

**Application by Highways England for an Order Granting Development Consent for the A38 Derby Junctions Scheme
Table for Examining Authority's Rule 17 request for further information dated 19 March 2020.**

Issued on 19 March 2020

The following table sets out the Examining Authority's request for further information. The further written questions are directed to specified parties, but responses will also be accepted from other Interested Parties.

Responses are requested by Deadline 9, on Thursday 26 March 2020.

Any comments on the responses are requested by Deadline 10, on Thursday 2 April 2020.

Abbreviations

dDCO	draft Development Consent Order [REP6-002]	ExA	Examining Authority
DCC	Derbyshire County Council	OEMP	Outline Environmental Management Plan [REP6-007]
DCiC	Derby City Council	CEMP	Construction Environmental Management Plan
EA	Environment Agency	HEMP	Handover Environmental Management Plan
EBC	Erewash Borough Council		

The Examination Library is at the following link: <http://infrastructure.planninginspectorate.gov.uk/document/TR010022-000671>

No	Question to	Reference	Question
1.	The draft Development Consent Order		
	Reference is made to the draft Development Consent Order submitted by the Applicant at Deadline 6 [REP6-002].		
	Part 1 – Preliminary		
1.1.	Derby City Council (DCiC) Derbyshire County Council (DCC)	Article 3 Disapplication of legislative provisions	a) Are DCiC and DCC content with the proposed disapplication of s.23 of the Land Drainage Act 1991 and with any other provisions required for them to accept disapplication, including those for consultation during the detailed design stage in the draft Development Consent Order (dDCO) and Outline Environmental Management Plan (OEMP)? b) Are DCiC and DCC content with the proposed disapplication of their permit schemes and with any other provisions required for them to accept disapplication, including those in Articles 11 and 12, in the Traffic Management Plan, and in the OEMP?
1.2.	Applicant Environment Agency (EA)	Article 3 Disapplication of legislative provisions	Does the Applicant accept the EA's proposed addition of 3(f) " <i>Regulation 12 (requirements for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 in relation to the carrying on of a flood risk activity as defined within Schedule 25 Part 1 Paragraph 3 (1) of the said Regulations</i> "? If not, please could the Applicant and the EA agree otherwise?
1.3.	DCiC DCC Affected Persons	Article 4 Maintenance of drainage works	a) Are the Lead Local Flood Authorities content that the dDCO provisions would not prevent them from fulfilling their statutory duties? b) Do any parties have any concerns with respect to the effect of the dDCO provisions on any private drainage agreements?
	Part 2 – Principal Powers		
1.4.	DCiC	Article 6 Maintenance of authorised	a) Are the EA and the Lead Local Flood Authorities content that the dDCO provisions would not prevent them from fulfilling their

No	Question to	Reference	Question
	DCC EA Affected Persons	development	<p>statutory duties?</p> <p>b) Do any Affected Persons have any concerns with respect to the effect of the provisions on any private drainage obligations?</p> <p>c) Do DCiC and DCC consider that an acceptable process is secured for the identification of final maintenance and repair responsibilities? Have satisfactory principles for maintenance and repair been agreed?</p> <p>d) Are DCiC, DCC or EBC aware of any mitigation measures identified by the Applicant whose maintenance may not be addressed by the provisions?</p>
Part 3 – Streets			
1.5.	DCiC	Article 13 Construction and maintenance of new, altered or diverted streets and other structures	Do DCiC have any outstanding concerns with respect to the dDCO provisions for the construction and maintenance of new, altered or diverted streets and other structures, or the related application of section 4 of the Highways Act 1980? How should any outstanding concerns be addressed?
1.6.	DCiC	Article 14 Classification of roads, etc.	Are DCiC content that an acceptable process is secured for the development of the detailed inventory and with any other related provisions required in Articles 12 or 13, in Schedule 3 or in the OEMP?
1.7.	DCiC	Article 18 Clearways	Do DCiC have any outstanding concerns with respect to the dDCO provisions for clearways? How should any outstanding concerns be addressed?
1.8.	DCiC	Article 19 Traffic regulations	Do DCiC have any outstanding concerns with respect to the dDCO provisions for traffic regulations? How should any outstanding concerns be addressed?
Part 4 – Supplemental Powers			
1.9.	DCiC	Article 20	a) Are DCiC and DCC content that the following provisions are not

No	Question to	Reference	Question
	DCC	Discharge of water	<p>added:</p> <p><i>"This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (3)"?</i></p> <p>b) Are DCiC and DCC are content that the OEMP addresses their concerns regarding the need to limit the amount of water discharged to a sewer drain or watercourse?</p>
Part 6 – Operations			
1.10.	DCiC	Article 40 Trees subject to tree preservation orders	Are DCiC content with these provisions and with the related provisions in Schedule 8 and in the OEMP? If not, how should they be amended?
Schedule 2 – Requirements			
1.11.	DCiC Erewash Borough Council (EBC)	Requirement 3 Construction Environmental Management Plan Adherence to the core hours.	<p>Are DCiC and EBC content with the ExA's proposed amendments (<u>underlined</u>):</p> <p><i>"(viii) any emergency works;</i> <i><u>provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of core hours, except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable.</u></i></p> <p><i>Any other work carried out outside the core hours or any extension to the core hours <u>will only be permitted if there has been prior written agreement of the relevant environmental health officer provided that the activity does not result in materially new or materially worse environmental effects as reported in the environmental statement.</u></i>"</p>

No	Question to	Reference	Question
1.12.	DCiC DCC EBC	Requirement 3 Construction Environmental Management Plan Provisions for the Handover Environmental Management Plan	Are DCiC, DCC and EBC content with the ExA's proposed amendments (<u>underlined</u>): “(5) Upon completion of construction of the authorised development the CEMP must be converted into the HEMP as approved under subparagraph (4). <u>The HEMP must:</u> (a) <u>be substantially in accordance with the relevant HEMP provisions included in the OEMP and CEMP;</u> (b) <u>contain a record of all the sensitive environmental features that have the potential to be affected by the operation and maintenance of the proposed development; and</u> (c) <u>incorporate the measures referred to in the environmental statement as being incorporated in the HEMP.”</u>
1.13.	DCiC DCC EBC	Requirement 5 Landscaping Preliminary works	a) Are DCiC and DCC content with OEMP landscaping provisions, including for the preliminary works? b) Are EBC content with the OEMP provisions with respect to the main construction compound and any related features that might be retained permanently?
1.14.	EBC EA	Requirement 13(1) Surface and foul water drainage	Are EBC and the EA content that OEMP provisions would provide enough protection for controlled and drinking waters in the vicinity of the main construction compound, including during the preliminary works?
Schedule 5 – Land in Which New Rights, etc. May be Acquired			
1.15.	Cadent Gas Limited	Schedule 5	Does Cadent Gas Limited have any outstanding concerns? How should any outstanding concerns be addressed?
Schedule 8 – Trees Subject to Tree Preservation Orders			

No	Question to	Reference	Question
1.16.	DCiC	Schedule 8	Does DCiC have any outstanding concerns? How should any outstanding concerns be addressed?
Schedule 9 – Protective Provisions			
1.17.	Network Rail Cadent Gas Limited Severn Trent Water Other relevant statutory undertakers	Schedule 9	<p>a) Do Network Rail, Cadent Gas Limited, Severn Trent Water, or any other relevant statutory undertakers have any outstanding concerns? How should any outstanding concerns be addressed?</p> <p>b) Before the close of the Examination, please could the Applicant and any other relevant party provide a summary of any protective provisions that have not been agreed?</p>
Schedule 10 – Documents to be Certified			
1.18.	Applicant	Schedule 10	<p>The ExA does not consider that the Schedule provides references to:</p> <ul style="list-style-type: none"> the latest versions of all relevant new or updated documents provided by the Applicant during the Examination; and updated environmental statement documents incorporating all clarifications to paragraphs, tables, figures or plans provided by the Applicant in its' Written Representations during the Examination. <p>A list of example references, following a partial review by the ExA, was provided at item 33 of the issues and questions for Issue Specific Hearing 3 [PD-015].</p> <p>a) Please could the Applicant carry out a detailed review of its' submissions during the Examination, including both standalone documents and relevant material embedded in its responses to the ExA's questions and in its comments on submissions made by others?</p>

No	Question to	Reference	Question
			b) Please could the Applicant then update Schedule 10 and provided copies of the updated documents that are to be certified?
2.	Transport networks and traffic		
2.1.	DCiC	Modelling of queueing and junctions during construction	Does DCiC have any residual concerns about the Applicant's modelling of queueing and junctions during construction? Is DCiC is content the Applicant has given enough consideration to the potential for queues at one junction to effect other junctions and potentially lead to gridlock? How should any outstanding concerns be addressed?
2.2.	DCiC	Congestion during construction	Does DCiC consider that the Applicant's assessment of congestion during construction represents a reasonable worst-case scenario?
2.3.	Applicant DCiC	Customer and Stakeholder Manager	Should the Customer and Stakeholder Manager be based in a site office, in DCiC's office, should they split their time between the two, or can the Applicant and DCiC agree otherwise? Can the OEMP be updated accordingly?
2.4.	DCiC	Access to Royal Derby Hospital during construction	Please could DCiC comment on the potential for significant disruption to the Royal Derby Hospital and is it content with the Applicant's proposed mitigation measures? Should other mitigation be secured?
2.5.	Derby Cycling Group DCiC DCC	Non-motorised users	Are there any further comments on the mitigation measures for non-motorised users that are set out in the Traffic Management Plan [REP7-003]? How should any outstanding concerns be addressed?
2.6.	DCiC DCC Derby A38 Behavioural Change Group	Traffic Management Plan	Are there any further comment or outstanding concerns regarding the Traffic Management Plan [REP7-003]? How should any outstanding concerns be addressed?

No	Question to	Reference	Question
2.7.	Applicant DCC Network Rail Derby Cycling Group	Ford Lane bridge	Please provide an update on the agreement of mitigation measures for Ford Lane bridge. How are the measures secured? Has there been consultation and agreement with Network Rail and Derby Cycling Group and, if so, please could evidence of that be provided?
2.8.	Applicant DCiC	Ford Lane / A6 junction	Please provide an update on the agreement of mitigation measures for the Ford Lane / A6 junction. How are the measures secured?
3.	Air quality		
3.1.	Applicant	The Applicant's commission from the Department of Transport	With reference to its request for removal of air quality from the agenda for Issue Specific Hearing 3 [EV-015], please could the Applicant provide an update on its position with respect to its commission from the Department of Transport?
3.2.	DCiC EBC	Applicant's Updated Air Quality Compliance Risk Assessment [REP6-020] Applicant's Supplement to Air Quality Compliance Risk Assessment [REP7-009]	Do DCiC or EBC have any outstanding concerns, including with respect to the consideration given to impacts during construction? How should any outstanding concerns be addressed?
3.3.	DCiC	DCiC's previous concerns	Do the air quality concerns previously raised by DCiC remain: <ul style="list-style-type: none"> • "method for reconciling infrastructure scheme contributions with national PCM compliance modelling outputs"; • "modelling against EU Directive for some receptors"; and • "outstanding detail in CEMP". If not, why not? How should any outstanding concerns be addressed?
3.4.	DCiC	The Applicant's assessment	a) Do DCiC and EBC consider that the Applicant's air quality assessment represents a reasonable worst-case scenario?

No	Question to	Reference	Question
	EBC		b) On balance, do DCiC and EBC agree that there are likely to be no significant air quality effects during construction or operation?
3.5.	EBC	A compliant zone becoming non-compliant	Is EBC still content that the proposed development would not, or would be unlikely to, result in a zone/agglomeration currently compliant becoming non-compliant?
4. The water environment			
4.1.	Applicant DCiC	Updated FRA for at the Markeaton junction [REP.	The Applicant's summary of oral responses to Issue Specific Hearing 4 [REP6-018] acknowledges that the surface water flood risk map shows overtopping of road that is outside of the boundary of the proposed changes to the road and that the hydraulic modelling focuses on the road. Please clarify the effect of the proposal on the risk of surface water flooding the areas adjoining the road. If the modelling does not cover such areas, how can the ExA be assured that the mitigation of an impacts would be effective? How would any mitigation be secured through the DCO?
4.2.	EBC Applicant	Little Eaton construction compound in relation to Source Protection Zones 2 and 1.	Does EBC consider that the OEMP [REP6-007] provisions regarding the Preliminary Works CEMP are enough to ensure a satisfactory drainage solution for the construction compound and relevant pollution prevention measures to mitigate the risks of pollution to controlled waters from activities in this location? Please provide an update on discussions regarding the condition in which the compound would be left.
5. Biodiversity and ecological conservation			
5.1.	EBC	Alfreton Road Rough Grassland Local Wildlife Site	Having regard to the updated assessment of the Alfreton Road Rough Grassland Local Wildlife Site [REP4-023], does EBC still consider that the proposed development would have an unacceptable effect on the Local Wildlife Site?

No	Question to	Reference	Question
6.	Historic environment		
6.1.	Applicant	Terminology used for archaeological documents	Please clarify and, where necessary, amend the naming and terms of the archaeological mitigation documents (e.g. AMS, OWSI, SSWSI, HMP). Please ensure that there is consistency between Requirement 9 and the OEMP [REP6-007] regarding who will produce them, when and subject to what consultation.
7.	Landscape and visual impact		
7.1.	EBC	Existing hedgerows	Does EBC consider that enough information has been provided in the 'Hedgerows within the Order Limits' submission [REP3-021] to assess the effect of the proposed development on existing hedgerows at this stage of the project.
7.2.	DCiC	The effect of the proposed development on veteran tree T358 [REP7-008]	Has appropriate consideration been given to adjustments to the proposed development to increase the possibility of retaining the veteran tree? How would such adjustments, and/or the proposed mitigation measures if the tree is lost, be secured in the DCO [REP6-002] or OEMP [REP6-007]?
8.	Land use, social and economic impact		
8.1.	Applicant Euro Garages McDonalds Restaurants	The effect of the proposed development on the McDonald's and Euro Garages sites.	Please provide updates on discussions/agreement on the capacity and geometry of the proposed access arrangements, access from the proposed A38 slip road, existing access rights and the case for providing advance signage.
8.2.	Applicant Derby Climate Change	Justification of the need for the Proposed Development,	Are the claimed economic benefits of the scheme are sufficiently supported by evidence from comparable road improvement schemes, having regard to the concerns expressed [REP6-030] and the documents appended to it?

No	Question to	Reference	Question
	Coalition		
9.	Other policy and factual issues		
9.1.	Applicant DCiC DCC EBC	Climate change and CO ₂ emissions	<p>a) Please could the Applicant clarify the consideration given to cumulative CO₂ emissions, rather than for the proposed development in isolation?</p> <p>b) Please could DCiC, DCC and EBC comment on the cumulative impacts of the proposed development with other local emissions and in respect to relevant local policy and targets?</p>
9.2.	Applicant DCiC DCC EBC	Climate change and net zero carbon by 2050	<p>a) Does the Applicant's approach to carbon emissions adequately consider the Government's updated target for net zero carbon by 2050 (Climate Change Act 2008 (2050 Target Amendment) Order 2019)?</p> <p>b) Please could DCiC, DCC and EBC comment on the carbon emissions from the proposed development with respect to relevant local carbon policy and targets?</p>
9.3.	Applicant	Climate change and adaptation updates	Does the Applicant consider that any updates are required to its position on climate change and adaptation, as per National Networks National Policy Statement paragraphs 4.38 to 4.47 and in relation to s10(3) of the Planning Act 2008 as per paragraph 4.38?
9.4.	Applicant DCiC DCC EBC Interested Parties	Climate change and carbon footprint	<p>a) Are there any comments or concerns regarding the mitigation set out in the OEMP to ensure that the carbon footprint would not be unnecessarily high?</p> <p>b) Has enough support been given to other transport modes and behavioural change?</p> <p>c) Has enough consideration been given to the climate change with respect to the loss of mature trees and the planting of new trees?</p> <p>d) How should the OEMP provisions be amended, if at all?</p>

No	Question to	Reference	Question
10.	Compulsory Acquisition, Temporary Possession and funding		
	The accuracy of the Book of Reference, Land Plans, updates and points of clarification		
10.1.	Applicant	Updates	Please could the Applicant provide any further updates before the close of the Examination.
	Need for Compulsory Acquisition and Temporary Possession and minimisation of need		
10.2.	Applicant	CA of unknown interests	<p>The ExA is considering the case for CA of unknown rights and whether the risks and potential consequences of the Applicant being "<i>held to ransom</i>" would justify the acquisition of the unknown rights of unknown third parties. To assist with this, please could further clarification be provided with respect to the Applicant's request for powers to acquire unknown interests:</p> <ol style="list-style-type: none"> What is the potential for Article 1 of the First Protocol to be engaged? How have unknown human rights been considered and what weight has been given to them? What is the likelihood of disruption to the proposed development and what is the likely extent of that if powers were not granted for the CA of unknown rights?
10.3.	Applicant	Reduction of CA during detailed design	<p>The ExA is considering the potential for the requested CA powers not being the minimum required due to the design being at preliminary stage. It is also considering the likelihood that this would be mitigated at detailed design in a manner that would give appropriate weight to human rights at that stage. To assist with this, please could further clarification be provided:</p> <ol style="list-style-type: none"> Has the "reasonable worst-case scenario" preliminary design taken a precautionary approach to the identification of the area of land required for the proposed development to ensure that there will not be an under-provision?

No	Question to	Reference	Question
			<p>b) Is this likely to result in some over-provision being identified following detailed design?</p> <p>c) What is the potential for CA to be reduced during detailed design?</p> <p>d) Would consideration would be given to human rights during detailed design in relation to any opportunities to reduce CA identified at that stage? If so, how human rights would be balanced against other factors.</p> <p>e) How can the ExA be confident that the assessments would be undertaken and that, if possible, CA would be reduced? Can an outline process be identified and secured?</p>
	Alternatives		
10.4.	Applicant DCiC	Alternatives to the CA of the Queensway properties	<p>a) Do the Applicant or DCiC consider that there is an alternative A38 alignment, based on the current position of the Markeaton roundabout, that would avoid the need for CA of the Queensway properties or any other residential properties other than those currently identified in Ashbourne Road and Sutton Close?</p> <p>b) It appears that any alternative identified in (a) above would result in the loss of a strip of land to the A38 edge of Markeaton Park and the loss of trees. How much relative weight should be given to the human rights that would be affected by the CA of residence on Queensway and to the loss of land and trees in Markeaton Park? Do the Applicant or DCiC consider that the loss of land and impacts on trees could be mitigated? If so, how?</p>
10.5.	Applicant DCiC	The case for CA of Ashbourne Road and Sutton Close gardens	<p>a) What is the status of the Independent Safety Review Technical Note [Appendix A of REP6-014] with respect to the statutory procedures for the assessment of highway safety? Is the stated purpose of that review to "<i>maximise the safety of resident's movements</i>" appropriate for the question being asked about the case for CA? Please could DCiC comment on the technical content of the review and on how much weight should be given to it?</p>

No	Question to	Reference	Question
			<p>b) Please could the Applicant clarify the need for a turning head at 255 Ashbourne Road and whether there is an alternative for this to be provided at 253 Ashbourne Road? Please could DCiC comment?</p> <p>c) Considering the alternative of a shared left-in left-out access alternative for 253 and 255 Ashbourne Road to the proposed access road; what is the balance of safety and convenience against the human rights considerations for the proposed CA of the 14 Sutton Close garden?</p> <p>d) What is the safe distance required between the Markeaton junction and a right-in right out and left-in left-out junction on the south/west side of Ashbourne Road? What is the relative proximity of the existing Sutton Gardens junction? Can the proposed CA of the gardens at 1 Sutton Close be avoided?</p>
Individual objections and issues			
10.6.	Applicant	Voluntary agreement and blight updates	<p>Please provide an update on progress in finalising voluntary agreements, potential acquisition due to blight and SoCG, including with respect to:</p> <ul style="list-style-type: none"> • the CA schedule; • residents of 12 Queensway; • 253 and 255 Ashbourne Road; • Millennium Isle of Man Limited; and • Royal School for the Deaf Derby.
10.7.	Applicant	Loss of car parking	<p>Please summarise the impacts and mitigation for the loss of car parking at 253 and 255 Ashbourne Road. Can the impacts be reduced? How is the mitigation secured?</p>
Crown interests			
10.8.	Applicant	Crown consent	<p>Please provide an update on securing written agreement and s135</p>

No	Question to	Reference	Question
			consent.
Statutory Undertakers			
10.9.	Applicant Statutory Undertakers	Progress updates	Please provide an update on progress in: <ul style="list-style-type: none"> • finalising protective provisions and SoCG; and • consideration of the alternative to the acquisition of rights from Network Rail of a deed of easement, a bridge agreement, a framework agreement and Relevant Asset Protection Agreement(s) suggested by Network Rail Limited.
10.10.	Applicant Statutory Undertakers	Whether there is serious detriment	Is there evidence of any serious detriment? Have the Planning Act 2008 s127 and s138 tests been satisfied?
Special Category Land			
10.11.	Applicant DCiC	The Markeaton Park 'Mundy covenant'	a) Has any successor in title been identified and contacted? How have their rights been considered? How have alternatives to CA, such as voluntary agreement, been considered? b) What consideration has been given to the rights of wider beneficiaries due to their use of the land as protected by the covenant, e.g. in relation to public amenity?
Availability and adequacy of funds			
10.12.	Applicant	Updates	Please provide any updates with respect to: <ul style="list-style-type: none"> • Government priorities and the Road Investment Strategy; and • the funding statement and land cost estimates?
Potential impediments to the proposed development			
10.13.	Applicant	Updates	Please provide any updates with respect to: <ul style="list-style-type: none"> • the Consents and Agreements Position Statement, progress in

No	Question to	Reference	Question
			<p>obtaining other consents, and whether there are any known impediments; and</p> <ul style="list-style-type: none"> any other changes to policy or priorities in the Applicant's programme that could affect the proposed development.
	Other matters		
10.14.	DCiC	Injurious affection	Have DCiC's concerns [REP4-029] regarding Part 1 and Section 10 claims for injurious affection been addressed by the Applicant's response [REP5-010]? Does DCiC have any outstanding concerns on this matter? If so, could a remedy be agreed with the Applicant?
10.15.	DCiC	Trigger mechanism	Have DCiC's concerns [REP4-029] regarding the need for a trigger mechanism for 28 days or 44 days been addressed by the Applicant's response [REP5-010]? Does DCiC have any outstanding concerns on this matter? If so, could a remedy be agreed with the Applicant?