



# Department for Transport

A556 Project Team  
Highways Agency  
9<sup>th</sup> Floor, Piccadilly Gate  
Store Street  
Manchester  
M1 2WD

Martin Woods  
Head of the TWA Orders Unit  
General Counsel's Office  
Department for Transport  
Zone 1/14-18  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Enquiries: 020 7944 2487

E-mail: [transportandworksact@dft.gov.uk](mailto:transportandworksact@dft.gov.uk)

Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)

Our Ref: TWA 8/1/9

28 August 2014

Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED A556 (KNUTSFORD TO BOWDON IMPROVEMENT) DEVELOPMENT CONSENT 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 report of the Examining Authority, Peter Robottom MA(Oxon) DipTP MRTPI MCMI, who conducted an examination into the application made by the Highways Agency ("HA") on 23 April 2013 for the A556 (Knutsford to Bowdon Improvement) Development Consent Order ("the Order") under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008 ("the 2008 Act").

2. The examination of the application began on 3 September 2013 and was completed on 3 March 2014. The examination was conducted on the basis of written evidence submitted to the Examining Authority and by a series of hearings held in Knutsford between 11 December 2013 and 20 February 2014.

3. The Order would grant development consent for the construction of a 7.5 kilometre improvement of the A556 trunk road between M6 Junction 19 near Knutsford, Cheshire and M56 Junction 7 near Bowdon, Greater Manchester to a consistent standard of modern dual carriageway. The new section of the route would bypass Tabley, Mere and Bucklow Hill with responsibility for the bypassed section of the current A556 being transferred to the local highway authority, Cheshire East Council ("CEC"). The Order would also authorise changes to existing adjacent local roads, improvements to facilities for non-motorised traffic and the compulsory acquisition and use of land for the purposes of the project.

4. Enclosed with this letter is a copy of the Examining Authority's report. The proposed development is described in section 3 of the report. The Examining Authority's findings are set out in sections 5 to 8 of the report, and his overall conclusions and recommendations are at section 9 of the report.

### **Summary of the Examining Authority's recommendations**

5. The Examining Authority recommended that the Order be made, in the form set out in Appendix I to his report.

## **Summary of Secretary of State's decision**

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

## **Secretary of State's consideration**

7. The Secretary of State's consideration of the Examining Authority's report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Examining Authority's report ("ER") and references to requirements are to those in Schedule 2 to the Order.

## **Legal and policy context**

8. The Secretary of State agrees with the Examining Authority that, since no National Policy Statement ("NPS") has yet been designated for highways, he is required to decide this application in accordance with section 105 of the 2008 Act (decisions in cases where no national policy statement has effect). However, like the Examining Authority, he considers that the consultation draft of the NPS for National Networks published on 4 December 2013 should be given some weight as its provisions are relevant and important considerations in assessing this project (ER 4.6-8, 5.12-13). For the purposes of section 105, he agrees with the Examining Authority that the other policies and legislation referred to at ER 4.1-52 are relevant and important matters to be taken into account in deciding this application.

9. The Secretary of State has considered the changes made to the application referred to by the Examining Authority at ER 4.53-57. He agrees with the Examining Authority that taken together these have not changed the application to the point where it is a different application. He is satisfied that it is within the powers of section 114 of the 2008 Act for him to make the Order in the form recommended by the Examining Authority, taking into account also the further changes to the Order referred to at paragraphs 37 to 41 below.

10. The Secretary of State agrees with the Examining Authority's judgement that the Government transport policy documents referred to at ER 4.19-27 provide clear support for the proposals in the application, including their identification as a priority project in the National Infrastructure Plan. He agrees similarly that the saved transport policies of the Macclesfield Local Plan 2004 are supportive of the proposals in the application. The areas of potential conflict with the environmental policies of the Local Plan identified by the Examining Authority, particularly as regards the effects on the setting of listed buildings and on the Green Belt, are considered below (ER 5.7-11).

11. The Secretary of State agrees with the Examining Authority's conclusions as to the adequacy of the environmental statement ("ES") in relation to the consideration of cumulative impacts and alternatives, some aspects of which some interested parties had contested (ER 5.15-21). He is further satisfied that the ES taken with the First Addendum and Second Addendum submitted by the applicant (ER 4.2-4) and the evidence submitted during the examination provide sufficient information for the purposes of his decision on this application.

## **Principle of the development: traffic flows and modelling**

12. The Secretary of State agrees with the Examining Authority that the need to improve the A556 is primarily established by the need to respond to the problems on the existing route in terms of adverse safety, congestion and environmental conditions, unreliable journey times and severance. The case for the project is also reinforced by the projected increases of traffic on the strategic road network referred to in the draft National Networks NPS. He notes that all interested parties accepted the need to address these problems, although many do not agree as to the extent or nature of the improvements that are required (ER 5.22-23).

13. The Secretary of State has considered the Examining Authority's assessment of the evidence submitted during the examination about traffic flow projections and the HA's traffic modelling (ER 5.24-34). He agrees with the Examining Authority that it seems inevitable that the existing problems on the A556 will increase with the likely increase in traffic flows (ER 5.27-28). He is satisfied also that the HA's traffic modelling had been thorough and was sufficiently robust to be a basis for the examination of this application (ER 5.35).

## **Alternatives**

14. The Secretary of State notes that the Examining Authority explored all possible alternatives to the HA's proposals and he is satisfied that those who disagree with those proposals have had sufficient opportunity to express their views both before the application was submitted and during the course of the examination (ER 5.20, 5.37). The Secretary of State has considered all the representations about alternative options and localised variants of the HA's proposals as summarised at ER 5.38-67 and 5.74-92. He has concluded, for the reasons given by the Examining Authority, that none of those alternatives to the proposals in the application should be pursued. With regard to value for money of the HA's proposals, the Secretary of State agrees with the Examining Authority that they represent satisfactory, and probably high, value for money (ER 5.69-73).

## **Air quality and emissions**

15. The Secretary of State agrees with the Examining Authority that balancing large improvements for some properties against a larger number of small adverse consequences would result in there being no significant air quality effects at either 2017 (with the initial 60 mph speed limit in place) or future dates (ER 5.97-105). He is satisfied also that the scheme is consistent with the approach to air quality that is set out in paragraphs 5.2-5.12 of the draft National Networks NPS (ER 5.107).

## **Noise and vibration impacts**

16. The Secretary of State notes that in both the short term and the longer term there would be perceptible increases in noise for a number of dwellings or other sensitive receptors, but that more would experience perceptible noise reductions. He agrees with the Examining Authority's conclusion that, taking into account the substantial mitigation measures proposed, the project would clearly produce a net benefit in terms of operational noise (ER 5.110-113). The Secretary of State agrees also that constructional noise and vibration impacts would be capable of being addressed through the Construction Environmental Management Plan ("CEMP") (ER 5.114-115). He is satisfied overall that

the proposals are consistent with paragraphs 5.171-5.183 of the draft National Networks NPS (ER 5.117).

### **Biodiversity**

17. The Secretary of State has considered the ecological impacts of the project and the proposed mitigation measures as summarised at ER 5.118-122. With regard to matters outstanding at the end of the examination, he notes that on 12 June 2014 Natural England sent a "Letter of No Impediment" to the HA indicating that it was satisfied with the HA's mitigation proposals for great crested newts. The Secretary of State agrees with the Examining Authority's overall conclusion that there will be a short-term adverse effect on ecology and biodiversity; and that once the mitigation is fully effective through the maturing of the landscape planting and its proper management, that effect should be offset with a possibility that there could ultimately be a net ecological benefit (ER 5.123).

18. The Secretary of State confirms that, in coming to a conclusion on these matters, he has had regard to the conservation of biodiversity as required by section 40 of the Natural Environment and Rural Communities Act 2006. He confirms also that, with regard to the Conservation of Habitats and Species Regulations 2010, he has considered the Report on the Implications for European Sites at Appendix F to the ER and the responses to it. The Secretary of State agrees with the Examining Authority that the project will not give rise to a likely significant effect on any European Site within the locality, either alone or in combination with other projects or plans, and that no appropriate assessment is therefore required under those Regulations before deciding whether to give consent for the project (ER 6.9-15).

### **Flood risk, water quality and resources**

19. The Secretary of State has considered and agrees with the Examining Authority's findings at ER 5.125-127 about the impacts of the project on flood risk, water quality and resources. He is satisfied that the project should not have any adverse effect on ground or surface water resources; and that it is consistent with the approach of the draft National Networks NPS to these matters and with the Water Framework Directive (ER 5.128).

### **Dust, pollutants and lighting**

20. The Secretary of State is satisfied that any issues in respect of dust and pollutants during construction will be addressed through the CEMP which will be secured through the requirements of the Order (ER 5.129). With regard to lighting, the Secretary of State agrees with the Examining Authority's conclusion that in general the proposed lighting will, in terms of environmental conditions, be an improvement over the existing situation and should not give rise to harm (ER 5.130-132).

### **Historic environment**

21. The Secretary of State has considered the Examining Authority's assessment at ER 5.133-148 of the effect of the project on the historical environment, in particular on the settings of listed buildings. He agrees with the Examining Authority's conclusion that taken as a whole and in line with the approach of the draft National Networks NPS the effect on the historic environment and cultural heritage must be regarded as a negative factor in weighing up the acceptability of the project as a result of the adverse effect on aspects of the settings of Over Tabley Hall and Denfield Cottage (ER 5.150).

## **Land use**

22. The Secretary of State has noted the concerns of interested parties about the loss of open countryside and farm land and, in particular, that some 98% of the permanent land take would be agricultural land, much of it being regarded as “best and most versatile” (ER 5.151-153). He agrees with the Examining Authority that overall the effect on land use through loss of agricultural land and the particular impact on certain holdings is an adverse effect to weigh in the balance (ER 5.154).

## **Landscape and visual impacts**

23. The Secretary of State has noted the Examining Authority’s assessment at ER 5.155-157 of the impacts of the project at various locations along the route of the proposed road. He accepts that there would inevitably be some adverse localised visual impacts particularly during construction and in the opening year when there will be a linear scar along the route. However, the Secretary of State agrees, for the reasons given by the Examining Authority, that the overall adverse effect will be modest with the new road generally absorbed into the landscape by the design year.

## **Socio-economic impacts**

24. The Secretary of State notes that, apart from value for money considerations, the economic justification for the project is derived from the importance of the link in the strategic network between Birmingham and Manchester and the access which it provides to Manchester Airport and related Enterprise Zones. He agrees with the Examining Authority that in terms of the predicted contribution in relieving congestion on the strategic road network and improving access to key economic locations, there is likely to be an economic benefit and a wider socio-economic benefit that can be attributed to the project (ER 5.159-161).

## **Safety and good design**

25. The Secretary of State has considered and agrees with the Examining Authority’s findings at ER 5.162-167 concerning the safety implications of the project. In particular, he agrees with the Examining Authority that, overall, the extent of safe local connectivity for motorised traffic should be increased and that non-motorised users will benefit from the new route along part of the de-trunked A556.

26. In relation to both landscape design and the design of structures, the Secretary of State agrees with the Examining Authority that there is no conflict between the HA’s proposals and the section in the draft National Networks NPS on the criteria for ‘good design’ (ER 5.168).

## **Nuisance**

27. The Secretary of State has considered the potential for the project to cause a statutory nuisance under section 79(1) of the Environmental Protection Act 1990. He agrees with the Examining Authority that taking into account the mitigation measures proposed and the controls that would be secured by the CEMP no statutory nuisance would be likely to arise (ER 5.169-171).

## **Overall conclusion on the merits of the project**

28. The Secretary of State has considered the Examining Authority's assessment of the project at ER 5.172-180 in relation to Green Belt policy, the development plan and the National Planning Policy Framework ("NPPF"). He agrees with the Examining Authority's overall conclusion that the material considerations weighing in favour of the project clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm, including the adverse effect on the setting of certain listed buildings and the loss of agricultural land. He agrees that this amounts to very special circumstances such as to justify development within the Green Belt.

29. The Secretary of State agrees further that the project is generally in conformity with the policies of the development plan notwithstanding any conflict with detailed environmental policies. He is, similarly, satisfied that there is overall consistency with the NPPF and that no specific policies in the NPPF indicate that the development should be restricted; and that the project complies with the relevant sections of the draft National Networks NPS.

## **Infrastructure Planning (Environmental Impact Assessment) Regulations 2009**

30. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that, in coming to the above conclusions, he has taken into consideration all the environmental information as defined in regulation 2(1) of those Regulations. For the purposes of regulation 23(2)(d)(iii), the Secretary of State considers that the main measures to avoid, reduce and, if possible, offset the major adverse environmental impacts of development are those specified in the requirements, including the Environmental Management Plan referred to in requirement 4.

## **Compulsory acquisition matters**

31. The Secretary of State has considered the compulsory acquisition powers sought by the HA against the tests concerning compulsory acquisition in sections 122 and 123 of the 2008 Act, relevant guidance and the Human Rights Act 1998. He agrees with the Examining Authority that there is a compelling case in the public interest for the generality of the land to be acquired compulsorily—subject to the exceptions referred to at ER 7.123-124—since there are no practicable alternatives to meet the objectives of the project and the public benefits of the proposals outweigh the loss to private interests or the restrictions imposed on those interests. He notes also that funding for the project is assured from the Department for Transport's committed roads programme to meet all costs potentially arising from the project (ER 7.34-39, 7.122)

32. The Secretary of State has taken into account the cases of the affected persons and the Examining Authority's conclusions in relation to each land-holding as set out at ER 7.27-30 and 7.41-116. He agrees with the Examining Authority that, subject to the exceptions referred to at ER 7.123-124, all the land detailed in the "Rev 2" series of land plans and the "Rev 2" book of reference is required for, or is required to facilitate or is incidental to, the development to which the development consent applied for relates (ER 7.121). The Secretary of State agrees also that the requirements of Article 1 of the First Protocol to, and Article 6 of, the European Convention on Human Rights have been met and that Article 8 is not engaged for the reasons given by the Examining Authority (ER 7.117-120).

33. As regards the exceptions where the Examining Authority concluded that the public benefit does not outweigh the harm to private interests, the Secretary of State agrees that the compulsory acquisition should be confirmed in accordance with Variant Land Plans 3/7, 6/7 and 7/7 (ER 7.123).

34. Specifically, in relation to the proposed compulsory acquisition of land to create a cycle track, the Secretary of State notes that in ER 7.116 the Examining Authority has referred to the HA's concerns that the "Highway Acts" do not contain sufficient powers to allow for the creation of a cycle track on land it does not own. The Secretary of State considers that this reference was intended to be to the 2008 Act, not the Highways Act 1980, as in the HA's REP 155 (at paragraphs 19-21). The Secretary of State agrees with the Examining Authority's conclusion that section 120 of the 2008 Act is sufficiently wide to allow for the inclusion of a power in a development consent order to create a public right of way over land it does not own without having to acquire that land. Further, paragraph 2 of Schedule 5 to the 2008 Act specifically provides that a development consent order can make provision for "[T]he creation, suspension or extinguishment of, or interference with, interests in or rights over land ..., compulsorily or by agreement", which in the Secretary of State's view would include the creation of a public right of way, including a cycle track, over land which an applicant did not own. The Secretary of State has also noted the HA's concerns that it is not clear how compensation is provided to a land owner where a right is created over their land rather than the land being acquired (paragraph 21(c) of REP 155). However he considers that the modification of the compensation enactments provided for in Schedule 6 to the Order provides the necessary mechanism.

35. As noted at paragraph 17 above, on 12 June 2014 Natural England issued a "Letter of No Impediment" in relation to the mitigation measures proposed by the HA between Chapel Lane and Millington Hall Lane for great crested newts. The Secretary of State considers that in the light of this agreement, compulsory acquisition should be confirmed in accordance with Variant Land Plan 5/7, with corresponding amendments to Schedule 5 to the Order specifying the new rights and restrictions over plots 5/3d and 5/3h in the terms suggested by the HA should the case for compulsory acquisition not be accepted (7.102, 124).

### **Draft Order, requirements and legal agreements**

36. The Secretary of State has considered the Examining Authority's conclusions on the Order at ER 8.1-40. Subject to the exceptions detailed in the following paragraphs he agrees that the form of the Order set out in Appendix I to the ER is appropriate for the implementation of the project.

37. In article 2(1) (interpretation), in the definition of "cycle track", the modification to the definition taken from section 329(1) of the Highways Act 1980 has been deleted because this would limit the scope of the further development permitted under paragraph (a) at the end of Schedule 1 (authorised development), which appears not to have been intended (see ER 8.6). Further, the original Highways Act definition does not appear to prevent the creation of a cycle track that includes a right of way on foot. The entry in column (4) of Part 1 of Schedule 4 (permanent stopping up of streets) relating to Footpath ROS FP13 has, however, been adjusted to make clear that the replacement cycle track is to include a right of way on foot.

38. With regard to article 20 (compulsory acquisition of rights), the Secretary of State agrees with the Examining Authority that it is appropriate in the circumstances of this case to authorise the HA to impose restrictive covenants over the plots of land detailed in Schedule 5 to the Order, including those referred to in paragraph 35 above (see ER 8.10). He is satisfied that in relation to those plots outright acquisition is not justified and that the nature of the development proposed is such that restrictions might need to be imposed on the future use of the land to protect that development or access to it. He notes further that in this case some of the affected landowners have argued that the Order should be amended to authorise only the minimum possible permanent land-take.

39. The Secretary of State is not, however, persuaded that it is appropriate to give a general power to impose restrictive covenants over any of the Order land as defined in article 2(1) in the absence of a specific justification for conferring such a wide-ranging power in the circumstances of this project and without an indication of how the power would be used. He considers that it is more appropriate to leave the matter of restrictive covenants to be the subject of agreement between HA and individual landowners where this might be an alternative option to compulsory acquisition. He notes further from paragraph 13 of REP 155 that the HA proposes to continue with the approach of relying on its compulsory acquisition powers and subsequently offering the land back subject to restrictive covenants where this is possible. The Secretary of State has therefore decided to amend article 20 to limit the power to impose restrictive covenants to the plots of land detailed in Schedule 5 to the Order.

40. The Secretary of State has decided to delete article 30 (Crown land) which the HA had inserted for the avoidance of doubt (ER 8.16). He is satisfied that this provision is unnecessary having regard to section 135 of the 2008 Act and because the Order cannot in any event bind the Crown without the agreement of the relevant Crown authority.

41. The Secretary of State has made a number of other minor textual amendments to the Order set out in Appendix I to the ER in the interests of clarity, consistency and precision, and in order to conform with the current practice for drafting Statutory Instruments. He considers that none of these changes, either individually or taken together, materially alter the effect of the Order.

42. The Secretary of State agrees with the Examining Authority that the two legal agreements between the HA and CEC referred to at ER 8.41 are proportionate in relation to the proposed development and necessary to make it acceptable in planning terms by securing essential mitigation. The HA submitted to the Secretary of State on 27 August 2014 a copy of a signed and sealed undertaking on the matters referred to in the Heads of Terms set out at Annex G to the ER.

### **Representations since examination**

43. The Secretary of State has received representations from five interested parties since the examination closed (all of which are being made available on the Planning Inspectorate's website). He does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to other interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the Examination Authority's report.

### **Secretary of State's conclusions and decision**



44. For all the reasons given in this letter, the Secretary of State considers that there is a compelling case in the public interest for authorising the improvements to the A556 trunk road between Knutsford and Bowdon proposed by the HA. He has accordingly decided to accept the Examining Authority's recommendation at ER 9.14 and is today making the Order granting development consent and imposing the requirements as proposed by the Examining Authority, but subject to the modifications referred to at paragraphs 37 to 41 above. He confirms that, in reaching this decision, he has had regard to the local impact report submitted by CEC and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act.

### **Challenge to decision**

45. 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.

### **Publicity for decision**

46. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

**Martin Woods**

## ANNEX

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The A556 (Knutsford to Bowden Improvement) Development Consent Order (as made) is being published on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/north-west/a556-knutsford-to-bowdon-scheme/>.

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**