

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT
CONSENT ORDER**

APPLICATION REFERENCE NUMBER TR010019

SUBMISSION UNDER SECTION 127 AND 138 OF THE PLANNING ACT 2008

STATUTORY UNDERTAKER - NETWORK RAIL INFRASTRUCTURE LIMITED

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1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport (the "**Secretary of State**") to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of Network Rail Infrastructure Limited ("**Network Rail**") to the Secretary of State. It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State:
- 1.2.1 under section 127 of the 2008 Act to authorise the acquisition of land owned by and/or interest benefiting a statutory undertaker; and
 - 1.2.2 under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, the widening of the Windsor Branch Railway underbridge and the realignment of junctions as part of the Scheme. Network Rail has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State that Network Rail's land or interest in land can be purchased and not replaced without serious detriment to the carrying on of its undertaking, pursuant to section 127(3) the 2008 Act. In addition, it seeks to satisfy the Secretary of State, pursuant to section 138(4) the 2008 Act.

2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.
- 2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the

Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

3. Interests Subject to this Submission

3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting Network Rail for the purposes of sections 127 and 138 of the 2008 Act.

3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
02-16	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access for inspection and possible refurbishment of bridge	1a, 1b, 2a, 2b
02-17	permanent acquisition at motorway level and temporary use below that	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access for inspection and possible refurbishment of bridge	1a, 1b, 2a, 2b
02-18	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access for inspection and possible refurbishment of bridge	1a, 1b, 2a, 2b
04-05	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
04-06	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access for inspection and possible refurbishment of bridge	1a, 1b
04-07	permanent	Land within existing motorway boundaries retained for construction and operation of the	1a, 1b

		Scheme	
04-08	permanent acquisition at motorway level and temporary use below that	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access for inspection and possible refurbishment of bridge	1a, 1b
04-09	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
04-10	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access for inspection and possible refurbishment of bridge	1a, 1b
10-06	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for use for inspection and possible refurbishment of bridge	1a, 1b, 5a
10-07	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for use for inspection and possible refurbishment of bridge	1a, 1b, 5a
10-08	permanent acquisition at motorway level and temporary use below that	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for use for inspection and possible refurbishment of bridge	1a, 1b, 5a
10-09	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for use for inspection and possible refurbishment of bridge	1a, 1b, 5a

10-12	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for use for inspection and possible refurbishment of bridge	1a, 1b, 5a
27-12a	permanent acquisition at motorway level and temporary use below that of Crown land	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge	1a, 1b, 27a, 27b
27-12b	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge	1a, 1b, 27a, 27b
27-12c	permanent acquisition at motorway level and temporary use below that of Crown land	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge	1a, 1b, 27a, 27b
27-12d	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge	1a, 1b, 27a, 27b
27-12e	permanent acquisition at motorway level and temporary use below that of Crown land	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge	1a, 1b, 27a, 27b
27-12f	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge	1a, 1b, 27a, 27b
27-15	permanent	Land within existing motorway boundaries retained for construction and operation of the	1a, 1b, 27a, 27b

		Scheme	
22-22	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access and working space for widening Windsor Branch railway underbridge to the South, including realignment of M4 and J6 Westbound off-slip and embankment strengthening and widening	1a, 1b, 16b, 16c, 17
22-22a	permanent	Land required for widening Windsor Branch Railway underbridge	16b, 16c, 17
22-22b	permanent	Land required for widening Windsor Branch Railway underbridge	16b, 16c, 17
22-23	permanent acquisition at motorway level and temporary use below that	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access and working space for widening Windsor Branch railway underbridge to the South, including realignment of M4 and J6 Westbound off-slip and embankment strengthening and widening	1a, 1b, 16b, 16c, 17
22-23a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 16b, 16c, 17
22-23b	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 16b, 16c, 17
22-24	permanent acquisition at motorway level and temporary use below that	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access and working space for widening Windsor Branch railway underbridge to the South, including realignment of M4 and J6 Westbound off-slip and embankment strengthening and widening	1a, 1b, 16b, 16c, 17
22-24a	permanent	Land required for widening Windsor Branch Railway	16b, 16c, 17

		underbridge	
22-24b	permanent	Land required for widening Windsor Branch Railway underbridge	16b, 16c, 17
22-25	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary land required for access and working space for widening Windsor Branch railway underbridge to the South, including realignment of M4 and J6 Westbound off-slip and embankment strengthening and widening	1a, 1b, 16b, 16c, 17
27-13a	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge.	1a, 1b, 26a, 26b
27-13b	permanent acquisition at motorway level and temporary use below that of Crown land	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge.	1a, 1b, 26a, 26b
27-13c	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge.	1a, 1b, 26a, 26b
27-13d	permanent acquisition at motorway level and temporary use below that of Crown land	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At railway level: temporary access for inspection and possible refurbishment of the bridge.	1a, 1b, 26a, 26b
27-14	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
27-18	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b

3.3 The relevant apparatus of Network Rail is contained in the parcels of land listed above.

4. Documents in support of the Submission

4.1 In support of the Submission, the following documents are enclosed:

4.1.1 Appendix 1: Draft of the Proposed Order;

4.1.2 Appendix 2: Book of Reference;

4.1.3 Appendix 3: Statement of Reasons;

4.1.4 Appendix 4: Land Plans (as amended);

4.1.5 Appendix 5: Schedule of Correspondence between Highways England and Network Rail.

4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:

<http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.

4.3 A copy of this Submission and its enclosures has been provided to Network Rail.

5. Section 127 and Section 138 of the 2008 Act

5.1 Section 127 makes provision for cases where an applicant for development consent under the 2008 Act seeks the inclusion in a development consent order of provision for the compulsory acquisition of land, or a right over such land, which has been acquired by a statutory undertaker (as defined in section 127(8)) for the purpose of its undertaking. The following provisions, set out in section 127(1)(b) and (c), should apply:

(b) *a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and a representation has not been withdrawn; and*

(c) *as a result of the representation, the Secretary of State is satisfied that:*

(i) *the land is used for the purposes of carrying on the statutory undertakers' undertaking; or*

(ii) *an interest in the land is held for those purposes.*

5.2 In the circumstances, the 2008 Act provides that a development consent order including provision for compulsory acquisition of statutory undertakers' land can only be made to the extent that the Secretary of State is satisfied of the matters set out in section 127(3).

5.3 The matters set out in section 127(3) are that the nature and situation of the land are such that:

(a) *it can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or*

(b) *if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.*

5.4 Sub-sections (4) to (6) of section 127 make similar provision for cases where an applicant seeks to acquire new rights over statutory undertakers' land compulsorily. In such cases, a development consent order can only include such provisions where the Secretary of State is satisfied of the matters set out in section 127(6). The matters set out in section 127(6) are that the nature and situation of the land are such that:

(a) *the right can be purchased without serious detriment to the carrying on of the undertaking; or*

(b) *any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right can be made good by the undertakers by the use of the land belonging to or available for acquisition by them.*

5.5 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. To an extent these provisions overlap with those of section 127 of the 2008 Act in that a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

6. **Applicant's Case under Section 127 and Section 138 of the 2008 Act**

6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:

6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Application for development consent could affect Network Rail's undertaking as it has infrastructure which may be affected by the Scheme;

6.1.2 the land is required for the purposes of:

6.1.2.1 the construction and operation of the Scheme;

6.1.2.2 access for inspection and possible refurbishment of the Windsor Branch Railway underbridge;

6.1.2.3 the widening of the Windsor Branch Railway underbridge; and

6.1.2.4 access and working space in connection with the widening of the Windsor Branch Railway underbridge including the realignment of off-slips and embankment strengthening and widening;

6.1.3 protective provisions appropriate for Network Rail's undertaking are included in the Proposed Order; and

6.1.4 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that Network

Rail's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.

- 6.2 Highways England is seeking to negotiate with Network Rail to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 11 March 2013. A schedule of the communications with Network Rail is provided at Appendix 5. Whilst it has not been possible to reach agreement with Network Rail prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.
- 6.3 In the absence of private treaty agreements with Network Rail, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with Network Rail's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in sections 127(3) and 127(6) (and 138(4)) have been met.
7. **Submission**
- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 127 and section 138 have been satisfied and that the proposed interests in land and land sought by Highways England can be acquired without serious detriment to Network Rail's operational undertaking and that interference with the rights of Network Rail is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.
- 7.2 Highways England respectfully requests that the Secretary of State publishes that he is satisfied that the conditions in sections 127 and 138 of the 2008 Act in respect of the rights and interests of Network Rail in the Order Land have been met.

APPENDIX 5
Schedule of Correspondence

	Date	Type of Contact	Outcome
1.	11/03/2013	Letter from Highways England to Network Rail Infrastructure Limited	Request for information on C2 Buried Services and apparatus
2.	22/03/2013	Email from Network Rail Infrastructure Limited to Highways England	Response to request for information on C2 Buried Services and apparatus
3.	10/03/2014	Invitation to attend a Preview Public Information Exhibition, to be held on 18 March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
4.	10/03/2014	Invitation to attend a Preview Public Information Exhibition, to be held on 18 March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
5.	23/10/2014	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
6.	10/11/2014	Consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
7.	10/11/2014	Further consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
8.	10/11/2014	Consultation undertaken pursuant to Section 47 of the 2008 Act.	Details of the pre-application consultation to be held between 10 November and 21 December 2014
9.	5/11/2014	Response to request for land ownership confirmation questionnaire	Completed questionnaire on request for land ownership confirmation
10.	14/11/2014	Letter from Network Rail Infrastructure Limited to Highways England	Objection Raised
11.	21/11/2014	Email from Network Rail Infrastructure Limited to Highways England	Requesting that Highway England complete a Network Rail questionnaire
12.	17/12/2014	Email to Network Rail Infrastructure Limited from Highways England	Standard Highways England acknowledgement response email
13.	17/12/2014	Email to Network Rail	Standard Highways England

		Infrastructure Limited from Highways England		acknowledgement response email
14.	19/12/2014	Email from Network Rail Infrastructure Limited to Highways England		Consultation Response
15.	22/12/2014	Email to Network Rail Infrastructure Limited from Highways England		Standard Highways England response email confirming consultation comments will be considered
16.	02/01/2015	Letter from Network Rail Infrastructure Limited to Highways England		Previous enquiry has been passed to Community Relations team
17.	25/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire		Major Land Owner/ Utility questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
18.	02/03/2015	Telephone call from Network Rail Infrastructure Limited to Highways England		Conversation regarding confirmation questionnaire request
19.	02/03/2015	Email to Network Rail Infrastructure Limited from Highways England		Follow up email relating to the conversation held regarding the confirmation questionnaire request
20.	12/03/2015	Email from Network Rail Infrastructure Limited to Highways England		Continued discussions regarding the confirmation questionnaire
21.	12/03/2015	Email to Network Rail Infrastructure Limited from Highways England		Continued discussions regarding the confirmation questionnaire
22.	16/03/2015	Email to Network Rail Infrastructure Limited from Highways England		Continued discussions regarding the confirmation questionnaire
23.	16/03/2015	Email from Network Rail Infrastructure Limited to Highways England		Response and continued discussions regarding the confirmation questionnaire
24.	06/05/2015	Letter to Network Rail Infrastructure Limited from Highways England		Consultation report objection response details
25.	13/05/2015	Email from Network Rail Infrastructure Limited to Highways England		Consultation report acknowledgement
26.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order		Notification of acceptance of application together with details of land which Network Rail Infrastructure Limited have an interest
27.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development		Notification of acceptance of application

		consent order	
28.	08/06/2015	Letter from Highways England to Network Rail Infrastructure Limited	Letter from District Valuer: Property Negotiation
29.	16/06/2015	Letter from Highways England to Network Rail Infrastructure Limited	Protective Provisions Letter.
30.	19/06/2015	Letter from Network Rail Infrastructure Limited to Highways England	Protective Provisions Letter acknowledgement
31.	08/07/2015	Email from Network Rail Infrastructure Limited to Highways England	Email following Protective Provisions Letter
32.	08/07/2015	Email from Network Rail Infrastructure Limited to Highways England	Requesting confirmation that a late Relevant Representation response could be submitted
33.	09/07/2015	Email from Network Rail Infrastructure Limited to Highways England	Relevant Representation response
34.	22/07/2015	Email from Network Rail Infrastructure Limited to Highways England	Forwarding a copy of Network Rail's Relevant Representation
35.	23/07/2015	Email to Network Rail Infrastructure Limited from Highways England	Acknowledgment of the copy Relevant Representation.
36.	29/07/2015	Letter from Highways England to Network Rail Infrastructure Limited	Letter from District Valuer: Requesting confirmation whether Network Rail Infrastructure Limited is willing to enter into negotiating terms relating to the purchase of land
37.	28/08/2015	Email from Network Rail Infrastructure Limited to Highways England	Additional Relevant Representation response
38.	22/09/2015	Email from Network Rail Infrastructure Limited to Highways England	Email request for additional Network Rail Infrastructure Limited contact information
39.	12/10/2015	Letter from Network Rail Infrastructure Limited to The Planning Inspectorate	Written representation with summary submitted for Deadline II – 8 October 2015
40.	12/10/2015	Letter from Network Rail Infrastructure Limited to The Planning Inspectorate	Response to the Examining Authority's first written questions submitted for Deadline II - 8 October 2015
41.	30/11/2015	Meeting with Network Rail Infrastructure Limited and Highways England	Update and discussions
42.	15/12/2015	Email to Network Rail Infrastructure Limited from Highways England	Minutes of previous meeting and date for next meeting

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT
CONSENT ORDER**

APPLICATION REFERENCE NUMBER TR010019

SUBMISSION UNDER SECTION 138 OF THE PLANNING ACT 2008

STATUTORY UNDERTAKER - BRITISH AIRWAYS PLC

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1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("2008 Act") (the "**Application**") by Highways England Company Limited ("Highways England") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "Scheme"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport (the "**Secretary of State**") to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of British Airways plc to the Secretary of State. It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State for Transport. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, and the realignment of junctions and roads and the construction of overbridges as part of the Scheme. British Airways plc has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State, pursuant to section 138(4) of the 2008 Act, that the extinguishment of British Airways plc's relevant right(s) or removal of its relevant apparatus are necessary for the purposes of carrying out the Scheme.

2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.
- 2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

3. **Interests Subject to this Submission**

3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting British Airways plc for the purposes of section 138 of the 2008 Act.

3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
27-20a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
27-20b	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
27-22a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b
27-25	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 27a, 27b

3.3 The relevant apparatus of British Airways plc is contained in the parcels of land listed above.

4. **Documents in support of the Submission**

4.1 In support of the Submission, the following documents are enclosed:

4.1.1 Appendix 1: Draft of the Proposed Order;

4.1.2 Appendix 2: Book of Reference;

4.1.3 Appendix 3: Statement of Reasons;

4.1.4 Appendix 4: Land Plans (as amended);

4.1.5 Appendix 5: Schedule of Correspondence between Highways England and British Airways plc.

- 4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:

<http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.

- 4.3 A copy of this Submission and its enclosures has been provided to British Airways plc.

5. **Section 138 of the 2008 Act**

- 5.1 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. Pursuant to the 2008 Act, a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

6. **Applicant's Case under Section 138 of the 2008 Act**

- 6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:

6.1.1 the acquisition of land and the creation of new rights in the favour of Highways England pursuant to the Application for development consent could affect British Airways' undertaking as it has infrastructure which may be affected by the Scheme;

6.1.2 the land is required for the purposes of the construction and operation of the scheme and the realignment of junction 4b(M25); and

6.1.3 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that British Airways' rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.

- 6.2 Highways England is seeking to negotiate with British Airways to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 10 March 2014. A schedule of the communications with British Airways is provided at Appendix 5. Whilst it has not been possible to reach agreement with British Airways prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.

- 6.3 In the absence of private treaty agreements with British Airways plc, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with British Airways' apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in section 138(4) of the 2008 Act have been met.

7. **Submission**

- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 138 have been satisfied and that the proposed interference with the rights of British

Airways is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.

- 7.2 Highways England respectfully requests that the Secretary of State publishes that he is satisfied that the conditions in section 138 of the 2008 Act in respect of the rights and interests of British Airways plc in the Order Land have been met.

APPENDIX 5
Schedule of Correspondence

	Date	Type of Contact	Outcome
1.	10/03/2014	Invitation to attend a Preview Public Information Exhibition, to be held on 18 March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
2.	10/11/2014	Consultation undertaken pursuant to Section 47 of the 2008 Act.	Details of the pre-application consultation to be held between 10 November and 21 December 2014.
3.	19/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
4.	02/03/2015	Email from British Airways plc to Highways England	Land ownership confirmation questionnaire acknowledgement
5.	09/03/2015	Telephone call from Highways England to British Airways plc	Discussing land ownership confirmation questionnaire
6.	28/05/2015	Telephone call from British Airways plc to Highways England	Land ownership confirmation questionnaire enquires
7.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application together with details of land which British Airways plc have an interest
8.	08/06/2015	Letter from Highways England regarding Freehold Land Interests	Requesting confirmation whether British Airways plc is willing to enter into negotiating terms relating to the purchase of land

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT
CONSENT ORDER**

APPLICATION REFERENCE NUMBER TR010019

SUBMISSION UNDER SECTION 138 OF THE PLANNING ACT 2008

STATUTORY UNDERTAKER - TRANSPORT FOR LONDON LIMITED

DLA Piper UK LLP
3 Noble Street
London
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Tel: +44 (0) 8700 111 111
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1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport (the "**Secretary of State**") to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of Transport for London Limited ("**TFL**") to the Secretary of State. It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, and the realignment of junctions and roads and the construction of overbridges as part of the Scheme. TFL has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State, pursuant to section 138(4) of the 2008 Act, that the extinguishment of TFL's relevant right(s) or removal of its relevant apparatus are necessary for the purposes of carrying out the Scheme.

2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.
- 2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

3. Interests Subject to this Submission

- 3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting TFL for the purposes of section 138 of the 2008 Act.
- 3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
30-02	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b, 30a, 30b
30-03	temporary	For inspection and possible refurbishment to St Dunstons Subway	1a, 1b
30-04	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout and The Parkway levels: land within existing highway boundary used for access to construction site, including traffic management	For work: 1a, 1b For access: all Works within Schedule 1 to the DCO
30-04a	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
30-04b	permanent	Land within existing motorway boundaries retained for construction and operation of the Scheme	1a, 1b
30-05	permanent	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At roundabout	For work: 1a, 1b For access: all Works within Schedule 1 to the DCO

		and The Parkway levels: land within existing highway boundary used for access to construction site, including traffic management	
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3.3 The relevant apparatus of TFL is contained in the parcels of land listed above.

4. Documents in support of the Submission

4.1 In support of the Submission, the following documents are enclosed:

- 4.1.1 Appendix 1: Draft of the Proposed Order;
- 4.1.2 Appendix 2: Book of Reference;
- 4.1.3 Appendix 3: Statement of Reasons;
- 4.1.4 Appendix 4: Land Plans (as amended);
- 4.1.5 Appendix 5: Schedule of Correspondence between Highways England and TFL.

4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:

<http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.

4.3 A copy of this Submission and its enclosures has been provided to TFL.

5. Section 138 of the 2008 Act

5.1 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. Pursuant to the 2008 Act, a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

6. Applicant's Case under Section 138 of the 2008 Act

6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:

- 6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Application for development consent could affect TFL's undertaking as it has infrastructure which may be affected by the Scheme;

- 6.1.2 the land is required for the purposes of the construction and operation of the Scheme and temporarily for the inspection and possible refurbishment to St Dunstons Subway; and
- 6.1.3 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that TFL's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.
- 6.2 Highways England is seeking to negotiate with TFL to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 29 April 2014. A schedule of the communications with TFL is provided at Appendix 5. Whilst it has not been possible to reach agreement with TFL prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.
- 6.3 In the absence of private treaty agreements with TFL, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with TFL's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in section 138(4) of the 2008 Act have been met.
7. **Submission**
- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 138 have been satisfied and that the proposed interference with the rights of TFL is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.
- 7.2 Highways England respectfully requests that the Secretary of State publishes that he is satisfied that the conditions in section 138 of the 2008 Act in respect of the rights and interests of TFL in the Order Land have been met.

APPENDIX 5
Schedule of Correspondence

	Date	Type of Contact	Outcome
1.	29/04/2014	Email from Highways England to Transport for London	Contact as Transport for London are a Local Highways Authority. Meeting request.
2.	08/05/2014	Invitation to attend a pre-application meeting to be held on 1 May 2014	Invitation to an informative meeting as part of initial stakeholder engagement and information exercise
3.	19/05/2014	Pre-application meeting	Information meeting to provide an overview of the Scheme, DCO process, suggested consultees, local proposed highway Schemes.
4.	17/10/2014	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
5.	21/10/2014	Response to request for land ownership confirmation questionnaire	Completed questionnaire on request for land ownership details.
6.	10/11/2014	Consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
7.	10/11/2014	Further consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
8.	10/11/2014	Consultation undertaken pursuant to Section 47 of the 2008 Act.	Details of the pre-application consultation to be held between 10 November and 21 December 2014.
9.	26/11/2014	Planning Act 2008 Section 42 Preliminary Consultation Response	Key issues raised were transport modelling, 'smart management', management of incidents and air quality.
10.	09/12/2014	Meeting with Highways England and Transport for London	Consultation meeting
11.	11/12/2014	Email from Transport for London to Highways England	Follow up and notes from consultation meeting on 09/12/2014
12.	16/12/2014	Email providing air quality information as requested in consultation meeting	Provision of direction to relevant aspects of the PEI Report for the TfL road network.
13.	17/12/2014	Email from Transport for London confirming information provided addresses comments on air quality	Confirmation that air quality information addresses TfL's air quality comments in Planning Act 2008 Section 42

			Preliminary Consultation Response
14.	18/12/2014	Email providing noise information as requested in consultation meeting	Provision of direction to relevant aspects of the PEI Report for the TfL road network.
15.	19/12/2014	Planning Act 2008 Section 42 Secondary Consultation Response	Stated that it could not support the Scheme due to concerns over traffic modelling; relevant issues and corresponding policy; and impact on air quality and noise in their jurisdiction.
16.	19/02/2015	Letter from Highways England requesting completion of land ownership confirmation questionnaire	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
17.	09/03/2015	Response to request for land ownership confirmation questionnaire	Completed questionnaire on request for land ownership details for Transport for London
18.	10/03/2015	Email from Highways England to Transport for London	Confirmation questionnaire received acknowledgement and follow up enquiries.
19.	11/03/2015	Email to Highways England from Transport for London	Continued discussion regarding completed confirmation questionnaire
20.	06/05/2015	Letter from Highways England to Transport for London	Letter Consultation report objection response
21.	22/05/2015	Email request from Highways England for Statement of Common Ground ("SoCG") meeting dates	Requested availability for a number of potential meeting dates in June 2015 to discuss the draft SoCG
22.	27/05/2015	Email to Highways England from Transport for London	Email Response: Request for a meeting regarding SoCG
23.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application together with details of land which Transport for London have an interest
24.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application
25.	08/06/2015	Letter from Highways England regarding Freehold Land Interests	Requesting confirmation whether Transport for London is willing to enter into negotiating terms relating to the purchase of land
26.	08/06/2015	Emails to/from Highways England to/from Transport for London	Email chains with continued discussions regarding future SoCG meeting arrangements
27.	12/06/2015	Email to Transport for London from Highways England	Continued discussions regarding future SoCG meeting arrangements
28.	16/06/2015	Email to Highways England from Transport for London	Continued discussions regarding future SoCG meeting arrangements
29.	22/06/2015	Email to Highways England from Transport for London	Continued discussions regarding future SoCG meeting arrangements
30.	22/06/2015	Email to Highways England from Transport for London	Continued discussions regarding future SoCG meeting arrangements and agenda

			request
31.	23/06/2015	Email from Highways England to Transport for London	Continued discussions regarding future SoCG meeting arrangements and agenda
32.	24/06/2015	Telephone call between Highway England	Continued discussions regarding future SoCG meeting
33.	24/06/2015	Email from Highways England to Transport for London	Continued discussions regarding future SoCG meeting agenda
34.	26/06/2015	Meeting between Highways England and the Strategic Authority (Greater London Authority and Transport for London)	Traffic modelling approach; air quality impacts; noise impacts; potential for collaborative traffic management; Greater London Authority and Transport for London land interests near M4 junction 3.
35.	03/07/2015	Email from Transport for London to Highways England	Email with Decision Letter attached following Section 56 notification.
36.	28/07/2015	Email from Highways England to Transport for London	Minutes of meeting on 26 June 2015 sent.
37.	29/07/2015	Chaser to freeholders that have not responded to request to negotiate land by agreement	Requesting confirmation whether Transport for London is willing to enter into negotiating terms relating to the purchase of land
38.	30/07/2015	Email from Transport for London to Highways England	Transport for London point of contact details
39.	11/09/2015	Email from Highways England to Transport for London	Email issue of draft SoCG with Greater London Authority and Transport for London
40.	17/09/2015	Email from Highways England to Transport for London	Email issue of draft SoCG with Greater London Authority and Transport for London
41.	24/09/2015	Email from Highways England to Transport for London	Comment chaser email for the draft SoCG.
42.	25/09/2015	Email from Transport for London to Highways England	Acknowledgment of receipt of the draft SoCG. A response will be sent in due course.
43.	25/09/2015	Email from Highways England to Transport for London	Enquiries following previous discussions regarding the draft SoCG.
44.	28/09/2015	Meeting between Highways England and Transport for London	Meeting regarding M4 Junction 4 and Spur Improvement Study
45.	28/09/2015	Email from Transport for London to Highways England	Continued discussions regarding the draft SoCG.
46.	08/10/2015	Email from Highways England to Transport for London	Comment chaser email for the draft SoCG.
47.	08/10/2015	Email from Transport for London to Highways England	Continued discussions regarding the draft SoCG: A response from Transport for London will be sent today.
48.	08/10/2015	Email from Transport for London to Highways England	A draft joint SoCG response sent for Transport of London and the Greater London Authority.
49.	08/10/2015	Email from Highways England to Transport for London	Revised draft SoCG sent
50.	13/10/2015	Email from Transport for London to Highways England	Revised draft SoCG sent with additional signature.
51.	13/10/2015	Email from Highways England to	Acknowledgment email of the signed

		Transport for London	SoCG.
52.	24/11/2015	Email between Transport for London and the London Borough of Hillingdon with Highway England as a copy contact	Transport for London confirmation of Highways England traffic model.

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT
CONSENT ORDER**

APPLICATION REFERENCE NUMBER TR010019

SUBMISSION UNDER SECTION 138 OF THE PLANNING ACT 2008

STATUTORY UNDERTAKER - CANAL & RIVER TRUST

DLA Piper UK LLP
3 Noble Street
London
EC2V 7EE
United Kingdom

Tel: +44 (0) 8700 111 111
Fax: +44 (0) 20 7796 6666

1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport (the "**Secretary of State**") to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of the Canal and River Trust to the Secretary of State. It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, and the realignment of junctions and roads and the construction of overbridges as part of the Scheme. The Canal and River Trust has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State, pursuant to section 138(4) of the 2008 Act, that the extinguishment of the Canal and River Trust's relevant right(s) or removal of its relevant apparatus are necessary for the purposes of carrying out the Scheme.

2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.
- 2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

3. Interests Subject to this Submission

3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting the Canal and River Trust for the purposes of section 138 of the 2008 Act.

3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
02-23	unrestricted powers to acquire or use land at motorway level, powers limited to acquisition of permanent rights and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river and river bank level: temporary use for inspection and possible refurbishment of bridge	1a, 1b
02-23a	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river and river bank level: temporary use for inspection and possible refurbishment of bridge	1a, 1b
02-23b	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river and river bank level: temporary use for inspection and possible refurbishment of bridge	1a, 1b
02-25	unrestricted powers to acquire or use land at motorway level, powers limited to acquisition of permanent rights and temporary use of land below motorway level	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river and river bank level: temporary use for inspection and possible	1a, 1b

		refurbishment of bridge	
02-25a	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river and river bank level: temporary use for inspection and possible refurbishment of bridge	1a, 1b
02-25b	temporary	At motorway level: land within existing motorway boundaries retained for construction and operation of the Scheme. At river and river bank level: temporary use for inspection and possible refurbishment of bridge	1a, 1b

3.3 The relevant apparatus of the Canal & River Trust is contained in the parcels of land listed above.

4. Documents in support of the Submission

4.1 In support of the Submission, the following documents are enclosed:

4.1.1 Appendix 1: Draft of the Proposed Order;

4.1.2 Appendix 2: Book of Reference;

4.1.3 Appendix 3: Statement of Reasons;

4.1.4 Appendix 4: Land Plans (as amended);

4.1.5 Appendix 5: Schedule of Correspondence between Highways England and the Canal & River Trust.

4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:

<http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.

4.3 A copy of this Submission and its enclosures has been provided to the Canal & River Trust.

5. **Section 138 of the 2008 Act**

- 5.1 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. Pursuant to the 2008 Act, a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

6. **Applicant's Case under Section 138 of the 2008 Act**

- 6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:
- 6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Submission for development consent could affect the Canal & River Trust's undertaking as it has infrastructure which may be affected by the Scheme;
 - 6.1.2 the land is required for the purposes of the construction and operation of the Scheme and temporarily for the inspection and possible refurbishment of a bridge; and
 - 6.1.3 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that the Canal & River Trust's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.
- 6.2 Highways England is seeking to negotiate with the Canal & River Trust to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 29 April 2014. A schedule of the communications with the Canal & River Trust is provided at Appendix 5. Whilst it has not been possible to reach agreement with the Canal & River Trust prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.
- 6.3 In the absence of private treaty agreements with Canal & River Trust, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with the Canal & River Trust's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in section 138(4) of the 2008 Act have been met.

7. **Submission**

- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 138 have been satisfied and that the proposed interference with the rights of the Canal & River Trust is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.
- 7.2 Highways England respectfully requests that the Secretary of State publishes that he is satisfied that the conditions in section 138 of the 2008 Act in respect of the rights and interests of the Canal & River Trust in the Order Land have been met.

APPENDIX 5
Schedule of Correspondence

	Date	Type of Contact	Outcome
1.	10/03/2014	Invitation to attend a Preview Public Information Exhibition, to be held on 18 March 2014	Preview Public Information Exhibition as part of initial stakeholder engagement and information exercise.
2.	10/11/2014	Consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
3.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application together with details of land which the Canal & River Trust have an interest
4.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application
5.	29/07/2015	Letter from Highways England regarding Leasehold Land Interests	Requesting confirmation whether the Canal & River Trust is willing to enter into negotiating terms relating to the purchase of land

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**THE PROPOSED M4 (JUNCTIONS 3 TO 12) (SMART MOTORWAY) DEVELOPMENT
CONSENT ORDER**

APPLICATION REFERENCE NUMBER TR010019

SUBMISSION UNDER SECTION 138 OF THE PLANNING ACT 2008

STATUTORY UNDERTAKER - HEATHROW AIRPORT LIMITED

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United Kingdom

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1. Introduction

- 1.1 This submission ("**Submission**") relates to the application made to the Secretary of State for Transport on 30 March 2015 under section 37 of the Planning Act 2008 ("**2008 Act**") (the "**Application**") by Highways England Company Limited ("**Highways England**") for development consent to improve some 51km (32 miles) of the M4 between junction 3 (Hayes) and junction 12 (Theale) by making it a smart motorway (the "**Scheme**"). The Application was accepted on 27 April 2015, and an Examining Authority has been appointed by the Secretary of State for Transport (the "**Secretary of State**") to examine the Application on his behalf.
- 1.2 The Submission is made by Highways England in respect of Heathrow Airport Limited to the Secretary of State. It is also sent to the Examining Authority in order to inform its recommendation to the Secretary of State for Transport. It is made in respect of the proposed powers within the Application that require consideration by the Secretary of State under section 138 of the 2008 Act to authorise the extinguishment of relevant rights and/or removal of relevant apparatus.
- 1.3 The Application seeks a development consent order (the "**Proposed Order**") which would confer powers of compulsory acquisition for the purposes of the Scheme. The Scheme involves permanently converting the hard-shoulder into a traffic lane (referred to as "**All Lane Running**"), and using technology to vary speed limits and manage traffic, creating extra capacity on the motorway. Signs and signals will be used to inform drivers of conditions on the highway network, when and where variable mandatory speed limits are in place, and when lanes are closed. There are a number of hard shoulder discontinuities on the M4 between junction 4 and junction 8/9, where existing bridges over or under the M4 limit the available carriageway width. It is proposed that these bridges are widened, or demolished and rebuilt, in order to enable All Lane Running along the Scheme. The Application for the Proposed Order also includes powers of compulsory acquisition for the purposes of the Scheme.
- 1.4 The Proposed Order includes powers sought in respect of, *inter alia*, the improvement of the eastbound and westbound carriageway of the M4 Motorway, and the realignment of junctions and roads and the construction of overbridges as part of the Scheme. Heathrow Airport Limited has interests in land upon which the Scheme will be constructed, as well as rights in land and relevant apparatus (as defined in section 138 of the 2008 Act).
- 1.5 This Submission is made in order to satisfy the Secretary of State, pursuant to section 138(4) of the 2008 Act, that the extinguishment of Heathrow Airport Limited's relevant right(s) or removal of its relevant apparatus are necessary for the purposes of carrying out the Scheme.

2. The Purpose of Compulsory Acquisition

- 2.1 The Proposed Order sought by Highways England seeks powers to acquire land compulsorily and to obtain new rights for the purposes of constructing, operating and maintaining the Scheme.
- 2.2 The land which is the subject of compulsory acquisition powers sought in the Proposed Order is referred to as the Order Land and is shown on the Land Plans that accompany the Application for the Proposed Order. The Land Plans are also attached to this Submission (see Appendix 4).

3. **Interests Subject to this Submission**

- 3.1 Part of the land to be acquired compulsorily comprises land or rights over land benefitting Heathrow Airport Limited for the purposes of section 138 of the 2008 Act.
- 3.2 The plots referenced in the Book of Reference (see Appendix 2) relevant to this Submission are as follows:

Book of Reference plot number	Acquisition permanent or temporary	Purpose for which land is required	Work No.
29-02	temporary	Temporary land required for use as construction compound	All Works

- 3.3 The relevant apparatus of Heathrow Airport Limited is contained in the parcels of land listed above.

4. **Documents in support of the Submission**

- 4.1 In support of the Submission, the following documents are enclosed:
- 1.1.1 Appendix 1: Draft of the Proposed Order;
 - 1.1.2 Appendix 2: Book of Reference;
 - 1.1.3 Appendix 3: Statement of Reasons;
 - 1.1.4 Appendix 4: Land Plans (as amended);
 - 1.1.5 Appendix 5: Schedule of Correspondence between Highways England and Heathrow Airport Limited.
- 4.2 The full suite of documentation comprised in the Application for the Proposed Order is available on the National Infrastructure Planning website at the following web address:
- <http://infrastructure.planninginspectorate.gov.uk/Schemes/South%20East/M4-Junctions-3-to-12-Smart-Motorway/>.
- 4.3 A copy of this Submission and its enclosures has been provided to Heathrow Airport Limited.

5. **Section 138 of the 2008 Act**

- 5.1 Section 138 of the 2008 Act makes provision for circumstances where a proposed development consent order provides for rights benefitting statutory undertakers to be extinguished and for their apparatus to be removed. Pursuant to the 2008 Act, a right in land is included in the concept of land. The provisions of section 138 allow the extinguishment of relevant rights - being rights of way and rights to install, keep and maintain apparatus - and the removal of apparatus. However, this is only permitted where the Secretary of State concludes that it is necessary to do so.

6. **Applicant's Case under Section 138 of the 2008 Act**

- 6.1 The case for compulsory acquisition is set out in Highways England's Statement of Reasons (Appendix 3). For the purpose of the Submission, it is Highway England's case that:
- 6.1.1 the acquisition of land and the creation of new rights in favour of Highways England pursuant to the Application for development consent could affect Heathrow Airport Limited's undertaking as it has infrastructure which may be affected by the Scheme;
 - 6.1.2 the land is required for the purposes of the construction and operation of the scheme and the for temporary use as a construction compound; and
 - 6.1.3 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that Heathrow Airport Limited's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking.
- 6.2 Highways England is seeking to negotiate with Heathrow Airport Limited to acquire the rights necessary for the Scheme and manage interfaces as such by private treaty. Highways England has been in negotiations with the statutory undertaker since 10 March 2014. A schedule of the communications with Heathrow Airport Limited is provided at Appendix 5. Whilst it has not been possible to reach agreement with Heathrow Airport Limited prior to the making of this Submission, Highways England continues to progress private treaty negotiations in parallel with the compulsory acquisition process with a view to reaching an agreement as soon as possible.
- 6.3 In the absence of private treaty agreements with Heathrow Airport Limited, it is necessary to seek the proposed powers to ensure that all the land that is required to deliver the Scheme is assembled within an appropriate timeframe and interfaces with Heathrow Airport Limited's apparatus are managed appropriately. Therefore, it is necessary that the Secretary of State is satisfied that the matters in section 138(4) of the 2008 Act have been met.

7. **Submission**

- 7.1 Highways England considers that for the reasons set out in this Submission, the requirements of section 138 have been satisfied and that the proposed interference with the rights of Heathrow Airport Limited is necessary and proportionate. Highways England does not consider that it is necessary to replace the land being acquired for the Scheme.
- 7.2 Highways England respectfully requests that the Secretary of State publishes that he is satisfied that the conditions in section 138 of the 2008 Act in respect of the rights and interests of Heathrow Airport Limited in the Order Land have been met.

APPENDIX 5
Schedule of Correspondence

	Date	Type of Contact	Outcome
1.	10/03/2014	Letter From Highways England to Heathrow Airport Limited	Invitation to attend a Public Information Exhibition held between 18 and 29 March 2014.
2.	14/08/2014	Letter from Highways England requesting completion of land interest questionnaire	Questionnaire to obtain land details of interested parties who may be affected by the works.
3.	22/09/2014	Meeting with Highways England and Heathrow Airport Limited	Meeting held to update Heathrow Airport Limited on the M4 J3-12 smart motorway proposals and timescales in advance of DCO Consultation.
4.	17/10/2014	Letter from Highways England to Heathrow Airport Limited	Questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
5.	10/11/2014	Consultation undertaken pursuant to Section 42 of the 2008 Act.	Notification of the formal pre-application consultation between 10 November and 21 December 2014 about the Scheme in accordance with Section 42 of the Planning Act 2008.
6.	10/11/2014	Consultation undertaken pursuant to Section 47 of the 2008 Act.	Details of the pre-application consultation to be held between 10 November and 21 December 2014.
7.	21/12/2014	Letter from Heathrow Airport Limited	Consultation objection made.
8.	22/12/2014	Email from Highways England to Heathrow Airport Limited	Consultation objection response.
9.	19/02/2015	Letter from Highways England to Heathrow Airport Limited	Major Land Owner/ Utility questionnaire to obtain confirmation that the details previously provided regarding the Scheme are still valid and to offer the opportunity to provide any updates.
10.	10/03/2015	Meeting with Highways England and Heathrow Airport Limited	Discussions regarding timescales and air quality.
11.	05/05/2015	Email from Highways England to Heathrow Airport Limited	Access request for ecology surveys.
12.	06/05/2015	Letter from Highways England to Heathrow Airport Limited	Provision of consultation report for the consultation held between 10 November and 21 December 2014.
13.	11/05/2015	Letter from Highways England to Heathrow Airport Limited	Follow up email regarding access request made in communication dated 05/05/2015.
14.	12/05/2015	Telephone call from Highways	A message was left requesting a call

		England to Heathrow Airport Limited	back regarding access request for ecology surveys.
15.	13/05/2015	Email from Heathrow Airport Limited to Highways England	Discussions regarding access for ecology surveys.
16.	14/05/2015	Email from Highways England to Heathrow Airport Limited	Continued discussions regarding access for ecology surveys.
17.	14/05/2015	Email from Heathrow Airport Limited to Highways England	Requesting a phone call to discuss access for ecology surveys.
18.	14/05/2015	Telephone call from Highways England to Heathrow Airport Limited	Continued discussions regarding access for ecology surveys.
19.	14/05/2015	Email from Highways England to Heathrow Airport Limited	Follow up email to phone call regarding access for ecology surveys.
20.	14/05/2015	Email from Highways England to Heathrow Airport Limited	Continued discussions regarding access for ecology surveys.
21.	14/05/2015	Email from Heathrow Airport Limited to Highways England	Provided another internal contact to assist with access for ecology surveys.
22.	14/05/2015	Email from Highways England to Heathrow Airport Limited	Acknowledgement of previous email regarding internal contact.
23.	14/05/2015	Email from Heathrow Airport Limited to Highways England	Discussions regarding access for ecology surveys.
24.	14/05/2015	Email from Highways England to Heathrow Airport Limited	Continued discussions regarding access for ecology surveys.
25.	15/05/2015	Email from Highways England to Heathrow Airport Limited	Continued discussions regarding access for ecology surveys.
26.	18/05/2015	Telephone call from Highways England to Heathrow Airport Limited	A follow up message was left requesting a call back regarding access for ecology surveys.
27.	19/05/2015	Email from Highways England to Heathrow Airport Limited	A follow up email to communication made on 18/05/2015 regarding access for ecology surveys.
28.	28/05/2015	Planning Act 2008 Section 56: Notice of acceptance of an application for a development consent order	Notification of acceptance of application together with details of land which Heathrow Airport Limited have an interest.
29.	01/06/2015	Telephone call from Highways England to Heathrow Airport Limited	Continued discussions regarding access for ecology surveys.
30.	08/06/2015	Letter from Highways England regarding Freehold Land Interests	Requesting confirmation whether Heathrow Airport Limited is willing to enter into negotiating terms relating to the purchase of land
31.	18/06/2015	Email from Heathrow Airport Limited to Highways England	Requesting an email copy of Section 56 Notice.
32.	06/07/2015	Telephone call from Heathrow Airport Limited to Highways England	Discussions regarding email copy of Section 56 Notice.