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Dear Sirs,

TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED RIVER MERSEY (MERSEY GATEWAY BRIDGE) (MODIFICATION) ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the application made by your clients, Halton Borough Council (“HBC”), on 26 March 2015 for the River Mersey (Mersey Gateway Bridge) (Modification) Order (“the Order”), to be made under sections 3 and 5 of the Transport and Works Act 1992 (“TWA”).

2. The Order, if made, would amend the River Mersey (Mersey Gateway Bridge) Order 2011 (“the 2011 Order”) to facilitate the introduction by HBC of open road charging by means of a road user charging scheme under the Transport Act 2000 (“the 2000 Act”) in respect of the Mersey Gateway Bridge (“MGB”) and the Silver Jubilee Bridge (“SJB”). The effect would be to modify features of such a charging scheme and where such a scheme is in force, replace the tolling arrangements in the 2011 Order.

Representations received

3. The Secretary of State received three objections to this application. The objections were considered under the written representations procedure set out in rule 24 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. The principal issues raised in the objections and HBC’s responses are summarised at paragraphs 7 to 17 below.

Summary of Secretary of State’s decision

4. For the reasons given in this letter, **the Secretary of State has decided to make the Order with modifications.**

Purposes of the Order

5. The 2011 Order which authorised the construction and operation of the MGB provided among other things for the charging of tolls to use the MGB on the basis that they would be collected at a barrier system. However, following the making of the 2011 Order, HBC decided to adopt a “free-flow” charging system for both the MGB and the existing SJB which would use smart technology to capture vehicle details and to ensure that users of the bridges paid the tolls or charges due. This was intended to have the benefit of reducing construction costs, minimising the tolls or charges paid by users, improving user experience and aiding journey time reliability. In the absence of a barrier system to prevent use of the bridges without payment, HBC require enforcement powers to ensure the collection of every toll or charge due.

6. The main purpose of the Order now applied for would be to facilitate the making by HBC of a single, uniform road user charging scheme under the 2000 Act in respect of the MGB and the SJB which, in relation to the MGB, would provide for the recovery of charges in place of the tolling provisions in the 2011 Order. As a consequence, HBC would be able to rely on the powers in the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 (“the 2013 Regulations”) to enforce the collection of unpaid charges incurred by users of the bridges. The Order would also modify the powers available under the 2000 Act to enable the proposed charging scheme to include matters already provided for in the 2011 Order and, where a charging scheme is in place, to disapply the tolling arrangements. In circumstances where a road user charging scheme is not in place, the Order would modify the 2011 Order to revise the enforcement powers in relation to tolls and charges under the 2011 Order.

The objections and HBC’s response

The principle of tolling or charging

7. All the objectors were opposed in principle to the imposition of tolls or charges for use of the MGB and the SJB on the grounds that this would be unfair to residents and businesses who had to use the bridges and that the costs of the project should have been met from general taxation.

8. HBC said that the 2009 public inquiry into the MGB scheme considered the need to impose tolls or charges for the use of the MGB and the SJB in order to fund the project and this was found to be justified. The current application did not give grounds for reopening debate on these matters of principle because the Order would not alter the power to charge tolls under the 2011 Order. HBC noted that all of the objectors were residents of Halton and so would be eligible to apply for free use of the bridges through the Local User Discount Scheme. The 2009 inquiry also found no evidence that the project would harm the viability of businesses; rather the Inspector concluded that the project would provide a net benefit to the local business community.

Local User Discount Scheme (“LUDS”)

9. One objector was opposed to being required to pay to register for the LUDS, since at present residents can use the SJB without payment as of right; and objected to the public having to bear the cost of the financing scheme which benefits the private sector.

10. HBC said that the registration fee would be small and would be proportionate and appropriate to the level of administrative costs of the LUDS. Registration would be necessary to ensure that only those eligible could access the discount. The powers to apply a discount scheme were granted in the 2011 Order and are not the subject of the current application.

Enforcement powers

11. One objector was concerned about the extra powers being conferred on HBC to enforce the charging system, in particular because these would be exercised by a private sector concessionaire and would impose criminal sanctions on users of the bridges for non-payment of charges. The objector doubted whether those powers were applicable to the MGB and the whether they would be exercised diligently by the concessionaire.

12. HBC said that the enforcement powers in the 2013 Regulations were available to charging authorities (such as HBC) under the 2000 Act. The 2011 Order expressly authorised HBC to enter a concession agreement for the purposes of the MGB project, including tolling operation, and in doing so HBC had made arrangements to ensure that the obligations under the 2011 Order are discharged diligently. Under the Order now applied for these powers would not be amended in substance.

Data protection

13. One objector was concerned about giving the concessionaire access to personal data held by the DVLA as such information could not be legitimately released without just or reasonable cause. The objector referred to examples of malpractice or negligence by third party agents in operating enforcement regimes for parking and road user charges and to deficiencies in the systems for accessing personal information held by DVLA.

14. HBC said that the Road Vehicles (Registration and Licensing) Regulations 2002 (“the 2002 Regulations”) allow local authorities to access DVLA’s vehicle register and that the 2011 Order allows HBC to pass on these rights in connection with a concession agreement. The Order now applied for does not seek to alter these powers.

Automatic Number Plate Recognition (“ANPR”)

15. One objector objected to the cost of operating the proposed ANPR system which would be borne by users of the bridge and could amount to hundreds of millions of pounds, taking into account the likely level of non-payment and recovery costs. ANPR was not proposed at the 2009 public inquiry into the MGB scheme and had not therefore been subject to appropriate public scrutiny.

16. HBC said that the ANPR system is required to operate the “free flow” arrangement and would realise significant capital and revenue cost savings for HBC, so helping to

minimise the toll or charge needed to finance the project. The cost of the ANPR is commercially sensitive and HBC did not consider it relevant to the Order application.

Other matters

17. One objector considered that HBC's proposal to introduce a road user charging scheme for the MGB under the 2000 Act substantiated the argument made at the 2009 public inquiry that the TWA did not empower the building of any tolled road crossing. The objector considered also that HBC had not adequately informed the public about their intentions in applying for the Order or the effect of the proposed changes to the 2011 Order.

The Secretary of State's consideration

The principle of tolling or charging

18. The Secretary of State notes that the proposals in the Order application are essentially concerned with modifying the arrangements for collecting tolls or charges for use of the MGB and SJB and for enforcing payment. He therefore agrees with HBC that it is not relevant to his decision on this application to reconsider the principle of how the construction and operation of the MGB is funded. He nevertheless considers that nothing in the representations on this matter undermines the basis on which the scheme is being procured and that the interests of local residents and businesses would not be adversely affected by the introduction of tolls or charges.

Local User Discount Scheme

19. The Secretary of State agrees with HBC that as the powers for introducing the LUDS have been granted in the 2011 Order and are not subject to modification in the Order now applied for, it is not relevant to his decision on this application either to reconsider the justification for those powers or to review the way that they are being exercised by HBC. He is, in any event, satisfied that making provision for local discount schemes in relation to tolling or charging schemes is appropriate in principle and that there is nothing unreasonable in HBC's proposal to make a proportionate charge for those who would benefit from the LUDS to cover the necessary costs of administering the LUDS.

Enforcement powers

20. The Secretary of State accepts that, as a consequence of HBC's decision to adopt a "free-flow" charging system, it is necessary for HBC to have access to appropriate enforcement powers. In the context of any road user charging scheme in England made under the 2000 Act this purpose is served by the 2013 Regulations. He considers that it is entirely appropriate for HBC to seek access to those powers by introducing a road user charging scheme under the 2000 Act. The Secretary of State is further satisfied that it is appropriate and reasonable for HBC to exercise powers under the 2011 Order to appoint a private sector concessionaire to operate the tolling or charging system on its behalf.

Data protection

21. The Secretary of State agrees with HBC that the arrangements for the concessionaire to access DVLA's vehicle register are legitimate having regard to the 2002

Regulations and the 2011 Order, and notes that the Order now applied for would not alter the relevant provisions. He considers that should either HBC or the concessionaire contravene data protection principles this would be a matter for enforcement under data protection legislation. He is satisfied that nothing raised in the representations on this matter weighs against the making of the Order.

Automatic Number Plate Recognition

22. The Secretary of State accepts that the cost of adopting the ANPR system as part of a “free-flow” charging scheme is a commercial matter for HBC and is not relevant to his decision this application. He nevertheless considers that ANPR is an established and appropriate feature of charging schemes where they have been adopted and that this application has given the public a fair opportunity to scrutinise and comment on HBC’s proposal to adopt “free-flow” charging.

Other matters

23. The Secretary of State does not accept that there was any illegality in the decision to make the 2011 Order. He is further satisfied that HBC carried out appropriate consultation about the proposals in the Order, as reported in the “Public Consultation Report” which accompanied this application.

Overall conclusion on the case for the Order

24. The Secretary of State has considered all the points made by the objectors to this application and by HBC. He is not persuaded that any of the objections raise matters which would justify refusing to make the Order. Rather, he is satisfied that the proposals in this application are lawful, appropriate and justified in the circumstances described by HBC.

25. The Secretary of State has noted that a road user charging scheme under the 2000 Act allows for enforcement by entry into a motor vehicle, and that in the circumstances where no road user charging scheme is in force under the 2000 Act, the Order would confer power on HBC to enter vehicles to ascertain whether equipment carried in the vehicle for the purpose of collecting tolls or charges under the 2011 Order had been interfered with so as to avoid payment. The Minister for Policing, Fire, Criminal Justice and Victims gave approval on 12 July 2016 for the inclusion of that power in the Order in accordance with the requirements of the Home Office Powers of Entry Gateway.

Secretary of State's decision

26. For the reasons given in this letter, the Secretary of State has decided to make the Order applied for by HBC, subject to a number of modifications to ensure that it would have the effect intended by HBC and in the interests of clarity. He is also changing the title of the Order to “The River Mersey (Mersey Gateway Bridge) (Amendment) Order to reflect more accurately the content of the Order. He considers that none of these modifications would make a substantial change in the proposals such as would require notification to affected persons under section 13(4) of the TWA.

Notice under section 14 of the TWA

27. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications, for the purposes of section 14(1)(a) and section 14(2) of the TWA. Your clients are required to publish newspaper notices of the determination in accordance with section 14(4) of the TWA.

Challenge to decisions

28. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Distribution

29. Copies of this letter are being sent to those who objected to this application.

Yours faithfully,

Martin Woods

RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the grounds that—

- it is not within the powers of the TWA; or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

A person who thinks they have grounds for challenging the decision to make the Order is advised to seek legal advice before taking action.