

Our ref: M42J6/DCO_SoS
Your ref: TR010027

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By email only

Dear Kevin,

M42 Junction 6 Development Consent Order (TR010027): Highways England's Response to Secretary of State's Request for Comments from the Applicant date 7 April 2020

I refer to your letter of 7 April 2020, which seeks updates from the Applicant on a number of matters. Our response to these points is set out below:

Crown Land – Update

The Applicant has undertaken a refresh of all of the relevant land registry titles contained within Part 4 of the Book of Reference.

The titles relating to Plots 4/6a, 4/6p, 4/6n have been updated so they reflect the fact that this land is now owned by Highways England. The other titles have not been updated yet and still show the Secretary of State as the owner despite the fact that this ownership has been transferred to the Applicant.

The Applicant also contacted HS2 Limited on 15 April 2020 to request an update on the status of the plots listed in the Part 4 of the Book of Reference which may become Crown Land when HS2 Limited acquires or take possession of them. HS2 Limited responded on 17 April 2020 and confirmed that they had not acquired any of the plots listed in Part 4.

Please note that this situation is dynamic and, at the date of the land registry title refresh (9 April 2020), there were pending applications for registration showing on some of the titles within the scope of HS2 Limited's powers so only backdated copies of these land registry titles were available. The Applicant has asked HS2 Limited to confirm whether it has taken possession of this land and is awaiting a response.

Crown Land Application

The Applicant submitted a Crown Land application on 21 November 2019. This application covered both the land that is currently registered to the Secretary of State that has actually been transferred to the Applicant, and the land that will become Crown Land when HS2 Limited acquires or takes possession of it. The Applicant received a request for further information from the Department for Transport on 28 November 2019 which it responded to the same day. The Applicant has subsequently sent three further emails on the 31 January, 6 March and 15 April 2020 to check the status of the application to offer further assistance if required. As far as the Applicant is aware, no further communication has been received from the Department for Transport. The Applicant would welcome further engagement from the Department for Transport in order to progress this matter.

Legacy scheme agreement

The Applicant and Warwickshire Gaelic Athletic Association (WGAA) have reached an agreement in principle in relation to the Legacy Scheme, which is outside of the scope of the Development Consent Order (DCO) application, and are now finalising the detailed terms of that agreement. It is anticipated that this agreement will be signed within three to four weeks, subject to the current Coronavirus emergency.

Formal Agreement with the National Exhibition Centre (NEC)

The Statement of Common Ground between Highways England and the NEC was signed on 23 October 2019 and submitted at Deadline 8. The Heads of Terms have also been agreed, but the Formal Agreement has been updated to address the NEC's current use as a Nightingale hospital during the coronavirus emergency. The Formal Agreement is with the NEC.

Esso protective provisions and pipeline agreement

The Applicant and Esso engaged in productive discussions to address Esso's concerns using a protective provisions agreement, rather than protective provisions within the DCO. A draft of the agreement was discussed between the parties between April and August 2019. The Applicant provided an amended version of the agreement for review on the 14 August 2019 and followed up with further emails on the 28 August, 13 September and 27 September 2019 to check the status of the draft and offer further assistance if required.

The Applicant received comments from Esso on 7 November 2019, and responded with a revised mark-up of the Agreement the following week. However, it has not received any further substantive correspondence from Esso since then. The Applicant remains of the view that Esso's concerns are capable of being addressed in a protective provisions agreement and welcomes further engagement from Esso to complete the agreement.

Catherine-de-Barnes Lane and St Peters Lane Junction

During the examination, the Applicant addressed representations in relation to this matter at Deadline 7 **[REP7-013 / Volume 8.88]** and Deadline 9 **[REP9-026 / Volume 8.99]**.

The Applicant remains of the view that a change in the prioritisation of Catherine-de-Barnes Lane and St Peters Lane, without acquiring extra land outside the Order limits, would introduce significant additional safety risks to motorists and introduce a number of significant departures from standards.

Similarly, Solihull Metropolitan Borough Council (SMBC) confirmed at the Issue Specific Hearing on the dDCO on the 23 October 2019 and in writing as part of its comments on the Panel's Preferred dDCO or dDCO Commentary **[REP9-032]** that a change in junction prioritisation would not be acceptable to them as the local highway authority.

Accordingly, the Applicant and SMBC have not progressed this matter further since the close of the examination.

However, the Applicant and SMBC will work collaboratively to ensure that the junction is developed in line with the Secretary of State's decision and the requirements of SMBC as the local highway authority. As noted at the Examination, SMBC favoured 'Option 3; priority for traffic on St Peters lane to Catherine-de-Barnes Lane North Overbridge – the preferred option'.

The Applicant confirms that SMBC have seen this response in relation to the prioritisation of Catherine-de-Barnes Lane and St Peters Lane and have agreed with it.

HS2 Limited protective provisions

The protective provisions which HS2 Limited referred to in its submission of 21 November 2019 are the protective provisions submitted by the Applicant as Part 4 of Schedule 12 to the draft DCO submitted at Deadline 9 **[REP9-011 and REP9-012]**. These protective provisions were agreed between the Applicant and HS2 Limited, and were submitted on 15 November 2019.

Bickenhill roundabout modelling

Although not immediately obvious, the new Bickenhill roundabout was modelled using ARCADY and the results are summarised in 'Table 7.10 ARCADY results – Mainline link road southbound/Catherine-de-Barnes Lane roundabout' of the Transport Assessment Report (TAR), **[APP-174/Vol.7.2]**. However, the roundabout was described in the report by reference to the roads it connects rather than being called 'Bickenhill Roundabout'.

Table 7.10 shows the junction is forecast to operate within capacity in 2041. For ease of reference we have replicated the table below.

Table 7.10: ARCADY results - New Link Road Southbound/Catherine-de-Barnes Lane Roundabout (Source: APP-174/Vol. 7.2 page 54)

ARM	AM			PM		
	RFC	Queue	LOS	RFC	Queue	LOS
CdB - South Approach	0.06	0	A	0.04	0	A
New Link Road off slip	0.39	1	A	0.80	4	A
CdB – North Approach	0.14	0	A	0.48	1	B

Note: RFC = Ratio of flow to capacity
Queue = Maximum number of vehicles queuing
LOS = Level of Service

Gooch Estates

Highways England and the Gooch Estate have agreed terms in respect of the issues outstanding at the end of the examination. The agreement simply remains to be executed once the coronavirus emergency allows.

Royal Mail

The agreement between Highways England and Royal Mail was completed on 5 November 2019.

Outline Site Waste Management Plan

The Applicant can confirm that a performance target to recover at least 85% of non-hazardous construction and demolition waste can be included within the Outline Site Waste Management Plan.

Western Power Distribution (West Midlands) PLC

The Applicant notes that whilst WPD was not specifically mentioned in the Secretary of State's consultation letter they have submitted a response, referring to the protection for Statutory Undertakers under Section 127 of the Planning Act 2008.

The Applicant can confirm that, as previously stated, no land held by WPD needs to be compulsorily acquired, only rights over land. Therefore, section 127(2) and (3) of the Act are not engaged.

Section 127(5) of the Act provides that a DCO may include provisions authorising the compulsory acquisition of a right over statutory undertakers' land if the Secretary of State is satisfied that the right can be purchased without serious detriment to the carrying on of the undertaking, or any detriment to the carrying on of the undertaking, in

consequence of the acquisition of the rights, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

The Applicant considers there would be no serious detriment to WPD's undertaking if it were to acquire these rights and interests and that the criteria in section 127 are satisfied. Adequate protection for WPD's assets are included within the protective provisions at Schedule 10, Part 1 of the DCO. As a result, it is HE's view that an interference caused (if at all) will not be a serious detriment to WPD carrying on its undertaking.

As noted by WPD, negotiations to agree a bespoke protective agreement have taken place. A draft agreement is currently with WPD and the applicant hopes that an agreement can be reached soon. The Applicant however maintains that the protective provisions within the Order, which are well precededented, will ensure that there will no serious detriment to WPD's undertaking.

Yours sincerely



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