with the Examining Authority that, weighed against the positive benefits of the scheme, the limited adverse landscape and visual impacts that would remain after mitigation are broadly acceptable (ER 4.100).

### ***Cultural heritage and archaeology***

18. The Secretary of State agrees with the Examining Authority that the visual and aural impacts of the scheme would have very little impact on the setting of the heritage assets at Luton Hoo, and that any such impact would be effectively mitigated as intervening planting matured (ER 4.110-118). He agrees also with the Examining Authority that, in relation to archaeological remains within or near the site of the scheme which might be adversely affected during the construction phase, the mitigation strategy that would be secured by the Requirements is appropriate for safeguarding them (ER 4.120-123).

### ***Ecology and nature conservation***

19. The Secretary of State notes that the scheme's construction phase could result in significant impacts on ecological resources as a result of disturbance, fragmentation, pollution and direct loss of hedges, trees and woodland. However, he agrees with the Examining Authority that following mitigation the residual long-term effect would be slight adverse. He notes also in this context that Natural England has no objections to the scheme and he agrees with the Examining Authority that Natural England's mitigation concerns are adequately addressed by the Order. The Secretary of State is accordingly satisfied that, despite some conflict with local nature conservation and biodiversity policies, the significance of the impact on ecological interests is not sufficient to stand in the way of the scheme and the benefits it would bring in the wider public interest (ER 4.124-133).

### ***Infrastructure Planning (Environmental Impact Assessment) Regulations 2009***

20. The Secretary of State is satisfied overall that, although there would be some significant adverse environmental impacts of implementing the scheme, they could be

adequately mitigated through design and construction, and that implementation of the proposed mitigation measures would be secured by the Requirements (ER 4.63, 4.136). He confirms for the purposes of regulation 3(2) of the above Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. For the purposes of regulation 23(2)(d)(iii), the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of scheme are the CoCP, the CEMP and the other plans that would require approval by the relevant planning authority under the Requirements (see ER 4.65-66).

### **Conclusions on the case for development consent**

21. The Secretary of State agrees with the Examining Authority that LBC has made a strong case for the scheme. He agrees that taking into account the need for additional highway capacity, the socio-economic impact of the scheme and the broad policy support for the proposals, the benefits of the scheme outweigh its potentially adverse environmental impacts which could be satisfactorily mitigated (ER 4.134-138). He has therefore concluded that development consent should be given for the scheme.

### **Compulsory acquisition**

22. The Secretary of State has considered the compulsory acquisition powers sought by LBC against the tests concerning compulsory acquisition in sections 122 and 123 of the 2008 Act and relevant guidance, and has considered the one outstanding objection to compulsory acquisition from an Affected Person. He agrees with the Examining Authority for the reasons given that the proposed development is for a legitimate purpose; sufficient resources are likely to be available to fund the scheme; a clear purpose has been identified for each plot of land and no more land is to be acquired than is reasonably necessary for the purposes of the scheme; the public benefits of the scheme outweigh the potential private dis-benefits; and there is a compelling case in the public interest for compulsory acquisition. The Secretary of State also agrees with the Examining Authority that there is no substance in the remaining objection to compulsory acquisition and that, as far as human rights considerations are concerned, the examination process has ensured a fair and public hearing; any interference with human rights is proportionate and strikes a fair balance between the rights of the individual and the public interest; and compensation would be available in respect of any quantifiable loss (ER 5.11-19, 5.25-34, 7.2-3).

### **Draft Development Consent Order**

23. The Secretary of State agrees with the Examining Authority that the various changes to the Order proposed by LBC during the course of the examination are appropriate and necessary (ER 6.10-15). He agrees also that, subject to following qualifications, the further amendments explained by the Examining Authority at ER 6.16-6.37 are justified for the reasons given and should be incorporated in the Order. The qualifications are that:

- the words “unless otherwise agreed in writing by the relevant planning authority” should also be deleted in Requirement 8(1) in the interests of precision and reasonableness, for the reasons given by the Examining Authority at ER 6.30-35; and

- Requirement 18 should be further amended by the deletion of the words “any amendments to”, so as to be consistent with the Examining Authority’s view that the Order should not sanction subsequent amendments by informal arrangements (see ER 6.31).

24. The Secretary of State has also decided to make the following additional modifications to the form of the Order set out in Appendix E to the Examining Authority’s report:

- in article 18 to insert paragraph (4) to make clear that the compulsory acquisition powers in the Order do not apply to Crown interests;
- in Requirements 3 and 4(2), to insert implementation provisions; and
- various minor drafting changes to the Order which do not materially alter its effect, including further changes to conform with the current practice for Statutory Instruments, changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

He is satisfied that, subject to these further changes, the Order is appropriate for implementation of the scheme.

### **Secretary of State’s overall conclusions and decision**

25. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the grade separation of Junction 10a of the M1. He considers in particular that relieving congestion and providing additional highway capacity in the vicinity of the junction would provide significant benefits. While recognising that the scheme would have a number of limited adverse impacts as identified by the Examining Authority, taking into account the mitigation measures that would be secured by the Order he does not consider that any of those impacts would be unacceptable. The Secretary of State has concluded that, overall, the benefits of the scheme clearly outweigh its likely adverse impacts.

26. The Secretary of State has accordingly decided to accept the Examining Authority’s recommendation at ER 7.5 and is today making the Order granting development consent and imposing the Requirements as proposed by the Examining Authority, but subject to the modifications referred to at paragraphs 23 and 24 above.

27. The Secretary of State confirms that, in reaching this decision, he has had regard to the local impact report prepared jointly by LBC and Central Bedfordshire Council, any matters prescribed by Regulations under the 2008 Act that are relevant to the proposed development, and any other matters which he considers important and relevant to his decision, as required by section 105 of the 2008 Act (decisions in cases where no National Policy Statement has effect).

### **Challenge to decision**

28. 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**

29. 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,

**Martin Woods**

## **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 former Infrastructure Planning Commission or 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 from the date when the Order is published. The M1 Junction 10a (Grade Separation) Order 2013 (as made) is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/eastern/m1-junction-10a-grade-separation-luton/>

**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 (0207 947 6655).**