



Department for
Communities and
Local Government

Rachael Pipkin
Head of National Planning Casework
Unit
Department for Communities and Local
Government
National Planning Casework Unit
5 St Philips Place
Colmore Row
Birmingham
B3 2PW



Department
for Transport

Fiona Wilson
Head of Strategic Roads Division
Department for Transport
3/29 Great Minster House
33 Horseferry Road
London
SW1P 4DR

3 June 2013

Addressee as on envelope

Dear Sir or Madam

HIGHWAYS ACT 1980
ACQUISITION OF LAND ACT 1981
A46 NEWARK TO WIDMERPOOL IMPROVEMENT -
Revised Access Arrangements at Farndon Roundabout

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 concurrent public Inquiries ("the 2011/2012 Inquiry") that sat for a total of 18 days between 8 November 2011 and 20 July 2012 before Mr R M Barker, BEng(Hons) CEng, MICE, FCIHT), CEng, MICE, FCIHT, an independent Inspector appointed by the Secretaries of State, to hear objections to, and representations about, the following draft Orders;

The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Margidunum Roundabout (Detrunking) Order 20 ("the DO");

The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary (Side Roads) Order Number 1 20 ("the SSRO"); and

The A46 Trunk Road (Newark to Widmerpool Improvement and Slip Roads) Supplementary Compulsory Purchase Order Number 1 20 ("the SCPO").

2. This letter conveys the decision of the Secretaries of State on whether the draft Orders should be made following their consideration of the Inspector's report.

3. The purpose of the draft Orders, if made as published, is to provide an alternative, reasonably convenient means of access for three landowners in the vicinity of Farndon Roundabout at the junction of the newly improved A46 with the B6166, Farndon Road (referred to hereafter as the "published scheme"). As part of this scheme, their existing access is to be stopped up.

4. The draft SCPO, if made, would provide for the acquisition of land and rights necessary to provide the alternative means of access.

THE INSPECTOR'S REPORT

5. A copy of the Inspector's report is enclosed. In this letter, references to paragraph numbers in the Inspector's report are indicated by the abbreviation "IR".

6. The Inspector recorded at IR 1.9 that there were a total of five objections to the draft Orders, one of which was withdrawn before the commencement of the 2011/2012 Inquiry, and that five written representations were received. The main grounds of objections are briefly summarised at IR 1.12.

THE DECISION OF THE SECRETARIES OF STATE

7. The Secretaries of State have carefully considered the Inspector's report together with all the objections, alternative proposals, counter objections, representations and expressions of support made, both orally and in writing, and all post-inquiry correspondence. In reaching their decision, they have also considered the requirements of local and national planning, including the requirements of agriculture, as required by section 10(2) in Part II of the Highways Act 1980.

8. The Secretaries of State are satisfied that the Inspector's conclusions cover all material considerations and propose to accept his recommendations, subject to the comments in the following paragraphs.

Matters arising

9. The Secretaries of State, in considering the Inspector's report, make the following comments on matters raised in the report:

Legal and Procedural Submissions

10. The Secretaries of State note the Inspector's handling of the various legal and procedural matters that were the subject of submissions at the 2011/2012 Inquiry, recorded in section 3 of the Inspector's report. The legal submissions related to (i) the admissibility of evidence obtained through alleged covert surveillance, (ii) P A Freight (Midlands) Limited's ("PAF") alternative access proposal, and (iii) whether or not the published scheme required an environmental impact assessment ("EIA") and therefore comprises EIA development. These have been summarised, together with the Highways Agency's response, at IR 3.1 to IR 3.15, IR 3.16 to IR 3.60, and IR 3.61 to IR 3.108 respectively.

11. The Secretaries of State are satisfied with the way the Inspector dealt with the procedural matters arising at the 2011/2012 Inquiry and agree with his comments and handling on each of them as set out in his report. They are therefore satisfied that, as a result, no one was prejudiced or prevented from putting forward their case at the 2011/2012 Inquiry, and that the Inspector took into account all relevant evidence and came to a reasonable decision in all the circumstances. The Secretaries' of State response to the legal submissions is addressed in paragraphs 12 to 19 below.

Alleged Covert Surveillance

12. The Secretaries of State have considered all the representations and evidence submitted at the 2011/2012 Inquiry on whether the evidence gathered by the Highways Agency through CCTV is admissible. They have also noted that the Inspector, after considering all the representations and evidence submitted to him, concluded at IR 8.3 that the data collected do not satisfy the definition of "personal data" as defined in section 1 of the Data Protection Act 1998. He further concluded at IR 8.7, for the reasons given, that the Highways Agency's activities did not breach Part 2 of the Regulation of Investigatory Powers Act 2000. Having reached conclusions on both these matters, he came to an overall conclusion at IR 8.9 that the traffic count information collected in the exercise involving cameras CCTV1 and 2 is admissible. The Secretaries of State having considered all the evidence submitted on this matter, and having regard to the applicable primary and secondary legislation and the cited case law, agree with the reasoning applied by the Inspector and accept the Inspector's conclusions that the evidence was admissible.

PAF's Alternative Access Proposal

13. The Secretaries of State have considered the Highways Agency's submission recorded at IR 3.16 to IR 3.34 and PAF's response at IR 3.35 to IR 3.60 on the interpretation of the provisions in section 125 (3)(b) of the Highways Act 1980. They have also gone on to consider whether the alternative means of access proposed by PAF (which differs from that described in the draft Orders) may be regarded as another reasonably convenient means of access to their premises, and, if so, whether it is preferable to the one proposed by the Highways Agency. They have also taken into account the Inspector's conclusions on this matter at IR 8.10 to IR 8.18.

14. It is noted that the Inspector at IR 8.17, having considered the appropriate test in section 125(3)(b) of the Highways Act 1980, accepted that while PAF's proposal would provide a substitute for the existing route, it would provide so much more than that which is legitimately required by the statute. For this reason, this led the Inspector to take the view that PAF's alternative could not be considered as a "modification" to the published scheme. Furthermore, having had regard to all the matters raised in this connection by PAF, the Inspector concluded at IR 8.18 that, for all these reasons, PAF's proposal does not constitute an alternative proposal for the purposes of the procedures and Orders currently under consideration.

15. The Secretaries of State have carefully considered the case made by PAF on this matter together with all the representations and evidence submitted. They have also had regard to the judgment in Carpenter v. Calio Quays Limited [2011 EWHC 96 (Ch)] that was cited. They take the view, broadly in agreement with the Inspector at IR 8.11, that for the purposes of section 125(3)(b) of the Highways Act 1980, consideration of "another" means of access must relate back to the existing or other means of access it is proposed to stop up. An assessment must then be made of the extent to which the proposed alternative access provides facilities equivalent to those provided by the one it is proposed to stop up. The Secretaries of State accept the Inspector's conclusion that PAF's proposal does not constitute an alternative for the purpose of the procedures and Orders currently under consideration.

EIA Considerations and Re-screening Opinion

16. The Secretaries of State note PAF's submission at IR 3.61 to IR 3.72 about the cases of *R v Bath* and *North East Somerset Council* and another *ex parte Baker* [2009] EWHC 595 (Admin) and *R v SOS CLG ex parte Mellor* [2009] (referred to the Court of Justice of the EU for

a preliminary ruling under reference C-75/08) which led to changes to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293) ("EIAR"). PAF contended that as a result this meant the proposed access road should have been the subject of a re-screening or negative opinion as it is intended to extend a project that amounted to development under the EIAR. The Secretaries of State have also considered the Highways Agency's response at IR 3.73 to IR 3.88 and PAF's further submission at IR 3.89 to IR 3.108, and have taken into account the Inspector's conclusions on this matter at IR 8.19 to IR 8.24.

17. After considering all the relevant evidence, the Secretaries of State fully concur with the Inspector's findings in IR 8.20 that the regulations that apply to the overall A46 project are the Highways (Assessment of Environmental Effects) Regulations 1999 (SI 1999/369) (the report mistakenly refers to these as 1990 regulations). These Regulations substituted a new version of Part VA of the Highways Act 1980 and this was subsequently further amended by the Highways (Environmental Impact Assessment) Regulations 2007 (SI 2007/1062). The Secretaries of State agree that the amendments to HA 1980 brought about by Regulations 1999/369 have not been affected by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824) which consolidated the EIAR (as amended) and made other amendments to them consequent upon the Mellor and Baker decisions.

18. The Secretaries of State agree with the Inspector's conclusion at IR 8.22 that the Highways Act 1980 (as amended by SIs 1999/369 and 2007/1062)) contains no express provision allowing a person who is minded to carry out development to request the Secretary of State to issue a screening direction. They further confirm that the Inspector, having considered all the representations and evidence submitted to him at the 2011/2012 Inquiry, correctly concluded at IR 8.24 that as the legislative framework for highways currently stands, the Highways Agency (as promoter) did not act unlawfully in not seeking a screening opinion.

19. The Secretaries of State note the Inspector's finding at IR 3.84 that when the Highways Agency assessed the environmental impacts of the A46 scheme as a whole it did so in a manner that was entirely consistent with the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824). The Inspector concludes that it is impossible to fault the assessment that was carried out and that it was lawfully conducted.

Other matters

The Needs of PAF's Business

20. The Secretaries of State note PAF's concerns reported at IR 6.9 to IR 6.14 about the needs of their business and why, for the reasons given, they consider the access proposed in the Orders is neither a reasonable nor a convenient replacement for the current one that it is proposed to stop up. The Secretaries of State note the Highways Agency's response at IR 7.11 to IR 7.14. In response to this matter, the Secretaries of State also note and accept the Inspector's conclusions at IR 8.27 to IR 8.30, and agree with his view recorded at IR 8.30 that the needs of PAF's business to expand should be addressed through the wider planning process. It was not appropriate to address this through the statutory process of providing a Private Means of Access (PMA) to which the test in section 125(3)(b) of the Highways Act 1980 applies or through public funding of highway improvements. They further agree with the Inspector's conclusion reported at IR 8.32 that there should be no solution to this matter which sits outside the statutory planning framework or which provides betterment at public expense.

The published PMA scheme

21. The Secretaries of State note from PAF's case reported at IR 6.2 that they took issue with the route and layout of the proposed alternative access to their premises from the new Farndon Roundabout as set out in the DO and the SSRO. PAF regard this as not fit for purpose and incapable of reasonable modification, and therefore should be rejected. In response to this concern, the Secretaries of State have accepted the Inspector's conclusions at IR 8.33, and agree for the reasons stated, that there is an urgent and compelling need to stop-up the existing access. They further accept his conclusions in IR 8.34 and IR 8.35 that the stopping-up of the existing access at its junction with Farndon Road necessitates the provision of an alternative, reasonably convenient means of access to those properties served by the existing access. They also agree with the Inspector at IR 8.35 that it is the route and layout of the proposed PMA that is at issue, and particularly its perceived potential impact on PAF's business operations and on other affected property owners served by the existing PMA. This matter is further considered in the following paragraphs.

Design Standards

22. The Secretaries of State note the case made by PAF reported at IR 6.15 to IR 6.17 that the Highways Agency wrongly chose not to refer to any design standard in the development or support of its PMA

proposal set out in the Orders, and failed to properly apply the standards in the Department for Transport's Design Manual for Roads and Bridges. On this matter, the Secretaries of State note and accept the Inspector's conclusion at IR 8.36, that following his consideration of both PAF's evidence and the Highway Agency's rebuttal evidence reported at IR 7.7, IR 17 and IR 7.20 to IR 7.22, he was satisfied that it is not necessary or appropriate to employ published standards that apply to the design of public highways to the design of PMAs. Furthermore, the Secretaries of State agree that as there is no design standard directly applicable to a PMA, and therefore the appropriate engineering and safety standards should be applied to meet the specific circumstances of the case and these should be reasonably comparable to those that are being replaced. The Secretaries of State are satisfied the Orders provide for this and that the professional engineering standards expected of the Highways Agency will apply.

Impediments

Flood risk

23. The Secretaries of State note the concerns of PAF recorded at IR 6.19 and IR 6.51 to IR 6.53 about potential flood risks and drainage issues at and around Farndon Roundabout. They further note that the Inspector concluded at IR 8.39 that he was satisfied that PAF accepted that this issue had been addressed at the 2011/2012 Inquiry, to the extent as such it appears capable of being surmounted. They also note that it is reported in IR 8.39 that the Environment Agency and the Trent Valley Internal Drainage Board for Nottinghamshire accepted that the effect of development in this area of the flood plain would be insignificant. Nevertheless, the Secretaries of State also accept the Inspector's conclusion that it is necessary and appropriate to acquire two additional elements of land, referring to plots 1/1J and 1/11 in the SCPO Site Plan 1, for the reason he describes. However, their agreement to this is on the understanding that if this requires the consent of any of the landowners concerned, this must be obtained through agreement, as the land-take requirement shown in the draft SCPO cannot otherwise be amended.

Road Safety Audit

24. The Secretaries of State note the assertions made by PAF recorded at IR 6.29 to IR 6.34 about the alleged inadequacy and lack of independence of the road safety audits ("RSA") that have been undertaken with respect of the main A46 Farndon Roundabout and a purported Stage 1 RSA of the promoted PMA to the ICL, together with the Highways Agency's response at IR 4.42 and IR 7.18.

25. The Secretaries of State having considered all the representations submitted on this issue agree with the Inspector's conclusion at IR 8.43 not to accept this assertion for the reasons he has given. They agree that no convincing evidence was submitted to support the contention that the auditors were not independent. However, the Secretaries of State also accept the Inspector's finding that the safety concern highlighted in the audit, similar to that put forward by PAF, should be addressed by the appropriate measures identified. These do not affect the draft Orders, and it is recommended that these are adopted.

Access Alignment & Location

26. The Secretaries of State have considered the concerns made by PAF reported at IR 6.35 to IR 6.38 regarding the alignment of proposed replacement PMA and its location. They have also considered the Highways Agency's submission at IR 4.18 to IR 4.41 and their further rebuttal statement reported at IR 7.11 to IR 7.29. Having considered all the representations on this matter, they accept the Inspector's findings at IR 8.44 to IR 8.50, and agree with his conclusion at IR 8.51, for the reasons he has stated. Given the adequate visibility characteristics, the likely low traffic flows and speeds and the potential signing, the Secretaries of State agree with the Inspector that the matter of access alignment and location would not be an unacceptably harmful consideration and therefore these matters should not be a matter that weigh significantly against the adoption of the HA's proposed PMA scheme as an impediment.

Access Issues – Lorry Park

27. The Secretaries of State note the concerns of PAF in a submission made by them on this matter, and in particular, the principal points reported at IR 6.13, IR 6.39 to IR 6.42, that the arrangements proposed in the Orders would result in a number of vehicles all entering the same area without guidance, routeing or clear priorities. PAF was concerned as to how all these movements could be safely and practically managed. They were also concerned that this would lead to an increase in operational costs.

28. The Secretaries for State, having considered the Highways Agency response in IR 7.40 to 7.43, agree with the Inspector's findings in IR 8.52 to IR 8.57, and accept the Inspector's overall conclusions at IR 8.58, for the reasons he has given, that the proposed lorry park and PMA described in the Orders would be a reasonably convenient replacement.

Access Issues – Abnormal Loads

29. The Secretaries of State note the issues raised by PAF under this heading recorded at IR 6.43 to IR 6.47, together with the Highways Agency's response at IR 7.5, IR 7.24, IR 7.26 and IR 7.27. These focussed on PAF's concerns about what would occur should two abnormal loads attempt to pass each other at the site entrance or the access ramp.

30. The Secretaries of State having considered this matter, accept the Inspector's findings on this matter at IR 8.60 to IR 8.63 and, together with the improved visibility aspects he highlighted in IR 8.46, accept his conclusions in IR 8.64 that for the reasons given, that the proposal contained in the Orders would provide a reasonable replacement for the existing facilities with respect to the provisions for abnormal loads. They also accept the Inspector's conclusions in IR 8.65 and IR 8.66 on the other related matters.

Lack of Health & Safety Assessment

31. The Secretaries of State note the concerns raised by PAF about the absence of any Health and Safety assessment reported at IR 6.25 to IR 6.28 and to the Highways Agency rebuttal on this and related matters in IR 7.37.

32. The Secretaries of State note that the Inspector, referring to the evidence reported at IR 7.37, concluded that he was not aware of any Health & Safety Assessment that PAF carried out for the existing access and lorry park. Having considered all the evidence on this matter, he failed to see why the Highways Agency's proposal described in the Orders would fail such an assessment or why it should have negative insurance implications as reported in IR 6.25 to IR 6.28.

33. The Secretaries of State having considered all the evidence before them on this matter have decided to accept the Inspector's overall conclusion on this matter at IR 8.69 and agree that little weight should be attached to the absence of any Health & Safety Assessment.

Mr M R Walmsley & "the Walmsley loop"

34. The Secretaries of State note that it is reported at IR 6.65 to IR 6.67 that whilst Mr Walmsley's land is currently leased to and used by PAF it could revert to a use promoted by him. It is further reported at IR 7.45 to IR 7.47 that in response to Mr Walmsley's concerns regarding the safety of access to his own land through the lorry park, the Highways

Agency approached Mr Walmsley to discuss a potential proposed alternative access arrangement to his site, which become known as the “Walmsley loop”. It is reported in IR 7.46 that he chose not to promote this. It is further noted from the Inspector’s findings in IR 8.70 and IR 8.71 that the Highways Agency did not themselves subsequently pursue this. The Secretaries of State therefore accept and agree with the Inspector’s conclusions in IR 8.71 that this alternative should not be pursued. Furthermore, it is also recorded at IR 6.56 to IR 6.58 that PAF expressed concerns about this suggested modification.

Mrs D Paver

35. The Secretaries of State note the concerns made by Mrs D Paver reported at IR 6.68 to IR 6.71 that the alignment of the proposed PMA would result in glare from vehicles’ headlights into bedrooms of her property at No 153 Farndon Road and to other related matters concerning the access, which she stated would be significantly improved if PAF’s proposed alternative was accepted. They have also considered the Highways Agency’s response to this at IR 7.48 to IR 7.52.

36. On these matters, the Secretaries of State note that the Inspector concluded at IR 8.72 to IR 8.73 that he saw no conclusive objective evidence that glare from vehicle headlights would cause demonstrable harm to the occupants of No 153 Farndon Road. He also found in referring to the evidence reported at IR 6.49, IR 6.68 and IR 7.48 that the ground floor bedroom window of this property facing the PAF site is largely masked by a timber fence and furthermore found no evidence that the International Logistics Centre is used extensively during hours of darkness.

37. The Secretaries of State also note from IR 8.73 that the Inspector found that vehicles may need to turn within Mrs Paver’s property and he accepted that a minor modification would be required to address a drafting oversight on the SSRO Plan as reported in IR 7.49. The Inspector was satisfied that this modification would not disadvantage anyone. He also noted that the uncontested technical evidence reported at IR 7.50 to IR 7.52 rebutted the objector’s concerns regarding noise and disturbance. The Secretaries of State, therefore, accept the Inspector’s conclusion in IR 8.73, for the reasons given, and agree that little weight should be attached to this objection.

All Other Remaining Matters

38. The Secretaries of State propose to accept the Inspector's conclusions reached on each of the other remaining matters contained in section 9 of his report, for the reasons he has given.

Post-Inquiry Correspondence

39. Since the 2011/2012 Inquiry closed on 20 July 2012, the agent acting for PAF submitted to the Secretaries of State under cover of a letter dated 10 October 2012 ("the PAF letter") a bundle of post-inquiry correspondence together with a report by Create Consulting Engineers Limited ("Create") on a technical review of the earlier 2007 Inquiry evidence. The PAF letter claimed that there were unresolved issues from the 2011/2012 Inquiry, including key-facts that had only recently come to light and which, it was claimed, could have a significant effect on the current decision-making process of the Secretaries of State.

40. In response to the PAF letter, the Litigation Group of the Treasury Solicitor's Department ("TSol") sought the views of the Highways Agency and replied directly to the agent of PAF on 30 October 2012 addressing the points raised in the PAF letter.

41. The Secretaries of State informed the parties by letter of 20 November 2012 that they proposed to consider all this post-inquiry correspondence alongside the Inspector's report. However, before they did this, for propriety reasons and to ensure that nobody would be disadvantaged or prejudiced by not seeing or being prevented from commenting upon matters raised in this post-inquiry correspondence, the Secretaries of State in their letter of 20 November 2012 gave all interested parties the opportunity of making written representations on that correspondence to them within three-weeks of the date of their letter. Copies of all post-inquiry correspondence received, which included other letters and emails dating after the 2011/2012 Inquiry closed, was enclosed with that letter.

PAF's letter of 10 October 2012

42. This letter requested that the material summarised below be remitted to the Inspector for his consideration. In any event, they maintained that the draft Supplementary Orders should be rejected and PAF's alternative access be further explored as the necessary alternative access to their commercial premises.

Planning permission for the "PAF Alternative"

- (i) It was stated that PAF had in early September 2011 submitted a planning application to Newark & Sherwood District Council

(“NSDC”) for an alternative scheme that would satisfy the needs of their business and make their land available for construction without the need for the Supplementary Orders affecting their land. On 3 March 2012, PAF received from NSDC a “minded to grant” approval resolution for this development, but this was subject to a section 106 agreement on terms that PAF considered unreasonable and which they could not accept. This is still the current position that exists, although PAF stated that they had been encouraged by NSDC officials to return with a fresh application.

Changes to the Promoted Scheme

(ii) It was claimed that the Highways Agency on the final sitting day of the 2011/2012 Inquiry had made amendments to the draft Supplementary Orders for their published scheme. PAF pointed out at the time that there were areas of inconsistency and error in the amended plans relating to this change and, having raised this, claimed they received no response from the Highways Agency despite the Inspector’s request for consensual resolution. When they chased for a response, they stated that they were told in a telephone call from the TSol that the position had already been adequately set out and this did not warrant any further response. PAF did not agree with this for the reasons stated in the PAF letter.

(iii) It was further stated for the reasons given that PAF did not agree to the proposed changes made to the promoted scheme by the Highways Agency, which they contend were not adequately explained. The PAF letter went on to demonstrate that these changes were insufficient and that more work needed to be done by the promoting authority. PAF claimed that the draft Supplementary Orders before the Secretaries of State were therefore defective.

Disclosure of Inconsistent 2007 Inquiry Evidence

(iv) It was submitted on behalf of PAF that they had only since the 2011/2012 Inquiry closed gained access to some of the evidence and documents from the previous 2007 local Inquiry into the A46 Improvement Scheme, which they had not previously seen. They acknowledged that this information may never have been wholly unavailable, but they claimed that it seemed to have been “buried” as to have been effectively inaccessible until found recently on a section of the Highway Agency’s website for the A46 scheme. They explained in their letter how they had since found by a circuitous route access to some of the documents from the 2007 Inquiry.

(v) Having since gained access to this evidence, Create analysed the 2007 documentation and submitted a report, titled “Technical Review of 2007 Inquiry Documents”, which was enclosed with the PAF letter. It was claimed that the report concluded that the evidence previously submitted to the 2007 Inquiry by the Highways Agency confirms and supports the validity of a number of points made on behalf of PAF at the 2011/2012 Inquiry. This related to design criteria, design speeds, entry/exit radii, and safety and drainage standards for the arm from Farndon Roundabout to the Highways Agency’s published scheme. It was further claimed that Create’s report demonstrates significant inconsistencies between the Agency’s approach in 2007 and that at the 2011/2012 Inquiry, and the PAF letter briefly described these.

Letter of 30 October 2012 - response to the PAF letter from TSol on behalf of the Highways Agency

43. In this letter, TSol responded to the PAF letter on behalf of the Highways Agency. TSol took issue and disagreed with PAF’s statement that not all the issues had been resolved prior to the close of the 2011/2012 Inquiry. TSol then referred to the history of this case and stated that the 2011/2012 Inquiry was simply looking into replacing the existing access arrangements from the road off Farndon Roundabout for the owners of three properties. Its purpose was to modify the previous proposals in the Orders made in 2009 for the three landowners concerned because there was no agreement between them as to what they actually wanted by way of an alternative private means of access. TSol then went on to disagree with the statements made in the PAF letter responding to the matters raised under the various headings used. TSol also commented on the report prepared by Create, refuting the allegation that evidence given at the 2007 and 2011/2012 Inquiries was inconsistent and went on to explain why Create were mistaken in making the assertions and allegations contained in the report. TSol further stated that the issues now being raised had been debated at the 2011/2012 Inquiry and therefore could not now be regarded as new evidence or raising new matters of fact. TSol continued by refuting the other matters raised in sections 2, 3, 5, 6 and 8 of Create’s report and which PAF alleged had also not been addressed at 2011/2012 Inquiry.

44. TSol further stated that the evidence submitted at the 2007 Inquiry concerned a different scheme to that in the current Orders and that the standards and design parameters proposed for the proposed scheme were appropriate for the intended use. TSol also disputed PAF’s claim that the 2007 Inquiry documents had only recently been made available and stated that they were readily available throughout the 2011/2012

Inquiry. TSol acknowledge that the only new minor issue now being raised was in regard to embankment stability, and commented that they felt this was overstated and without foundation.

FURTHER RESPONSES

45. In response, to this exchange of correspondence, two further letters, dated 9 and 14 November 2012, were received from the agents of PAF. Also, in response to the Secretaries' of State letter of 20 November 2012, a letter was received from Mr Lawrence's agent dated 10 December 2012 and one from Mr Walmsley of Walmsley Autos Limited dated 15 December 2012.

Letters of 9 November & 14 November - on behalf of PAF

46. The letter of 9 November 2012 acknowledged receipt of TSol's letter of 30 October. The letter of 14 November 2012 responded to the detail of TSol's comments. In this second letter PAF claimed that TSol was not only attempting to recast the new material as material that had already addressed at the 2011/2012 Inquiry, but was also trying to address matters that were for the Inspector, and to raise new arguments and matters without any justification. Therefore, in the interest of fairness, they considered it necessary to provide further clarification of matters under each of the following headings:

- Introductory Matters;
- The Planning Permission for "the PAF Alternative";
- Changes to the Promoted Scheme;
- Inconsistent and Unfair Approach of the HA;
- Disclosure of Inconsistent 2007 Inquiry Evidence;
- Inconsistency in respect of Applicable Safety Standards;
- Drainage Issues:
Petrol Interceptors, Pollution Control and Flood Prevention;
Attenuation; and Embankment Protection.
- Construction Issues;
- Roundabout Design; and
- PA Freight's Original Objections.

47. PAF concluded by stating that the allegedly new materials they had uncovered revealed the HA's position at the 2011/2012 Inquiry to be fundamentally inconsistent with its position and promises in 2007. It was further claimed that the fact that the issues may have been debated at the 2011/2012 Inquiry missed the point that the newly found materials had not been placed before the Inspector. PAF maintained their primary position that the draft Supplementary Orders be rejected and their

alternative scheme be explored further as the necessary access arrangement required to their commercial premises.

48. A number of other letters and emails were also submitted showing an earlier exchange of correspondence between PAF's agent and NSDC and TSol.

Letter of 10 December 2012 – on behalf of Mr Lawrence

49. This letter raised concerns that submissions and correspondence were continuing to be accepted with regard to the 2011/2012 Inquiry, despite that having formally closed on 20 July 2012. It also expressed disappointment that Mr Lawrence had not been consulted by PAF, or the papers they submitted copied to him before being given to the Inspector on matters of direct interest to him and that the submissions made on behalf of PAF did not appear to have been made publically available. It also commented that PAF's letter appeared to have focussed on attempting to justify significantly increasing the size of their lorry park, originally built without planning permission, and to relocate it in a protected "open break settlement" area adjacent to Mr Lawrence's dwelling house. The letter also went on to comments about PAF not having access until recently of documents from the 2007 Inquiry; their planning application; and that there appeared nothing new in the material now being presented in the PAF letter. The letter also expressed annoyance on Mr Lawrence's behalf that he has now had to incur additional time and costs in having to go through the documentation again after the 2011/2012 Inquiry closed. It concluded by stating that he believed their latest submissions were unnecessary and that he will be submitting an award of costs application on the grounds of PAF's unreasonably behaviour as set out in Circular 03/2009.

Letter of 15 December 2012 – from Mr Walmsley

50. In this letter, Mr Walmsley started by explaining that, despite reminding the Highways Agency on two previous occasions, he had not received copies of the draft Orders. He then went on to raise matters concerning such issues as the design and standard of the proposed access or where that proposed road started and finished on his land, flood and drainage arrangements, and concerns about safety at Farndon Roundabout, rather than directing his comments at the post-inquiry correspondence submitted by PAF and TSol.

The Secretaries' of States Decision on the post-Inquiry correspondence

51. The Inspector's role in this matter ceased when the 2011/2012 Inquiry closed on 20 July 2012. Nevertheless, as the procedure demands in these circumstances, the Secretaries of State have now carefully considered all the post-inquiry correspondence alongside the Inspector's report in reaching their decision on whether the Orders should be made.

52. The Secretaries of State in considering the post-inquiry correspondence have had regard to the matters the Inspector considered pertinent in his report to reach conclusions on and in coming to a recommendation on the making of the draft Orders. It is the Secretaries' of State view that the evidence provided in support of the Orders before the 2011/2012 Inquiry differs in many ways from that provided at the earlier inquiries, which was for a different scheme and raised different considerations. The current draft Orders seek to stop up the existing private means of access and provide a reasonably conveniently alternative for the affected landowners, and for this purpose section 125(3)(b) of the Highways Act 1980 has been correctly applied. The Secretaries of State are satisfied that the proposals in the draft Orders and in PAF's alternative proposal, have been addressed appropriately by the Inspector and by them in terms of their consideration of his report and the post-inquiry correspondence. On the matter raised about changes to the proposed PMA, the Secretaries of States take the view that it is not unusual that statutory draft Orders published under the Highways Act and their supporting plans are often subject to change or modification during the Inquiry process in regard to some aspects of its detailed design and that further discussions with the parties are often necessary to agree the final design and any related accommodation works. This is not considered a matter that prevents them from taking their decision on the draft Orders.

53. The Secretaries of State are satisfied that the 2011/2012 Inquiry properly limited its consideration to whether the scheme proposed in the draft Orders provides another reasonably convenient PMA to replace the existing one that will be stopped up. It was not concerned with wider issues such as the construction of the access road off Farndon Roundabout or about the roundabout itself, or evidence that was presented at the earlier Inquiries. The Secretaries of State are satisfied that the question of design standards, road safety and alignment and access, in so far as they are pertinent to the matters in the current draft Orders, were dealt with appropriately at the 2011/2012 Inquiry and addressed accordingly by the Inspector.

54. On the question of the accessibility of the 2007 Inquiry documents, the Secretaries of State are content from the evidence before them that

these have never been deliberately hidden from anybody searching for them and they continue to be available on the websites of those with responsibility for this matter.

55. Furthermore, the Secretaries of State are also satisfied that the proposed Newark Southern Relief Road is now unlikely to be connected to the Farndon Roundabout as suggested at the earlier Inquiries. Nevertheless, this will, if necessary, be the subject of a separate and independent statutory process and can be addressed at the appropriate time if and when firm proposals become available. The Secretaries of State do not see this possibility as a matter that prevents them from now taking their decision on the draft Orders before them.

56. The Secretaries of State have therefore decided as indicated in the preceding paragraphs, that certain matters raised in the post-inquiry correspondence were either adequately addressed by the Inspector at the 2011/2012 Inquiry and in his report, or are such as to not cause them to disagree with the Inspector's conclusions and recommendations. On the other matters raised in the post-inquiry correspondence, these are not in their opinion, directly relevant or pertinent to them in deciding whether to make the above draft Orders.

57. The award of costs application on behalf of Mr Lawrence, referred to above, is a separate matter not directly related to the making of the draft Orders and this will be the subject of a further letter in due course.

58. On the matter raised by Mr Walmsley in his letter of 15 December 2012 concerning the Orders, he has now been sent further copies of the draft supplementary Orders.

The Secretaries' of State Decision on the Draft Orders

The DO

59. The Secretaries of State agree with the Inspector's overall conclusion on the DO at IR 8.83, and for the reasons he has given, accept his recommendation in IR 9.1 that the DO should be made as drafted without modification.

The SSRO

60. The Secretaries of State agree with the Inspector's overall conclusions on the SSRO at IR 8.84 to IR 8.86 and, for the reasons he has given, together with those of the Secretaries of State above, accept his recommendation in IR 9.2 that the SSRO be modified as set out in Inquiry document HA/104 (modified) and that the order so modified be

made. The Secretaries of State are satisfied that this modification does not, in their opinion, make a substantial change to the draft SSRO for the purposes of the provisions in paragraph 8(3) of Schedule 1 to the Highways Act 1980.

The SCPO

61. The Secretaries of State agree with the Inspector's overall conclusion at IR 8.87 to IR 8.90 on the SCPO and, for the reasons he has given, together with those of the Secretaries of State above, accept his recommendation in IR 9.3 that the SCPO be modified as set out in Inquiry document HA/104 (modified) and that the order so modified be made. As the Inspector's report is silent on the matter, the decision of the Secretaries' of State to modify the SCPO is given on the understanding that, if any additional land-take is required from that shown in the draft SCPO to implement this modification, the written agreement of the relevant landowners for this change has or will be obtained, otherwise the SCPO cannot be modified.

Availability of the Inspector's Report

62. A copy of this letter and the Inspector's report has been sent to all statutory objectors and to any other person who, having appeared at the 2011/2012 Inquiry, has asked to be notified of the decision of the Secretaries of State. Any person who is entitled to be supplied with a copy of the Inspector's report may apply to the Secretary of State for Transport within six weeks of receipt of this letter, to inspect any document appended to the report. Any such application should be made to Tony Sherwood (telephone number 0207 944 6086) at the Department for Transport. 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