

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (WATERBROOK ASHFORD) (EU EXIT)
SPECIAL DEVELOPMENT ORDER 2019

2019 No. 1230

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This Special Development Order (SDO) grants planning permission for the use of land at Waterbrook, Sevington, Kent. The land is identified on the illustrative plan referred to in the SDO. The instrument allows the site to be used for stationing and processing of vehicles and the installation and siting of temporary facilities, services, structures and infrastructure that are ancillary to this use. This is a temporary permission which expires on 31st December 2020. This is an important component of the Government's preparations for a 'no deal' EU Exit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Ministry regrets that it has not been possible to comply with the normal procedure for negative statutory instruments, whereby the instrument would not come into force earlier than 21 days after it is laid.
- 3.2 This reflects, however, the rapidly moving work on the 'no deal' EU Exit preparations. Moreover, prior to making the SDO, a range of environmental and other analysis needed to be undertaken before the Ministry could consider the potential impact of the proposed development and undertake targeted engagement with relevant stakeholders. The urgent need to ensure the site has planning permission to provide the new use in time for preparatory works to be completed prior to the UK's exit from the EU, taken with the detailed work needed before the SDO could be made, we consider the breach of the 21-day rule for this SDO is justified.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Sections 59 and 60 of the Town and Country Planning Act 1990 give the Secretary of State the power to grant planning permission in relation to specific sites under a special development order (“SDO”). Such planning permission may be made unconditionally or subject to such conditions or limitations as may be specified.

7. Policy background

What is being done and why?

- 7.1 The measure is part of the Government’s preparations to mitigate the effects of cross-Channel travel disruption on the Kent and wider road network in the event of a ‘no deal’ departure from the EU on 31 October 2019.
- 7.2 The Dover strait ports (Dover and Eurotunnel) have the majority of EU goods entering and leaving the UK. Therefore, the ports are designed to have limited customs and lorry space as lorries roll on and off the ferries/shuttle (ro-ro ports). This will change in the event of a ‘no deal’ EU Exit.
- 7.3 If the UK leaves the EU without a deal, there will be immediate changes to the procedures that apply to businesses trading with the EU. Hauliers who arrive at the border without the required paperwork risk not being able to proceed across the Channel and may create disruption to the transport network in Kent. Therefore, in preparation for the UK leaving the EU on 31 October, Her Majesty’s Government are working closely with local agencies to expand capacity with the creation of temporary holding and facilities for government services, particularly customs.
- 7.4 The planning permission allows regulatory checks to be carried out away from areas that have a high existing demand and are close to capacity in the event of EU Exit, will face a substantially greater volume of traders undergoing these customs procedures.
- 7.5 The site will act as an office for starting and ending transit movements of goods to and from the UK, allowing goods to be presented under the operational arrangements of the Common Transit Convention (CTC). It will also accommodate the wet stamping on Admission Temporaire / Temporary Admission (ATA) Carnet documentation. Areas of the site will be used as holding facilities, known as turnaround locations, for HGVs with incomplete customs documents, allowing them a period of time to obtain the correct documentation. A small number of spaces will be used by DVSA (Drivers Standards and Vehicles Standards Agency), to impound unroad worthy vehicles that are unable to continue their journeys safely. In addition, a low volume of checks on specimens of species included in the Annex to Council Regulation (EC) No 338/97 will be handled at this location. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is implemented in the EU through a set of regulations known as the EU Wildlife Trade Regulations. Regulation (EC) No 338/97 is the principle regulation.
- 7.6 By providing this additional capacity the site will help facilitate the flow of trade and support strategic traffic management in the Dover Straits area.

- 7.7 In order to mitigate against potential impacts the SDO grants planning permission for such use subject to a number of conditions and limitations. The SDO limits the number of vehicles that can be stationed on the land at any one time and only vehicles that are directed by site officials to be stationed on the site may do so. Where the site operator intends to station goods vehicles on any part of the land other than parking areas A and B (as illustrated in the plan of the land appended to the order), the approval of the Secretary of State is required.
- 7.8 The SDO does not allow certain activity to take place on the land, for example it does not permit:
- goods vehicles to be stationed anywhere other than areas of hard standing
 - the refuelling and unloading of goods vehicles (other than incidentally);
 - any structure, works, plant, or machinery to be on any areas other than areas of hard standing;
 - the land to be used for the stationing of certain dangerous goods e.g. explosive material;
 - goods vehicles carrying live animals, other than in limited circumstances.
- 7.9 The SDO also applies several conditions, for example:
- the engines of stationed goods vehicles must be switched off;
 - any hard standing must be kept in good repair;
 - the surface and foul water drainage systems must be kept in good repair;
 - any artificial lighting must be arranged to minimise light spill;
 - any structures on the site must not exceed 4.5 metres in height;
 - any temporary structures collecting sewage, such as portacabins, that are not connected to mains sewers must be emptied regularly;
 - copies of rules, policies and plans relating to the operation of the site must also be approved by the Secretary of State; and
 - regular monitoring and reporting of the effects of the use on neighbouring roads.
- 7.10 The area of land to which this SDO applies is shown on a map, a copy of which is available for inspection at the offices of the Secretary of State for Communities and Local Government and another copy at the offices of Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL.
- 7.11 The planning permission granted by this SDO is temporary and the use will cease on 31 December 2020. With the exception any structures, works, plants or machinery which the Secretary of state gives approval to remaining, the land must be restored to its original condition by 31 March 2021. This includes removal of all structures, works, plants or machinery brought onto the land relating to the use.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it relates to preparations for exiting the European Union in the event of No Deal.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

- 10.1 In considering the proposed development at this site, the Ministry has carried out targeted engagement with stakeholders to invite representations on the potential impacts of the development. This has included direct engagement with the Environment Agency, Natural England, Historic England, Highways England, the Health and Safety Executive, the Highways Authority (Kent County Council), the Local Planning Authority (Ashford Borough Council), Kent Fire and Rescue, and Kent Police. Their responses were not in opposition but identified some issues they would like addressed as part of this work. We believe these issues are manageable and have included conditions within the SDO as a direct response. Where concerns were expressed, we have sought to address these by including conditions.
- 10.2 A number of respondents requested assurances that works to Junction 10A of the M20 would be completed and operational on 31 October 2019 with signage and other measures to ensure the traffic flows are maintained. These concerns have been addressed by requiring regular monitoring and reporting of the effects of the use on neighbouring roads and by the Secretary of State needing to be satisfied that roadworks to Junction 10A of the M20 are sufficiently advanced for the site to be operational.
- 10.3 Both Ashford Borough Council and Natural England raised the need for the conditions of an earlier planning consent to be implemented prior to the site being operational: the SDO addresses this for example, by requiring the provision of acoustic fencing.
- 10.4 Points raised by the Environment Agency have been addressed through the limitations and conditions on the site relating to for example, the repair and upkeep of hard standing and foul and surface water drainage systems and restrictions on which dangerous goods can be stationed on the site.

11. Guidance

11.1 Not relevant.

12. Impact

- 12.1 No significant long-term impact is expected from this instrument as it is a temporary measure. This instrument does not place any additional regulatory burden upon the private or public sector.
- 12.2 This instrument grants temporary permission for the use of the land at Waterbrook as additional capacity for the stationing and processing of vehicles to alleviate potential congestion and the impact of this on the Kent and wider road network in the event the UK leaves the EU without a deal. The use of the site has been negotiated with the land owner by a third-party mediator through a market-rate lease and does not disrupt any existing business operations.
- 12.3 Through the granting of permission this instrument enables public bodies to undertake regulatory checks away from areas that have a high existing demand, which will temporarily face a substantial increase in the volume of checks if the UK leaves the EU without a deal. It includes measures, conditions and limitations as summarised in

section 7 above to help address some matters relating to the local road network and infrastructure raised by relevant public bodies.

13. Regulating small business

- 13.1 This instrument does not place any additional regulatory burdens upon small businesses.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause as the instrument is not regulatory in nature.

15. Contact

- 15.1 Michael Salmon at the Ministry of Housing Communities and Local Government Telephone: 0303 444 2891 or email: Michael.salmon@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Simon Gallagher, Director of Planning, at the Ministry of Housing Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Esther McVey, Minister of State for Housing at the Ministry of Housing Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.