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17 July 2013

Addressee as on envelope

Dear Sir or Madam

**HIGHWAYS ACT 1980
ACQUISITION OF LAND ACT 1981
A45/A46 TOLLBAR END JUNCTION IMPROVEMENT**

1. We are directed by the Secretary of State for Transport and the Secretary of State for Communities and Local Government (“the Secretaries of State”) to refer to the letter of 9 April 2013 (“the April letter”) that set out their interim “minded-to” decision on the published draft Orders and Exchange Land Certificate relating to the proposed improvement of the A45/A46 at Tollbar End Junction (“the published scheme”). This was the subject of a public local Inquiry held between 26 January 2010 and 3 February 2010 (“the 2010 Inquiry”) and followed consideration of the Inspector’s report.

2. The April letter stated that the Secretaries of State concurred with the Inspector’s conclusions on the published draft Orders and Certificate and were therefore minded to accept in principle the Inspector’s recommendation to make the draft Orders and to publish the Certificate as drafted. However, the letter went on to explain that since the close of the 2010 Inquiry, a number of modifications were proposed to the published scheme and the economic and environmental evidence published in 2009 needed to be updated to take account of changes in the Department for Transport’s WebTAG guidance.

3. The Secretaries of State asked the Highways Agency, because of these changes, to publish and send out on their behalf copies of a consultation document to all interested parties. The purpose of the document was to explain the modifications. This was sent out on 3 May 2013 and allowed a period up until 3 June 2013 to enable any interested party to make representations to the Secretaries of State. The Highways Agency at the end of this period collated the responses on their behalf and these were forwarded to the Secretaries of State on 5 June 2013 without comment for their consideration.

4. It was explained in the April letter that for the avoidance of doubt the Secretaries of State did not propose to invite representations or reopen for debate any matter previously considered at the 2010 Inquiry that has not subsequently changed, and on which they propose, as indicated in the April letter, to accept the Inspector's conclusions.

5. The Secretaries of State consideration of the representations received is therefore confined strictly to those matters directly relevant to the changes to the original published scheme and on the updated environmental and economic assessments contained in the consultation leaflet and the documentation placed locally on deposit. The purpose of this letter is to consider the responses received and then to reach a final decision on whether the draft Orders should be made and the Certificate issued to allow the scheme to proceed to construction.

6. A total of 3433 leaflets were distributed to properties within a 300 metre band of the proposed scheme, to statutory bodies, objectors and other stakeholders and interested parties. Plans showing the proposed modifications together with a revised Traffic Forecasting Report, Economic Assessment Report ("EAR") and Environmental Update Report ("EUR") were placed on deposit at Warwick Library and Information Centre, the Town Hall of Rugby Borough Council and Willenhall Community Library in Coventry. The information and documentation was also available on-line.

7. In response to this consultation, the Highways Agency received a total of 17 emails and telephone calls within the consultation period. Some of these requested further information on the changes and others were not directed at the changes. The Highways Agency submitted details of all responses to the Secretaries of State on 5 June 2013, together with copies of the original emails, for their consideration. Two representations received outside the consultation period were accepted.

8. After considering all the representations, the Secretaries of State note that the Highways Agency provided a factual response to those enquiries that required a more detailed explanation of the changes or

raised matters relating to the original scheme that was taken to the 2010 Inquiry or raised other general matters relating to the A45 and A46. This left three responses that raised specific concerns on the proposed changes described in the consultation documentation that the Secretaries of State now address in this letter.

9. The concerns raised in these responses are summarised as follows:

- that no explanation had been provided about the timing and the resulting delay that has occurred from the date of the Inspector's report of the 2010 Inquiry to now bringing this scheme forward; and that there can be no justification in delaying it further to accommodate improvements associated with the Coventry and Warwickshire Gateway ("CWG") or the Whitley Business Park ("WBP") projects;
- the reasoning given in the consultation leaflet for the changes to the proposed Tollbar End scheme is considered wrong in principle and inaccurate in practice, such as where this states that this is to ensure compatibility with the proposed CWG project;
- that this is also a misuse of public funds and discriminates in favour of the unapproved CWG project.
- there are inconsistencies between the proposed Tollbar End Improvement scheme and the CWG proposals, referring to the free-flowing slip road from the A45 westbound to the A46 southbound; the difference in lanes between them for A45 eastbound through-route across the junction, and to the cycle lane on the eastbound on-slip to the A45;
- an objection was made to the reasoning given for the proposed modifications to Stonebridge Highway, namely that this was to ensure that the scheme is compatible with the proposed CWG project; and to support this, reference was made to the 2010 Inquiry Inspector's report and his conclusions at IR 8.4.2 about not providing for potential development that does not have planning approval. It was also claimed that the CWG project conflicts with the National Planning Policy Framework;
- it was claimed that the proposed changes differ from those proposed by the Inspector in his report of the 2010 Inquiry and that these now appear to have been made to reduce costs;
- it was submitted that there remains matters of unresolved conflict between the proposed Tollbar End Improvement scheme and highway

proposals for the CWG project and it was explained why it is unreasonable to say that they are compatible;

- concerns were raised about the relationship of the published scheme with WBP development, and why the published consultation documentation contains significant errors, such as not properly describing the whole scheme represented in the WBP's outline planning permission; and consequently, the traffic modelling and environmental assessment may not have taken into account the full scale and impact of the approved scheme; the current proposals should therefore be rejected under the Environmental Impact Assessment ("EIA") Regulations; and a cumulative impact assessment should also have been undertaken.

- the proposed changes to Stivichall Junction and the proposed CWG project both impact on Leaf Lane and neither offer a satisfactory solution to this problem; and the potential traffic delays at the Leaf Lane entrance to the circulatory carriageway at Stivichall Junction will also become worse if both the GWG and WBP projects were implemented

- that the Secretaries of State should satisfy themselves that the information provided in the revised economic assessment is sufficient to reach a valid judgement on the modified Tollbar End scheme and on the soundness of the latest assessment before proceeding to approve the scheme;

- the economic assessment was also challenged in respect of the huge change being shown in the benefit to cost ratio for the proposed scheme; it would have been expected, for the reasons given, to have seen higher costs and benefits as a result of the change of base year; the economic claims are therefore misleading with the costs seriously under-stated and benefits over-stated; this distorts the economic case for the published scheme and cannot be trusted; this seriously lacks credibility when compared to the former assessment and requires explanation; no decision to proceed with the published scheme would be justified on this basis.

- the air quality section of the EUR makes no reference to the proposed scheme changes and ignores the fact that the scheme has changed since publication of the original Environmental Statement; furthermore, the air quality analysis carried out is misleading as predications show significant increases in emissions making the proposals unacceptable. The air quality analysis is not considered adequate to meet the EIA regulations;

- the noise assessment is also challenged as it was explained that the selective use of low-noise surfaces for maintenance has made the published scheme appear artificially good in comparison.

The Warwickshire Wildlife Trust (“WWT”) – letter of 7 June 2013

10. The WWT submitted the following comments for consideration:

- under the heading Non-Statutory Wildlife Sites, it was explained that Leaf Lane ecosite is now an important county Local Wildlife Site and the proposed modifications are situated immediately adjacent to this site. Any mitigation measures to offset impacts on this site should have been detailed in the EUR. The River Avon is also now listed as a Local Wildlife Site and the ES should be corrected accordingly;
- under the heading Stonebridge Meadows Local Nature Reserve (“SMLNR”), it was stated in 2010 that the SMLNR entered into a Higher Level Stewardship (“HLS”) scheme administered by the WWT.
- a derogation agreement would be required for any operation or activity on the SMLNR, including any access arrangements arising from the proposed scheme, which may impede or adversely affect the fulfilment of the prescribed management aims in the HLS for this plot. WWT want this agreement in place prior to any proposed access or activity commencing;
- the HLS has implications for plot 1/4 in the Compulsory Purchase Order (“CPO”) and the Certificate, as land may need to be removed from the HLS during works and this may lead to a reduction of income in relation to the SMLNR and could incur a financial penalty for any breach of the scheme rules; and
- WWT also referred to an administrative change that may affect the CPO and Public Notice of Intention to issue a Certificate (given under paragraph 6 of Schedule 3 to the Acquisition of Land Act 1981). This was in respect to grazing on the SMLNR where Mr D Whitlock had taken over responsibility for this from Mr S Bartle.

THE DECISION OF THE SECRETARIES OF STATE

11. The Secretaries of State have carefully considered each individual response they received together with the concerns they raise, including the two responses received outside the consultation period, for the purposes of reaching a final decision as envisaged in their April letter. The Secretaries’ of State responses to the concerns summarised above are as follows:

- the Secretaries of State are satisfied that it was adequately explained in the consultation documentation that the scheme was delayed in 2010 because funding constraints at that time had not identified it for a potential start of construction until post-2015. However, in the autumn of 2011 the Chancellor announced funding to bring the A45/A46 Tollbar End Improvement scheme forward earlier to enable a start of works in this current session of Parliament;
- in response to concerns about inconsistencies between the Tollbar End and CWG proposals, if it was found that the CWG highway proposals were to conflict with the proposed scheme, it would be for the developer of the CWG project to resolve this conflict with the relevant planning authorities and to satisfy the Highways Agency that any departures from design standards that are necessary for their scheme, operate safely and are acceptable;
- on the matter raised about the reasons given in the consultation documentation for the changes to the published scheme, these are being made to comply with the Inspector's conclusions in his report to Secretaries of State on the 2010 Inquiry to reduce the impact on Optilan (UK) Ltd parking areas, and also as part of the Government's spending review and cost-cutting measures to reduce the cost of the scheme by procuring less land wherever possible. It has also been necessary that the design of the Tollbar End scheme should be updated to take account of the highway proposals in the planning consent granted for the Jaguar Whitley site. One of the consequential effects these changes have had is to make the published scheme's alignment more compatible with the potential highway proposals for the CWG project, although this is only as far as may be reasonably practical without incurring any additional costs to the published scheme. This is also seen as being prudent and appropriate for what is still currently an unapproved development. The Secretaries of State are therefore satisfied that these changes are appropriate to the published Tollbar End scheme;
- in response to a similar matter raised about the relationship between the proposed scheme and other development proposals in the locality and whether this is wrong and a misuse of public funds, the Secretaries of State have explained above why the changes are being made. Furthermore, neither the EAR nor the EUR take into account the CWG development other than as potential development in the area. The Secretaries of State are satisfied that there are sound engineering and economic reasons for the proposed changes described in the consultation leaflet and that these are appropriate to the delivery of the Tollbar End improvement scheme.

- on the issue regarding the impact the WBP development will have on the proposed scheme and whether a cumulative impact assessment should have been carried out, the Secretaries of State are satisfied that the EUR that was placed on deposit only considered the significant changes that had occurred since the 2010 local Inquiry. It is therefore appropriate that the highways proposals in the outline planning for the WBP site are taken into account along with the section 106 agreement the developers had entered into. Furthermore, the executive summary of the EUR does record that some minor cumulative effects are predicted in combination with the WBP proposals and other nearby developments. However, the impact of these are not considered to be significantly over and above the direct assessed impacts from the published Tollbar End scheme;
- on the concern made about the proposed changes to Stivichall Junction and potential delays at Leaf Lane, the Secretaries of State are satisfied, on the evidence available, with the proposed arrangements at this location. It became apparent during the development stage that changes were needed to the layout of Stivichall Junction to accommodate the development proposed for the former Jaguar Whitley site. However, the potential delay quoted in the EUR represents the upper expected limit of that delay. However, the actual typical delay for joining the roundabout at this location may turn out to be much less than this in practice. Traffic forecasting is not an exact science but represents the best estimate of future conditions on the network that is available and techniques are improving all the time. To assist in this matter, the Highways Agency operates a post-opening evaluation procedure to compare the forecast effects with those that are recorded on site after the scheme has opened to traffic. This procedure is carried out one year and five years following the scheme's completion. If the scheme results in any unacceptable effects, these will be picked up during ongoing traffic surveys and the Highways Agency can then determine whether any further layout changes are necessary. Such changes, if desirable, may in consultation with the local highway authority, then be implemented through the local network management process of minor improvements;
- on the concerns raised about the economic assessment and the published scheme's costs and benefits, the Secretaries of State have regard to and are satisfied by the full explanation for the difference in the benefit to cost ratio given for the scheme in Appendix E of the EAR. Nevertheless, it may be helpful to explain that traffic growth has been predicted in accordance with current guidance and costs have reduced now that more realistic updated cost information has become available. Benefits have increased as a consequence of the latest guidance which

requires figures to be reported in 2010 prices rather than being discounted back to 2002. In essence the benefits calculated in 2009 if reported at 2002 prices have to be reduced to take account of inflation but also to take account of the interest the money would have earned if it were invested in 2002. Historic costs are excluded in accordance with current guidance although these are not considered significant in the context of the published scheme's benefit to cost ratio. The Secretaries of State are therefore satisfied that option appraisal for this scheme has been presented in accordance with both the H M Treasury's "Green Book" and the Department for Transport's "WebTAG" guidance and is considered sufficiently robust to enable them to reach a valid judgement;

- on the concerns about the air quality assessment, the Secretaries of State are satisfied that the assessment takes into account changes to the published scheme and the updated guidance and latest modelling tools. The model inputs are presented in Appendix D2 of the EUR and section 14.4.1 refers to the remodelled results. Recent data obtained from Coventry County Council as part of their air quality monitoring requirement has also been included. The Secretaries of State also note that as a result of the scheme, there are predicted to be fewer exceedences of Coventry City Council's annual mean air quality strategy objectives at their receptor sites. The particulate results also demonstrate that whilst there is an increase in emissions as a result of the scheme, concentrations predicted at sensitive sites such as residential properties, schools and hospitals, are well below air quality standard objectives and the European Union limit values. The Impact analysis also indicates that more than twice as many people will benefit from improved air quality than those experiencing worse air quality. The conclusion that the impacts of the scheme are not significant on air quality are based on guidance from the Highways Agency on how to determine if the effects are significant and they predicated an overall improvement in air quality and a reduction in the number of properties that exceed the European Union limit values. The Secretaries of State are therefore satisfied that the air quality assessment takes full account of the changes and is sufficiently robust to meet the EIA regulations;

- the Secretaries of State also note the concerns raised about the noise benefits recorded in the EAR based on the comparisons of the proposed scheme and the "do minimum" scenario. It is further noted that whilst there may be disagreement in assessing the true effect of low-noise surfacing by not considering such effects in the "do-minimum", the 2010 Inquiry Inspector at IR 9.2.53 of his report concluded that the evidence is, that the presence of any low noise surfacing would not mean that the noise benefits predicted to arise from the scheme would not materialise. The Secretaries of State are satisfied the noise benefit assessment is sufficiently robust to enable them to take their decision.

12. The Secretaries of State make the following comments on the matters WWT have brought to their attention:

- the published EUR considered whether there had been any significant changes to the environmental impacts since the 2010 Inquiry together with the proposed changes to the scheme. It is noted that it concluded that no additional local or national designations had been made along the route corridor on the basis of desk studies using publicly available information. Nevertheless, the Secretaries of State note the changes the WWT have brought to their attention under their heading non-statutory wildlife sites and they have now taken them into account in reaching their decision;
- in relation to the impact of the scheme at the Leaf Lane Ecosite, the Secretaries of State note that the assessment in the EUR concluded that the site would not be directly or indirectly affected by the proposals as the scheme does not extend north of Stivichall Junction. Furthermore, they also note that it is reported that the changes to the proposed scheme described in the consultation document do not change the scheme in this area. The Secretaries of State therefore accept on the evidence before them that the magnitude of impact at the Leaf Lane site is likely to remain at most negligible and the likely significance of its effect for a locally or regionally designated site is considered to be neutral; and
- the Secretaries of State note that in respect of the SMLNR, the HLS status had occurred before the draft Orders will have been made and the Certificate issued and therefore this should have been taken into account in the EUR. Nevertheless, this is now a matter that the Highways Agency are asked to take up with WWT and Nature England at the appropriate time when the notice to treat has been served, and any losses that SMLNR may incur in relation to the HLS as a direct consequence of the effect of the proposed scheme, will now become the subject of compensation. The Secretaries of State note WWT's request that a derogation agreement be entered into prior to any access or activity commencing and they will ask the Highways Agency to action this accordingly in consultation with Natural England. They have also taken note of the administrative changes WWT refer to in their letter and brought these to the attention of the Highways Agency.

Decision following consideration of the representations

13. The Secretaries of State are now satisfied that the requirements in paragraph 8 of Schedule 1 to the Highways Act 1980 have been fully complied with in respect of the proposed modifications. Therefore, in the

light of this action and having taken into consideration all the matters raised above, together with their own responses and the published documentation, they take the view that no objections have been made to prevent them from taking their decision, or where there are concerns these have in their opinion now been adequately addressed by the Secretaries of State in their response. For this reason, they have decided that there is no impediment to them now modifying and making the published draft Orders and issuing the Certificate.

ORDERS TO BE MADE

14. In the light of the decision taken above, the Secretary of State for Transport will make shortly the following Orders, accepting the Inspector's recommendations in his report of the 2010 Inquiry, incorporating the modifications that are required to implement the changes described in the consultation documentation:

THE A45 TRUNK ROAD (A45/A46 TOLLBAR END JUNCTION IMPROVEMENT) ORDER 200_ ("the Line Order");

**THE A45 TRUNK ROAD (A45/A46 TOLLBAR END JUNCTION IMPROVEMENT)
(SIDE ROADS) ORDER 200_ ("the SRO"); and**

THE A45 TRUNK ROAD (A45/A46 TOLLBAR END JUNCTION IMPROVEMENT) COMPULSORY PURCHASE ORDER (MP NO. XX) 200_ ("CPO").

15. The Secretary of State for Transport is satisfied that in regard to the modifications to the Compulsory Purchase Order ("CPO"), the necessary landowners' written agreement for any additional land-take required to implement the published scheme in full with the proposed modifications in place, has or will be obtained before the CPO is made.

16. The Secretary of State for Communities and Local Government, who is responsible for the Public Notice to the matter shown below, will in due course issue the required certificate under paragraph 6(1)(c) of Schedule 3 to the Acquisition of Land Act 1981.

A CERTIFICATE UNDER PARAGRAPH 6(1)(C) OF SCHEDULE 3 TO THE ACQUISITION OF LAND ACT 1981

17. Public notice will be given when the Orders referred to in this letter are made. Any person who wishes to question their validity, or any particular provision contained in them, on the grounds that the Secretary of State for Transport has exceeded his powers, or has not complied with the relevant statutory requirements may, under the provisions of

schedule 2 of the Highways Act 1980 and section 23 of the Acquisition of Land Act 1981, do so by application to the High Court. Such application must be made within six weeks of publication of notice that the Orders have been made.

Decision on Environmental Statement

18. The Secretary of State for Transport having considered the EUR alongside all the opinions expressed by the public together with their consideration in their April letter of the previously published Environmental Statement, confirm the decision to proceed with the published scheme incorporating the proposed changes.

19. When the public notice referred to in paragraph 8 of the April letter is given, any person who is aggrieved by the Secretary of State for Transport's decision to proceed with the scheme and wishes to question its validity, or of any particular provision contained in it, on the grounds that the Secretary of State has exceeded his powers or has not complied with the relevant statutory requirements may, under the provisions in section 105D of the Highways Act 1980, do so by application to the High Court. Such application must be made within six weeks of publication of the notice. The decision to which the notice applies shall not be questioned in any other legal proceedings whatsoever.

COMPENSATION

20. After the CPO has been made, the qualifying persons, in relation to the land included in the made Order, will be approached about the amount of compensation payable to them in respect of their interest in the land. If the amount cannot be agreed with the valuer instructed by the Highways Agency on behalf of the Secretary of State for Transport, the matter may be referred for determination to the Lands Tribunal under the Lands Tribunals Act 1949 and the Land Compensation Acts 1961 and 1973, as amended by the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011.

AVAILABILITY REPORT

21. A copy of this letter has been sent to statutory objectors and to any other person who made representations. Any person who is entitled to be supplied with a copy of this letter may apply to the Secretary of State for Transport within six weeks of receipt of this letter, to inspect any document referred to in this letter. Any such application should be made to Tony Sherwood, telephone number 0207 944 6086 at this office. Applicants should indicate the date and time (within normal office hours)

when they propose to make the inspection. At least three days' notice should be given, if possible.

Yours faithfully

Fiona C Wilson

Fiona Wilson
On behalf of the Secretary of State for Transport

Rachael Pipkin

Rachael Pipkin
On behalf of the Secretary of State for Communities
and Local Government