

Highways Commissioning
Block 5, 6th Floor East
Shire Hall
Gloucester GL1 2TH
Telephone: 01454 662377

4th April 2025

M5 Junction 10 Improvements Scheme

Dear Mr Barrowman,

Application by Gloucestershire County Council for an order granting Development Consent for the M5 Junction 10 Improvements Scheme (the “Scheme”)

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Request for comments from the Department for Transport

Further to the Department for Transport’s (DfT) letter dated 21 March 2025 requesting comments on matters following receipt of the Inspectors Report provided on 4 March 2025, I write in respect of the information requested from the Applicant. I also take this opportunity to provide an update on the progress of the Applicant’s engagement with statutory undertakers.

Noise and Vibration

The Applicant has been advised that the Stoke Orchard Traffic Calming scheme is on GCC’s local highways Capital Programme for delivery in FY25/26 by Ringway, GCC Framework Contractor. Detailed design is due to be completed in April 2025.

Crown Land

Proposals for the Scheme affect land in which the Ministry of Housing, Communities and Local Government (“**MHCLG**”) and the Crown Estate Commissioners have an interest. Such land comes within the definition of “Crown land” in section 227 of the Planning Act 2008. During examination it was also identified that proposals for the Scheme affect land in which the Department for Environment, Food and Rural Affairs (“**DEFRA**”) has an interest within the meaning of section 227. However, for the reasons set out below, DEFRA has confirmed this is not the case.

The relevant plots for relating to Crown Land are included in Part 4 of the Book of Reference [**REP10-034**]. These are summarised below:

Highways

Land Plot Reference	Description of Land	Owner of Any Crown Interest In The Land Which Is Proposed To Be Used For The Purposes Of The Order For Which The Application Is Being Made
13/3r	Temporary possession and use of approximately 767 square metres of public adopted highway, verge, footway, and bus stop (Tewkesbury Road (A4019)), south of The Old Dairy and north of Newhouse Farm, Uckington (Excluding all interests of the Crown) GR8654	Department for Environment Food & Rural Affairs Seacole Building 2 Marsham Street London SW1P 4DF (<i>in respect of a Land Charge within a Redemption of Tithe Rent charge by an Order dated 16 June 1922 registered under title GR8654</i>)
13/6a	Permanent acquisition of rights and temporary possession and use of approximately 98 square metres of public adopted highway verge and footway (Tewkesbury Road (A4019)), south of The Old Dairy and west of Elton Lawn, Uckington (Excluding all interests of the Crown) GR207444	The Secretary of State for the Department for Levelling Up, Housing & Communities 2 Marsham Street London SW1P 4DF <i>(in respect of a restriction of no disposition by the proprietor of the land or in exercise of the power of sale or leasing in any Legal Charge (except an exempt disposal as defined by section 81(8) of the Housing Act 1988) is to be as registered under the Provisions of section 133 of that Act and no disposition (except a Transfer) of a qualifying dwellinghouse (except to a qualifying person or persons) is to be registered without the consent given under section 171D(2) of the Housing Act 1985 as it applies by virtue of the Housing (Preservation of Right to Buy) Regulations 1993) as registered under title GR207444)</i>
14/5a	All rights and interests within approximately 757 square metres of wooded area and verge (Gallagher Retail Park), south of Green Steps and northeast of Cross Hands, Uckington (Excluding all interests of the Crown) GR127822	The Crown Estate Commissioners 1 St James's Market London SW1Y 4AH
14/7a	All rights and interests in approximately 66 square metres of public footway, northwest of Cross Hands and south of Green Steps, Uckington (Excluding all interests of the Crown) Unregistered	The Crown Estate Commissioners 1 St James's Market London SW1Y 4AH <i>(in respect of subsoil rights up to the centreline of the public footway)</i>

Highways

Department for Environment, Food and Rural Affairs (“DEFRA”)

Appendix 1 to this letter provides email confirmation from DEFRA that the interest identified (Plot 13/3r) is not considered by DEFRA to be Crown land and therefore they are unable to provide, nor need to provide, section 135 consent. DEFRA has confirmed that the beneficiary of the interest is in fact the Church Commissioners, but that the interest itself is extinguished.

Ministry of Housing, Communities and Local Government (“MHCLG”)

Appendix 2 to this letter provides the required section 135 consent provided by MHCLG. The Applicant considers therefore that the matter relating to this interest is now closed, and that the test contained in section 135 is now satisfied.

Crown Estate Commissioners (“TCE”)

The Applicant made several submissions during the examination regarding the position of TCE and Crown land. The Applicant has continued to liaise with TCE since close of examination and has agreed the following joint response to paragraph 4 of Secretary of State’s letter to the extent that it relates to TCE:

GCC and TCE have agreed heads of terms for a voluntary agreement for land acquisition and use of Crown land encompassed by the DCO which would enable TCE to give consent under section 135 of the Planning Act 2008. The internal procedures to enable TCE’s consent to be issued have not yet been completed. Therefore, GCC and TCE would request that the Secretary of State allow the parties limited additional time to provide the outstanding Crown consent, which the parties reasonably believe can be provided by 30 April 2025.

The Secretary of State invited the Applicant to set out what the appropriate options are if consent is not provided. Section 135(1) makes it clear that without crown consent an Order may not include provision authorising the compulsory acquisition of an interest in Crown land held otherwise than by the Crown and therefore the Order is not able to grant the Applicant powers of compulsory acquisition over the relevant plots held by The Crown Estate Commissioners. Secondly, section 135(2) makes clear that an Order may only include any other provision applying in relation to Crown Land if the relevant crown authority consents. Therefore, the Order would not be able to grant powers to the Applicant to construct, maintain or operate the scheme over the relevant land plots. The practical implication of this is that without re-design, the Order would be unable to provide the Applicant with all the powers, and permissions required for the Scheme. The Applicant would note that the interest held by TCE relates to a small portion of land required for the Gallagher Junction and therefore any extent of re-design, if necessary, is considered to be limited when compared to the full nature of the Scheme.

However, given the extent of agreement between the Applicant and TCE, it is considered highly likely that section 135 consent can be obtained prior to the end of the decision stage and, as stated above, the parties reasonably believe such consent can be provided by 30 April 2025.

Update on Negotiations with Statutory Undertakers

In addition to those matters requested by the Secretary of State, I provide below an update on the Applicant’s engagement with statutory undertakers following the completion of the DCO

Highways

Examination of 4 December 2024 and address the written submissions by National Grid Electricity Distribution (West Midlands) PLC [RR-24], [RR-25] and [REP1-057].

Engagement with Statutory Undertakers

The Applicant has been working with various statutory undertakers since the inception of the Scheme to agree appropriate protections for their interests where these may be affected.

At close of examination agreement was only outstanding with the following statutory undertakers, who maintain objections to the Scheme:

- Wales & West Utilities Limited (“WWU”), which submitted a single relevant representation [RR-044];
- National Grid Electricity Distribution (West Midlands) PLC (“NGED”), which submitted a final representation during Examination at Deadline 9 [REP9-018]; and
- Severn Trent Water Limited (“STW”), which submitted a single relevant representation [RR-047] in response to the Applicant’s change application during examination.

The final draft DCO submitted at Deadline 11 [REP11-003] included (in Schedule 9) protective provisions for WWU, NGED and STW in a form which reflected the progress of negotiations at that date, subject to outstanding points of disagreement.

To assist the ExA’s understanding of the outstanding points of disagreement, the Applicant submitted a Report at Deadline 8 entitled ‘*Applicant’s case under section 127 and 138 Planning Act 2008 – Statutory Undertaker’s Land*’ [AS-110] (the “S127 Report”). The S127 Report acknowledges that sections 127 and 138 of the Planning Act 2008 are engaged because the Scheme would affect statutory undertakers’ interests, rights and apparatus in land. The S127 Report summarised the points of disagreement between the Applicant and each of WWU, NGED and STW in respect of the bespoke protective provisions and set out the Applicant’s case that:

- for the purpose of section 127, the bespoke protective provisions included in the draft DCO are adequate to ensure that no statutory undertaker will suffer a serious detriment as a result of the compulsory acquisition of land in which statutory undertakers have an interest; and
- for the purpose of section 138, the extinguishment and relocation of the relevant statutory undertakers’ rights is necessary for the purpose of carrying out the Scheme.

The S127 Report was submitted at Deadline 8 but remained accurate at the close of examination on the basis of the position between the statutory undertakers and the Applicant being unchanged.

Update on Engagement Post-Examination

Following the close of Examination, the Applicant has continued to engage with STW, WWU and NGED. No response from STW has been received to date.

Highways

WWU returned further comments on the draft protective provisions. The outstanding points of disagreement between the Applicant and WWU remain as described in the S127 Report. As no agreement has been reached, the Applicant request the Secretary of State make final determination of the terms of the Order. The Applicant's argument for its position is as per the S127 Report.

Representation by NGED dated 3 March 2024

By the end of Examination, the Applicant and NGED had agreed in-principle the terms of an Asset Protection Agreement (APP) and negotiations to agree a final form of protective provisions were ongoing. This position was acknowledged in NGED's written submission at Deadline 9 [REP9-018].

The parties have continued to engage following the close of Examination with the outstanding points of disagreement within the bespoke protective provisions remaining as set out respectively in the S127 Report [AS-110] and NGED's Deadline 9 submission [REP9-018].

NGED submitted a written representation to the ExA [RR-24], [RR-25] and [REP1-057]. ("NGED's Representation"), a copy of which has been shared with the Applicant by NGED's legal representatives.

NGED's Representation confirms that NGED's objection to the Scheme remains outstanding and explains that:

"As a reminder of NGED's position, NGED cannot withdraw its objection to the project until the Applicant has satisfied the following two requirements:

- 1. a satisfactory set of protective provisions in favour of NGED have been agreed and these have been included in the Order ("Requirement 1"); and*
- 2. an asset protection agreement has been entered into between on the parties on terms which are satisfactory to NGED ("Requirement 2")."*

Requirements 1 and 2 remain outstanding as of today's date and no further progress has been made with the Applicant it respect of satisfying these.

*Therefore, further to our letter dated 19 November 2024, we request that NGED's preferred form of protective provisions as appended to this letter at **Appendix 1** are included on the face of any Order to be granted consent.*

In respect of Requirement 1, the outstanding points of disagreement concern the definition of and process for carrying out specified works. The Applicant considers that these are primarily technical matters relating to the construction process for the Scheme and the potential interaction with NGED's assets. On this basis, the Applicant proposed (in November 2024) a meeting between the parties' technical advisors to enable the parties to better understand (and provide any reassurances) regarding the practicalities of carrying out the Scheme and identify a mutually acceptable drafting position. NGED's legal representatives responded in mid-January 2025 to confirm that NGED does not believe a technical meeting is required.

Highways

For this reason, the Applicant has been unable to discuss the precise requirements of NGED which relate to the Scheme, notwithstanding Government Guidance (*Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects*) which states that (emphasis added):

“Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development.”

and;

“Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration”

As a result, the Applicant has been unable to reach agreement with NGED on the terms of the protective provisions and the Applicant requests the Secretary of State to make final determination of the terms of the Order. The Applicant submits that the bespoke form of protective provisions for NGED included in Part 5 of Schedule 9 to the Deadline 11 draft DCO [REP11-003] appropriately reflect the Scheme for the reasons set out in the S127 Report.

NGED's Representation further states that:

“Additionally, we request that the Order is not granted until such time that Requirement 2 has been satisfied, and that the Applicant has entered into the requisite asset protection agreement with NGED.

If Requirement 1 and Requirement 2 are not satisfied prior to the granting of the Order, NGED considers that the granting of the Order has the potential to cause serious detriment (for the purpose of Section 127 of the Planning Act 2008) to NGED's assets and interests which form part of its undertaking.”

With respect to NGED's request for the Order not be granted “*until such time that Requirement 2 has been satisfied*”, the Applicant submits that the existence and terms of an asset protection agreement is a private commercial matter between the parties and that all protections for NGED's assets and interests which are necessary to enable the grant of development consent are provided by the protective provisions at Part 5 of Schedule 9 to the Deadline 11 draft DCO. In particular:

- paragraph 59 prevents any NGED apparatus from being acquired without NGED's agreement;
- paragraph 60 prevents any NGED apparatus from being removed or diverted until alternative apparatus has been constructed and made operational to the reasonable satisfaction of NGED. Further, any NGED land rights to retain its apparatus may not be extinguished until access rights to the alternative apparatus has been provided; and
- paragraph 62 requires GCC to provide 60 days' notice to NGED before carrying out any “specified works”, and to comply with any reasonable requirements NGED has for the alteration or protection of apparatus, or for securing access to it.

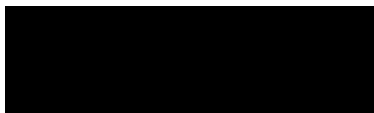
Highways

The Applicant submits that the relevant consideration for the Secretary of State is whether, in the context of sections 127 and 138 of the Planning Act 2008, the protective provisions included in the DCO are adequate to ensure that NGED will not suffer a serious detriment as a result of the Scheme.

I reiterate the Applicant's position, as set out in the S127 Report **[AS-110]**, that the bespoke protective provisions included for NGED in the final draft DCO submitted at Deadline 11 **[REP11-003]** are proportionate and adequate to ensure that NGED will not suffer serious detriment if the Secretary of State is minded to grant consent for the Scheme.

I trust this information provides assistance in considering the matters raised and addresses the Department's letter.

Yours sincerely,



Highways and Infrastructure
Gloucestershire County Council

Highways

Appendix 1

Email confirmation from DEFRA dated 12 March 2025

Douglas Haycock

From: Douglas Haycock
Sent: 04 April 2025 14:16
To: Douglas Haycock
Subject: FW: M5 Junction 10 - DEFRA DCO Crown consent

From: [REDACTED] <[REDACTED]@defra.gov.uk>
Sent: 12 March 2025 09:59
To: [REDACTED] <[REDACTED]@burges-salmon.com>
Cc: [REDACTED] <[REDACTED]@defra.gov.uk>; [REDACTED] <[REDACTED]@defra.gov.uk>
Subject: RE: M5 Junction 10 - DEFRA DCO Crown consent

Caution: External Email

Hi [REDACTED]

Yes this is the position.

Kind regards

[REDACTED]

[REDACTED] | Head of Water Infrastructure
Planning & Delivery Unit
Water Sector Delivery | Floods & Water Directorate |
Department for Environment, Food and Rural Affairs
[REDACTED]@defra.gov.uk | [REDACTED] | Lancaster House,
Hampshire Court, Newcastle, Tyne & Wear, NE4 7YH

From: [REDACTED] <[REDACTED]@burges-salmon.com>

Sent: 11 March 2025 17:46

To: [REDACTED] <[REDACTED]@defra.gov.uk>

Cc: [REDACTED] <[REDACTED]@defra.gov.uk>; [REDACTED]

[REDACTED] <[REDACTED]@defra.gov.uk>

Subject: FW: M5 Junction 10 - DEFRA DCO Crown consent

You don't often get email from [REDACTED]@burges-salmon.com. [Learn why this is important](#)

Hi [REDACTED],

I hope you don't mind me contacting you on the above : I have been asked to clarify DEFRA's position in relation to your email of earlier today in relation to the above before we go back to DfT. I have copied in [REDACTED] and [REDACTED] as I saw their names on the email and I am working with them on another matter.

We are acting for Gloucestershire County Council who submitted a DCO for a highway improvement scheme involving Junction 10 of the M5. The DCO has been through examination and is now with DfT for a decision and we need to update DfT on the position in respect of Crown land asap.

You have kindly outlined DEFRA's position. I just wanted to ensure that my understanding is correct before we inform DfT.

1. There is no Crown land in the scheme in which DEFRA has an interest;
2. Therefore, there is no need (or indeed ability) to secure section 135 consent from DEFRA;
3. There is a historic land charge but that does not create any Crown interest.

That is my reading of your email. Are you able to please to confirm that this is the position?

Many thanks

Kind regards

[REDACTED]

Partner
Burgess Salmon LLP

T: [REDACTED]
M: [REDACTED]

www.burgess-salmon.com



Classification L2 - Business Data

From: [REDACTED] <[REDACTED]@defra.gov.uk>
Sent: Tuesday, 11 March 2025 08:07
To: [REDACTED] <[REDACTED]@carterjonas.co.uk>
Cc: [REDACTED] <[REDACTED]@carterjonas.co.uk>; SM - M5J10
<M5J10@carterjonas.co.uk>; [REDACTED]
<[REDACTED]@defra.gov.uk>; [REDACTED]
<[REDACTED]@defra.gov.uk>; [REDACTED]
<[REDACTED]@defra.gov.uk>; [REDACTED]
<[REDACTED]@defra.gov.uk>
Subject: [External Message] RE: DEFRA DCO Crown consent [CJO-
IMANAGECLOUD.FID265566]

Hi George

Please find below an update and our position on the **Defra DCO Crown consent (Junction 10 of the M5)** item.

The land required by Gloucestershire County Council ('GCC') for the Junction 10 M5 scheme does not include Crown land in which Defra has an interest in it. GCC, therefore would not be able to rely on section 135 Planning Act 2008 to include provisions in its DCO which authorise the compulsory acquisition of an interest in Crown land where that interest is held by a party other than the Crown. As the land is not Crown land, there is no basis upon which Defra could provide a letter of consent authorising the acquisition of such an interest.

A copy of the relevant title of the land which GCC seek to compulsory acquire shows that the Secretary of State has no ownership in the land nor are there any rights or covenants in favour of the Secretary of State.

There is a land charge, as GCC states, over the land in question for the Redemption of Tithe Rent and this was imposed by order of the Ministry of Agriculture and Fisheries ('MAF'), the predecessor of the Secretary of State for Environment Food and Rural Affairs. But this does not amount to a "Crown Interest" for two main reasons:

1. Although the charge was imposed by an order of MAF, MAF was not the beneficiary of the rentcharge, the registered proprietor of the charge is the Church Commissioners For England. It is they who therefore have the interest in the charge, not the Crown.
2. Redemption of Tithe Rentcharges is a historic form of charge which have now been extinguished, and therefore the landowner should be able to make an application to the Land Registry to cancel the charges over the title.

GCC is the registered owner of the land, who are also the party asking the Secretary of State to consent to the DCO. It would therefore seem that it is open to GCC to apply to the Land Registry to remove the charge so that they have a clean title, but it is not for the Secretary of State to give the consent due to this not being Crown land for the purposes of them wanting to include compulsory purchase provisions in the DCO as provided under Planning Act 2008.

Kind Regards

[REDACTED]

[REDACTED] | Head of Water Infrastructure
Planning & Delivery Unit
Water Sector Delivery | Floods & Water Directorate |
Department for Environment, Food and Rural Affairs
[REDACTED] @defra.gov.uk | [REDACTED] | Lancaster House,
Hampshire Court, Newcastle, Tyne & Wear, NE4 7YH

Classification L2 - Business Data

Classification L2 - Business Data

IMPORTANT: Burges Salmon's bank account details are very unlikely to change. Please contact us by telephone using the details for Burges Salmon LLP published in the Solicitors Register on the Solicitors Regulation Authority's website before sending us any money, in order to verify our account details.

This email (and any attachment) is intended solely for the addressee(s), is confidential and may be legally privileged. If you have received this email in error, please let the sender know immediately and delete it without reading, copying or disseminating it.

This email is being sent to you on behalf of one or more of the following entities: Burges Salmon LLP, a limited liability partnership registered in England and Wales under number OC307212, authorised and regulated by the SRA (401114), BS Pensions Trustees Limited, a company registered in England and Wales under number 2682277, authorised and regulated by the SRA (75314), Burges Salmon Trustees Limited, a company registered in England and Wales under number 4066209, authorised and regulated by the SRA (333652), all of whose registered address is One Glass Wharf, Bristol BS20ZX; and/or on behalf of Burges Salmon (Northern Ireland) Limited, a company registered in Northern Ireland under number NI611307, authorised and regulated by the Law Society of Northern Ireland with a registered office at Forsyth House, Cromac Square, Belfast, Northern Ireland, BT2 8LA; and/or on behalf of Burges Salmon IP Ireland Limited, a company registered in the Republic of Ireland under number 680701, which is not authorised or regulated by an approved regulator and with a registered office at The Greenway, 112-114 St Stephen's Green, Dublin 2, D02 TD28. Burges Salmon LLP is also authorised as a multi-national practice by the Law Society of Scotland.

A list of the members / directors of the above entities may be inspected at the relevant registered office and also at Burges Salmon LLP, One Glass Wharf, Bristol, BS2 0ZX Tel: +44 (0)117 939 2000 Fax: +44 (0)117 902 4400 <https://www.burges-salmon.com>.

Please note that no Burges Salmon entity accepts service of documents by fax or email unless it has expressly agreed in writing to do so.

Department for Environment, Food and Rural Affairs (Defra) This email and any attachments is intended for the named recipient only. If you have received it in error you have no authority to use, disclose, store or copy any of its contents and you should destroy it and inform the sender. Whilst this email and associated attachments will have been checked for known viruses whilst within Defra systems we can accept no responsibility once it has left our systems. Communications on Defra's computer systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.

Highways

Appendix 2

Section 135 consent provided by MHCLG, dated 13 March 2025



Ministry of Housing, Communities & Local Government

13 March 2025

To: Case Manager: Spencer.Barrowman.RT@planninginspectorate.gov.uk

CC: PINS Project Email Address: M5Junction10@planninginspectorate.gov.uk

Dear Planning Inspectorate,

Application by Gloucestershire County Council for a Development Consent Order (“DCO”) under the Planning Act 2008 for the M5 Junction 10 Improvements Development Consent Order (the “Scheme”)

Consent under Section 135 of the Planning Act 2008

1. The Ministry of Housing, Communities and Local Government.(MHCLG) as the Department for Levelling Up, Housing and Communities statutory successor, understands that Gloucestershire County Council (“**GCC**”) has applied for a development consent order (“**DCO**”) under the Planning Act 2008 (the “**Act**”) for the Scheme.
2. Proposals for the Scheme affect land in which MHCLG has an interest and which comes within the definition of 'Crown land' in section 227 of the Act. Such land comprises the following areas listed in the below table (together, the “**Land**”):

Plot Number	Location on Crown Land Plans	Extent, description, and situation of the plots	Explanation of proposed use
13/6a	13	Public adopted highway verge and footway (Tewkesbury Road (A4019)), south of The Old Dairy and west of Elton Lawn, Uckington (shown edged red and tinted blue on the attached plan).	New right for the construction of a service road running east and west of The Green New right for the diversion, use, protection and maintenance of gas main for the benefit of Wales and West Utilities Limited New right for the diversion use, protection and maintenance of electric cable and associated apparatus and equipment for the benefit of National Grid Electricity Distribution PLC

Ministry of Housing Communities and Local Government
3rd Floor, North West Quarter
Fry Building
2 Marsham Street
London, SW1P 4DF

3. Section 135(1) of the Act enables DCOs to authorise the compulsory acquisition of an interest in Crown land (which includes rights over land held by the relevant Crown authority) where that interest is held by a party other than the Crown. If provisions to compulsorily acquire such interests are to be included in a DCO, then the consent of the appropriate Crown authority is needed before the DCO can be granted by the Secretary of State.
4. Section 135(2) of the Act allows a DCO to include any provision which applies "in relation to Crown land or rights benefiting the Crown", but only if the appropriate Crown authority consents to the inclusion of the provision.
5. GCC seeks the consent of MHCLG to the inclusion of Crown land in the DCO for Scheme. As MHCLG benefits from rights over the Land, MHCLG is the appropriate Crown authority to give Crown land consent as prescribed by section 135 of the Act.
6. In relation to any rights of compulsory acquisition which GCC may seek in relation to interests in the Land plots noted above which are held otherwise than by or on behalf of the Crown falling within section 135(1) of the Act, I confirm that MHCLG grants its consent to the inclusion of such rights in the draft DCO for GCC and to the exercise of such rights as provided for in section 135(1)(b) of the Act. I confirm that MHCLG is satisfied with and consents to, in accordance with section 135(2) of the Act, the proposed Order applying in relation to the Land.

MHCLG expects to be kept informed of GCC's progress with the Scheme, both in relation to the application for the DCO and the implementation of that consent, should it be granted by the Secretary of State in due course.

Yours sincerely



For and on behalf of The Secretary of State for Housing Communities and Local Government

