



GOVERNMENT OFFICE
FOR THE SOUTH EAST

Addressee as on envelope

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for the South East
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28 October 2009

Dear Sir or Madam

**HIGHWAYS ACT 1980
ACQUISITION OF LAND ACT 1981**

A23 HANDCROSS TO WARNINGLID WIDENING

1. I am 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 Inquiry”) held at the Slaugham Manor Training and Conference Centre, Staplefield Road, Slaugham, Haywards Heath, RH176AJ, on six sitting days between 16 and 25 June 2009, before Mr Colin Tyrrell, MA (Oxon), CEng, MICE, FIHT, an independent Inspector appointed by the Secretaries of State, to hear objections to, and representations about, the following draft Orders:

The A23 Trunk Road (Handcross to Warninglid Widening Slip Roads) Order 200 ;

The A23 Trunk Road (Handcross to Warninglid Widening Side Roads) Order 200 ; and

The A23 Trunk Road (Handcross to Warninglid Widening) Compulsory Purchase Order (No MP) 200 .

This letter conveys the Secretaries’ of State decision on the published draft Orders after considering the Inspector’s report.

2. These draft Orders, if made, would provide for the widening of 3.8km of the existing A23 between Handcross and Warninglid in West Sussex to dual three-lane carriageway standard running mostly on the line of the existing road (the overall scheme and its surroundings are described in more detail at paragraphs 3.1 to 3.12 of the Inspector's report), and the acquisition of land and rights necessary to carry out these works ("the published scheme").

THE INSPECTOR'S REPORT

3. 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".

4. The Inspector at IR 9.23 concluded that the need for the published scheme in terms of reducing congestion and accidents had been demonstrated. He went on to recommend at IR 10.2 that the three published draft Orders be made subject to the modifications referred to in his report, and the outcome of the public consultation regarding OA1, and also OA2, if the Secretaries of State agreed with the Inspector that the proposed alternative access in the published scheme at Handcross Market Garden does not comply with the provisions of the Highways Act 1980.

5. 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.

Decision on the Environmental Statement

6. The Secretary of State for Transport is satisfied that the requirements of European Directive No. 85/337/EEC, as amended by Directive No. 97/11/EC and Directive No. 2003/35/EC, implemented by sections 105A, 105B, 105C and 105D of the Highways Act 1980, have been complied with fully in respect of the published scheme ("the project" for the purpose of the Directive). The Secretary of State is also satisfied that the Environmental Impact Assessment undertaken for the project and the Environment Statement and its two addendums, have properly identified, assessed and addressed all significant environmental effects, and considered and given reasons for dismissing the main alternatives, as well as assessing the proposed measures to minimise these impacts. The Secretary of State is satisfied that members of the public and others concerned have been given reasonable opportunity to express their opinion before deciding whether to proceed with the project

to which the assessment relates. Therefore, having considered the Statement and addendums and any opinions expressed on them by the public and others, the Secretary of State has decided, to proceed with the project to which the assessment relates. For the purpose of section 105B(6) of the Highways Act 1980, publication of the Secretary of State's decision to proceed with the scheme will be given by public notice as set out in section 105B(7).

Decision on the published Orders

7. The Secretary of State for Transport is satisfied that the published scheme accords with the aims and objectives of the Government's White Papers "The Future of Transport – A Network for 2030", "A New Deal for Transport: Better for Everyone", and also the Government's sustainable development strategy, "Securing the Future".

8. The Secretaries of State are satisfied that the Inspector's conclusions cover all material considerations relevant to the scheme as a whole, and 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 Issue

10. The Secretaries of State note the Inspector's conclusions at IR 9.4 and IR 9.5 regarding the request from Mr Pritchard-Gordon summarised at IR 7.261 to IR 7.267 for the inquiry to be adjourned to allow proper consideration of the removal of Slaugham junction from the published scheme as proposed in OA1. The Secretaries of State are satisfied with the way the Inspector dealt with this matter and with his comments at IR 9.4. They are therefore satisfied, as a result, no one was prejudiced or prevented from putting forward their case at the time, and that the Inspector took into account all relevant evidence and came to a reasonable decision in the circumstances. The further consultation with interested parties referred to by the Inspector at IR 9.5 is explained in more detail in paragraph 12 below.

Slaugham Junction

11. The Secretaries of State note the Inspector's conclusions at IR 9.65 to IR 9.70 about the removal of Slaugham junction from the published scheme and his recommendation at IR 9.71 that OA1, which proposed the omission of Slaugham junction, should be further investigated with a view to adopting it as a change to the published

scheme. The Secretaries of State have considered the Inspector's findings and the benefits which the adoption of OA1 would deliver, and taken into account the concerns of some objectors about the increase in traffic on the side roads which is likely to occur with the adoption of OA1.

12. Having considered all the available evidence, the Secretaries of State have decided to accept the Inspector's recommendation that OA1 should be further investigated with a view to adopting it as a change to the published scheme. In taking this decision, the Secretaries of State agree with the Inspector at IR 9.5 and IR 9.70 that to adopt OA1 into the scheme, this would not amount to a minor change which could be included in the Orders without the further process of consultation envisaged in paragraph 8(3) to schedule 1 of the Highways Act 1980. However, the view is taken that although this would be regarded as a "substantial change" to the published draft Orders for the purposes of the Highways Act 1980, the Secretaries of State have decided, as a matter of fact and degree, that the scale of this change when compared to the overall scheme, does not warrant this element to be dealt with by supplementary Orders. The procedure in paragraph 8(3) to schedule 1 of the Highways Act 1980, that allow those who are affected by this change and other interested parties to be consulted and their views taken into account before a final decision is taken, is considered the most appropriate for this purpose. Before reaching a final decision on this matter, the Secretaries of State will ask the Highways Agency to carry out this consultation by notifying any person who appears likely to be affected by the proposed modification and to give that person an opportunity of making representations. These will be forwarded to the Secretaries of State and a further letter conveying their decision will be issued in due course.

13. However, the Secretaries of State have also noted that the Inspector in making this recommendation was concerned about the increase in traffic on the side roads which might result from the adoption of OA1 (IR 9.68) and was not satisfied that the Highway Agency's traffic model was sensitive enough to reflect the changes that would occur as a result. They have therefore accepted the Inspector's recommendation at IR 9.70, for the reasons given by the Inspector, and will ask the Highways Agency to carry a more rigorous analysis and forecast of traffic on the minor road network affected by the adoption of OA1. This will form part of the consultation process referred to in paragraph 12 above and allow consultees to be better informed of the affects of OA1 on local roads.

Convenient Alternative Access to Handcross Market Garden

14. The Secretaries of State have noted the Inspector's comments at IR 9.6 to IR 9.8 regarding the proposed alternative access in the

published scheme to Handcross Market Garden. The Secretaries of State agree with the Inspector that this is a matter of law and a mandatory requirement under section 125(3) of the Highways Act 1980 that no Order authorising the stopping-up of a means of access to premises shall be made unless the Secretaries of State are satisfied that, either no access to the premises is reasonably required, or that another reasonably convenient means of access to the premises is available or will be provided. The Secretaries of State also agree with the Inspector at IR 9.7, that this matter cannot be dealt with by compensation as reported at IR 7.259.

15. In reaching a decision on this matter, it is noted at IR 7.258 that the proposed alternative access in the published scheme would have a substantial adverse impact on the Handcross Market Garden and without a suitable commercial access, the business would become unviable. It was also reported by the owner and operator of the Market Garden at IR 7.252 that the closure of the current direct access to his premises from the A23 would effectively end the business which was started in 1946 and continues to this day.

16. The Secretaries of State having considered all the evidence before them on this matter agree with the Inspector's opinion at IR 9.7 that the Highways Agency's proposal would not provide "another reasonably convenient means of access" to this commercial property and therefore fails the test in section 125(3) of the Highways Act 1980. The Secretaries of State are therefore minded to accept in principle the Inspector's recommendation at IR 9.55 that if the Market Garden should be provided with an access that would allow the business to continue, then OA2 should be considered for further investigation as a possible replacement for the relevant part of the published scheme. The Inspector found OA2 to be the best option from a number of other alternatives he considered.

17. However, to enable the Secretaries of State to reach a final decision on this matter, agreeable to all interested parties, it is considered important at this stage to bear in mind that OA2 is opposed by the National Trust because it would lead to an intensification of use of some local roads including the B2114 Staplefield Road which passes Nymans (IR 7.3 and IR 9.54). Furthermore, Slaugham Parish Council (IR 7.82), Warninglid Residents' Association (IR 6.21), and West Sussex County Council (IR 6.106) are also opposed to OA2 on grounds of traffic safety because of the additional traffic passing the entrances of the two schools in Handcross and its potential disruption to the delivery of the published scheme. Mr Kinnard, owner of the Market Garden also opposed OA2. The Secretaries of State have therefore decided because of these concerns and the fact that OA2 would require greater

land-take overall (IR 6.16), be ecologically worse than some of the other options (IR 6.17), and, if adopted, would delay the start of construction of the published scheme (IR 6.15), that it would be prudent in the circumstances to ask the Highways Agency to give further consideration to the other suggested alternatives that have been identified to resolve this problem, at the same time as considering OA2. These other alternatives were OA11a, OA11b, OA11c, OA12a and OA12b (IR 7.255 and IR 7.256), although it is acknowledged that some of these were also opposed to varying degrees, particularly where they impacted on National Trust land.

18. The Secretaries of State consider this approach to be the most appropriate in the circumstances because, as already reported at paragraph 13 above, the Inspector had some reservations about the Highways Agency's traffic model to provide traffic flow forecasts on the minor roads within the local network (IR 9.31), and it is acknowledged that OA2 would cause some alterations to traffic flows on local roads (IR 9.53). The Inspector was also concerned that he had seen no evidence of the traffic effect of OA2 in combination with OA1 (IR 9.54), and had reservations about the accuracy of the traffic modelling to represent changes in traffic flows on the side road network (IR 9.31, IR 9.32 and IR 9.54). This concern would also apply to some of the alternatives the Inspector considered.

19. The Secretaries of State have already asked the Highways Agency in paragraph 13 above to carry out a more rigorous analysis and forecast of traffic on the minor road network. They will also now ask the Highways Agency to ensure that this will show traffic flows as a result of adopting OA2, and the other alternatives, on the local road network. This will then form part of the consultation process on the Market Garden access and allow consultees to be better informed of the effects of OA2 on local roads, together with other alternatives considered alongside OA2.

20. To enable the Secretaries of State to reach a final decision on this matter, they will ask the Highways Agency to consult any person who appears likely to be affected by OA2 and the other access options to be considered, and to give that person an opportunity of making representations. These will then be forwarded to the Secretaries of State and allow them to take into account the weight of public opinion in deciding the best option and whether this option can be accommodated within the published draft Orders under the procedure in paragraph 8 to schedule 1 of the Highways Act 1980, or whether supplementary Orders will be required. A further letter conveying their decision will be issued in due course.

Nymans House and Gardens – National Trust

21. The Secretaries of State have noted the Inspector's conclusions in response to the National Trust's concerns about the increase in traffic noise coming from the scheme passing through the High Weald Area of Outstanding Natural Beauty and passes the boundary of the National Trust Nymans Estate, an outstanding 20th Century Garden registered Grade II* (IR 7.5 and IR 7.6) and the Inspector's response at IR 9.80. The Inspector recommended in IR 9.80 that the noise performance of the material used for the road surface should be given increased weight in recognition of the noise-sensitive nature of Nymans (IR 7.8). For the reasons given by the Inspector, the Secretaries of State accept the Inspector's conclusions and will ask the Highways Agency to give due consideration to the material used at the appropriate time to meet the Inspector's recommendation.

Facilities for Non-Motorised Users (NMUs)

22. The Secretaries of State note the Inspector's finding in IR 9.92 to IR 9.97 where he reported that the existing facilities for NMU's on the line of the road are very limited and then went on to summarise the current NMUs and equestrians network. It is also noted that the Inspector concluded at IR 9.98 that it would be reasonable that the Highways Agency should take appropriate measures to allow usage by all NMUs of the all-purpose A23 route where there is no ready alternative. However, the Inspector did not consider there was a strong case for a visually separated NMU route alongside the A23 trunk road north of C96 Staplefield Road, where there is already an alternative equestrian route via Park Road and the landscape impact of a 2 metre fence would be high (IR 9.99). For the avoidance of doubt, this section is therefore excluded from the Inspector's conclusion at IR 9.98. The Secretaries of State have accepted this conclusion, and for the reasons given by the Inspector, will ask the Highways Agency to include this into the published scheme where it is practicable to do so within the constraints of the published Orders.

23. The Secretaries of State also note that the Inspector has also considered the merits of OA15b, an upgraded NMU route between Staplefield Road at Slaugham and the service road, and OA15d, a connection between the upgraded NMU route and the enlarged FP14/15 underpass. He concluded at IR 9.106 that the package of OA15b with OA15d incorporating an underpass with 2.7 metre headroom should be investigated further as an appropriate improvement to the proposed NMU facilities. It is noted at IR 9.102 that the Highways Agency has already offered to provide a link for pedestrians between the verge level footway/cycleway and footpath14S as it approaches the subway under the A23, which is in effect OA15c (IR 5.67). The Secretaries of State

accept the Inspector's conclusion, for the reasons he has given, and will ask the Highways Agency to give further consideration to this matter and to decide whether it is practicable to include these proposals into the published scheme having regard to any additional land-take in the Compulsory Purchase Order which, if needed, would require the written consent of the landowner concerned.

Alternative Proposals

24. The Secretaries of State note at IR 9.118 that the Inspector reported the details of the 17 alternative proposals in Chapter 6 of his report and reached conclusions on their merits in IR 9.119. Of these he recommended that OA1, OA15b and OA15d (modified with 2.7 metre headroom) should be considered for adoption. He also recommended OA2 for further consideration, if an alternative access was required to Handcross Market Garden. These have been addressed in the preceding paragraphs. He also commended the change of position of the verge safety barrier alongside the cycle/footway referred to in IR 9.95 and the short bridle-path link at Park Road referred to in IR 9.49 as detailed design matters. He considered no other variations were justified.

Modifications to Published Draft Orders

25. The Secretaries of State have noted the Inspector's comments at IR 9.120 and IR 9.121 about the Highways Agency's proposed modifications to the published draft Orders that take account of preferred changes to the published scheme. They would draw to the attention of the Agency the Inspector's finding that the amended Compulsory Purchase Order does not take account of two additional plots which have been omitted at Anne's Wood Stream which would be required both with the published scheme and OA15b. He also found at IR 9.9 that landowners' agreements had not been provided for changes proposed to the published Compulsory Purchase Order. The Secretaries of State are satisfied that these modification can be dealt with at the Order making stage but would remind the Agency that paragraph 5 to schedule 1 of the Acquisition of Land Act 1981 states that changes to the published draft Compulsory Purchase Order that increase land-take cannot be made unless all interested persons consent. Therefore, unless the Agency can obtain the written consents of all landowners before the Compulsory Purchase Order is made, a supplementary Order would need to be published.

Post-Inquiry Correspondence

26. Since the close of the inquiry, correspondence has been received from Mr Ian Till, the Reverend Pole, Mr Harvey Meares, and the written response by the Highways Agency to questions asked at the inquiry by

Chris Boocock, Mr M Kinnard, Mrs E Dean, Norman Rigglesworth of Slaugham Parish Council, Mr G Pritchard-Gordon and Richard Walters, on behalf of Country Gardens. The Secretaries of State have considered this correspondence carefully alongside the Inspector's report in reaching their decision. However, they are satisfied that the matters raised in the post-inquiry correspondence do not cause them to disagree with the Inspector's conclusions and recommendations.

THE PUBLISHED SCHEME

27. In conclusion, the Secretaries of State have decided to proceed with the published scheme by making the draft Orders, as recommended by the Inspector at IR 10.2, with the modifications set out in this letter. A decision on OA1 and OA2, or possibly one of the other alternatives, will be the subject of a further letter from the Secretaries of State in due course.

ORDERS TO BE MADE

28. In the light of the above, the Secretary of State for Transport will make shortly the published draft Orders listed in paragraph 1 above, as recommended by the Inspector, subject to the proviso in paragraph 25 above in regard to the Compulsory Purchase Order and the need to obtain the landowners written agreement for an additional land-take, and the outcome of the further consultation regarding OA1 and the alternative access to Handcross Market Garden.

29. When the public notice referred to in paragraph 6 above 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 whatever.

30. Public notice will also 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.

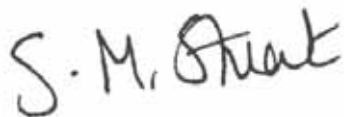
COMPENSATION

31. After the Compulsory Purchase Order 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.

AVAILABILITY OF INSPECTOR'S REPORT

32. A copy of this letter and the Inspector's report has been sent to statutory objectors and to any other person who, having appeared at the 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 Stephen Dapaah, Telephone number 01483 884826 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

A handwritten signature in black ink that reads "S. M. Stuart". The signature is written in a cursive style with a large initial 'S'.

Deputy Regional Director
Government Office South East