

Application by Highways England for an Order Granting Development Consent for the A38 Derby Junctions Scheme
The Examining Authority's issues and questions for Issue Specific Hearing 1 dealing with matters relating to the draft Development Consent Order

Issued on 26 September 2019

The issues and questions set out below will be referred to in the first issue specific hearing (ISH1) into the draft Development Consent Order (dDCO), which will be held on Tuesday, 8 October 2019.

They are principally addressed to the Applicant and public bodies and other parties who are named in the dDCO but contributions will be welcome from other Interested Parties attending the hearing.

Abbreviations used and Examination Library catalogue references

| Abbreviation | Document | Examination Library reference |
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| PA2008 | The Planning Act 2008 as amended | |
| dDCO | draft Development Consent Order | [APP-016] |
| EM | Explanatory Memorandum | [APP-018] |
| ES | Environmental Statement | [APP-039 – 055] |
| OEMP | Outline Environmental Management Plan | [APP-249] |
| CEMP | Construction Environmental Management Plan | |
| HEMP | Handover Environmental Management Plan | |
| SoS | Secretary of State | |

The Examination Library will be updated as the Examination progresses and can be obtained from the following link:

<http://infrastructure.planninginspectorate.gov.uk/document/TR010022-000671>

| No | Reference | Issue or question |
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| General matters | | |
| 1. | Draft Development Consent Order (dDCO) format and tracking of changes | <p>The Applicant is asked to confirm that subsequent versions of the draft Development Consent Order (dDCO) and Explanatory Memorandum (EM) submitted after the application version will be:</p> <ul style="list-style-type: none"> a) kept up to date with any changes and, if there have been any changes to the latest version provided to the Examination, submitted at the next Examination Deadline; b) supplied in .pdf (dDCO and EM) and Word formats (dDCO only) and in two versions, the first forming the latest consolidated draft and the second showing changes from the previous version in tracked changes, with comments outlining the reason for the change; c) the consolidated draft version of the dDCO in Word is to be supported by a report validating that version of the dDCO as being in the SI template, obtained from the publishing section of the legislation.gov.uk website; and d) the revision number of each subsequent version is updated consecutively from the application version, clearly indicated within the body of each document and included within the electronic filename. |
| 2. | Tracking of changes to plans and documents referred to by the dDCO | <p>The Applicant is asked to ensure that:</p> <ul style="list-style-type: none"> a) alongside each update to the dDCO, an up to date "record of plans and documents" is provided in the form of a table that records the names and revision numbers of the latest versions of each plan and document referred to in the dDCO; b) all application or subsequent plans and documents referred to in the dDCO in whatever provision are identified by a unique drawing or document name, electronic filename and revision number; |

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| | | <p>c) the revision number of each plan and document is updated consecutively from the application version, clearly indicated within the body of each plan and document and included within the electronic filename;</p> <p>d) the latest versions of plans and documents, including their revision number, are referenced by and reflected in the latest version of the dDCO; and that</p> <p>e) a full description is provided of all changes included in each revision of each plan and document as it is submitted to the Examination, together with comments outlining the reason for the change.</p> |
| 3. | Final audit of plans and documents | <p>a) Please could the Applicant confirm that it will undertake a final audit of plans and documents referred to in the dDCO prior to submitting its final preferred dDCO to the Examination. It should ensure that the results of this audit are reflected in all references in the dDCO and in the "record of plans and documents" requested above?</p> <p>b) Please could any subsequent changes to the "record of plans and documents" be submitted at each Examination Deadline up to the close of the Examination?</p> |
| 4. | The determination of compensation when not relating to Compulsory Acquisition | <p>a) Several articles make provision for "<i>compensation to be determined, in case of dispute, under Part 1 of the 1961 Act</i>". It is acknowledged that a provision in this form is commonplace in DCOs and other Orders. However, Part 1 of the 1961 Act only relates to compensation for Compulsory Acquisition. For there to be certainty that it would apply in other situations (e.g. with respect to the felling or lopping of trees under Article 39), should a modification be included? If not, why not?</p> |

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| | | b) If the Applicant takes the view that such an amendment is not necessary, it would assist the ExA to be directed to examples of cases where the Tribunal has accepted jurisdiction over similar matters to those proposed in the dDCO that do not involve Compulsory Acquisition as strictly defined. |
| 5. | "Guillotine" provisions | <p>Several provisions confer deemed consent if a consultee does not respond within 28 days (a "guillotine").</p> <p>a) Please provide evidence that the guillotine has been discussed with each relevant consultee, demonstrate that they are aware of it and provide any comments that they have made on their ability to comply.</p> <p>b) Should those provisions contain an express requirement that any application for consent should contain a statement drawing the consultee's attention to the guillotine?</p> |
| Preamble to the dDCO | | |
| 6. | Reference to the Panel | Please could the preamble be updated to reflect the appointment of a Panel of 2 members, rather than a single appointed person? |
| 7. | Powers conferred to the Secretary of State | <p>a) Replace "<i>Part 15 of Schedule 5</i>" with "<i>Part 1 of Schedule 5</i>"?</p> <p>b) Several sections of the Planning Act 2008 (as amended) (PA2008) quoted have been substituted or repealed by other legislation. Does that need to be dealt with?</p> <p>c) Why have other sections of PA2008 not been quoted, e.g. s125, s126, s136?</p> |
| Part 1 - Preliminary | | |

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| 8. | <p>Article 2(1)</p> <p><i>"authorised development" means the development and associated development described in Schedule 1 (authorised development)</i></p> | <p>a) Why does Associated Development need to be mentioned here, when it is covered in Schedule 1?</p> <p>b) Please could the Applicant consider the following alternative wording, which also clarifies the meaning consistent with PA2008, and is a form commonly used in previous DCOs:</p> <p><i>"authorised development" means the development described in Part 1 of Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act</i></p> |
| 9. | <p>Article 2(1)</p> <p><i>"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of ... remedial work in respect of any contamination or other adverse ground <u>conditions establishment</u> of working areas and compounds, ...</i></p> | <p>a) Replace <i>"conditions establishment"</i> with <i>"conditions, establishment"</i>?</p> <p>b) How do any activities to be carried out before commencement relate to those set out in the Outline Environmental Management Plan (OEMP)?</p> <p>c) What extent of remedial works in respect of any contamination or establishment of working areas and compounds are envisaged, for example in relation to the former Rowditch Tip and the main construction compound?</p> <p>d) How will it be ensured that any activities carried out before commencement will not result in significant adverse impacts, including on any archaeological artefacts, on biodiversity or from noise?</p> <p>e) More generally, how will it be ensured that any activities carried out before commencement would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the Environmental Statement (ES)?</p> <p>f) Is it necessary to make the definition more precise and/or to augment it to clarify that pre-commencement activities remain within the</p> |

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| | | Rochdale envelope as specified and assessed in the certified plans and documents? |
| 10. | <p>Article 2(1)</p> <p><i>"maintain" includes inspect, repair, adjust, alter, <u>remove, replace or reconstruct</u> in relation to the authorised development and <u>any derivative of "maintain" is to be construed accordingly to the extent assessed in the environmental statement</u></i></p> | <p>a) Please provide an explanation of what is meant by <i>"any derivative of maintain"</i>.</p> <p>b) Please provide examples of <i>"any derivative of maintain"</i> activities and explain how these differ from <i>"maintain"</i> activities.</p> <p>c) Please provide examples of <i>"remove, replace or reconstruct"</i> activities and clarify whether these could include major construction works during operation, such as the removal and replacement of the proposed A38 embankment at the Little Eaton junction.</p> <p>d) With reference to the advice provided in section 20 of Advice Note 15¹, please identify where all the activities in the definition, including those noted above, have been assessed in the ES.</p> <p>e) Please identify proposed mitigation measures for all the activities in the definition, how those are secured and any residual significant impacts.</p> <p>f) How will it be ensured that the activities would not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the ES, recognising the importance of effects as well as the extent?</p> <p>g) Is it necessary to make the definition more precise and/or to augment it to clarify that actions construed as maintenance remain within the Rochdale envelope as specified and assessed in the certified plans and documents?</p> |

¹ Advice note 15: Drafting Development Consent Orders, The Planning Inspectorate, July 2018

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| 11. | <p>Article 2(1)</p> <p><i>"the Order land" means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;</i></p> <p><i>"the Order limits" means the limits of the land to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;</i></p> | <p>a) Is the "Order land" intended to be the whole of the land within the "Order limits" or to have some different boundary?</p> <p>b) Is there any difference between the red line boundaries shown on the Land plans and on the Works plans? The Land plans keys identify the red boundary as the "Order limits"; however, the Works plans also have a red line boundary, but the key describes it as "Land to be acquired or used permanently or temporarily".</p> <p>c) For clarity, could the definitions in the dDCO and the descriptions in the plans be simplified and made consistent?</p> |
| 12. | <p>Article 2(1)</p> <p>Definition of "carrying out the authorised development"</p> | <p>The term "carrying out the authorised development" is used several times in the dDCO. Should this be defined to clarify the stages of the Proposed Development that this does or doesn't apply to – e.g. activities before commencement, construction, maintenance, use or demolition of the authorised development?</p> |
| 13. | <p>Article 3 - Disapplication of legislative provisions</p> | <p>a) Has this disapplication and the relevant dDCO provisions been agreed with the drainage authorities?</p> <p>b) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> |
| 14. | <p>Article 4 - Maintenance of drainage works</p> | <p>a) How would any other party be able to discharge its responsibility for the maintenance of drainage works when the Undertaker has taken temporary possession?</p> <p>b) Should the Undertaker be required to temporarily have responsibility for the maintenance of drainage works while it has taken temporary possession? If not, why not?</p> |

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| | | <p>c) How will it be ensured that any other parties responsible for the maintenance of drainage would be able to discharge their responsibilities when the Undertaker has taken permanent possession?</p> <p>d) Does this article need to be amended to clarify the ability for responsibilities for the maintenance of drainage works to be discharged when the Undertaker takes temporary or permanent possession of the land?</p> |
| Part 2 – Principal Powers | | |
| 15. | Article 6 – maintenance of authorised development | <p>Please clarify how it is secured that the Undertaker, or other specified bodies, have an obligation to maintain the works, including, but not limited to:</p> <ul style="list-style-type: none"> • Associated and Ancillary Development? • Flood storage areas and drainage? • Noise barriers? • Trees, hedgerows and landscaping? • Public rights of way? • Other environmental mitigation and enhancement areas? |
| 16. | Article 7 - Planning Permission | <p>Should this be subject to any cumulative impacts of the Proposed Development with the development under the terms of the planning permission not giving rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the ES?</p> |
| 17. | <p>Article 8 – Limits of deviation</p> <p><i>(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of</i></p> | <p>The EM refers to a lateral deviation to a maximum of 0.5 metres. However, this does not appear to be included in Article 8 or on the works plans. It is noted that the “<i>highway work limit of deviation</i>” currently indicated on the works plans appears to have the potential for</p> |

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| | <i>the limits of deviation shown on those plans;</i> | <p>the highways to be closer to sensitive receptors than is considered by the ES.</p> <p>Please can the limits of lateral deviation be clarified and quantified and identified as the smallest reasonable distances?</p> |
| 18. | <p>Article 10 – Consent to transfer benefit of order</p> <p><i>(4) The consent of the Secretary of State is required for a transfer or grant under this article except where the transfer or grant is made to...</i></p> | <p>The EM explains that the potential transfer of the powers of this order can be given without Secretary of State (SoS) consent because the companies listed have apparatus present on the order land.</p> <p>Could the Article be made more specific to this purpose, for example to limit the circumstances where a transfer of the benefit of the order can be made without SoS consent to the maintenance and repair of apparatus located in the Order land?</p> |
| Part 3 - Streets | | |
| 19. | <p>Article 11 – street works</p> <p><i>(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits</i></p> | <p>Please could the precision of this broad provision be improved by tying it to a schedule as per the model provision and other made orders?</p> |
| 20. | <p>Article 11 – street works</p> <p><i>(1)(e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d).</i></p> | <p>The powers sought are broad and appear to have the potential to be greater than are required to provide a reasonable degree of flexibility.</p> <p>a) Could “<i>any works required for, or works incidental to</i>” be made more specific to the Proposed Development and, perhaps, be included in sub-paragraphs (a), (b), (c) and (d) instead?</p> <p>b) Please provide examples of what is anticipated as “<i>any works required for, or works incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d)</i>”.</p> |

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| | | <p>c) How can it be ensured that such works will not give rise to any materially new or materially worse adverse environmental effects in comparison with those reported in the ES?</p> <p>d) Is it necessary to make this provision more precise and/or to clarify that such works remain within the Rochdale envelope as specified and assessed in the certified plans and documents?</p> |
| 21. | Article 12 – Application of the 1991 Act | <p>a) Have these provisions been agreed with the Local Highway Authorities?</p> <p>b) Which matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> |
| 22. | Article 13 - Construction and maintenance of new, altered or diverted streets and other structures | <p>a) Have these provisions been agreed with the Local Highway Authorities?</p> <p>b) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> <p>c) Who will be responsible for maintaining public rights of way and how is this secured?</p> |
| 23. | Article 13 - Construction and maintenance of new, altered or diverted streets and other structures | <p>a) Should sub-paragraph (2) identify the local highway authority <u>in whose area the highway lies</u>?</p> <p>b) Should sub-paragraph (3) identify the street authority <u>in whose area the street lies</u>?</p> <p>c) Should sub-paragraph (4) identify the local highway authority <u>in whose area the bridge lies</u>?</p> |
| 24. | Article 14 – Classification of roads, etc. | <p>a) Should each instance of this phrase be amended to “<i>On the date on which the authorised development is completed and open for traffic</i>”?</p> |

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| | <i>On a date to be determined by the undertaker</i> | b) Could timing be specified more precisely to avoid any additional impacts or require further assessment if there are substantial delays? |
| 25. | Article 14 – Classification of roads, etc. <i>(6) <u>Unless otherwise agreed with the relevant planning authority, the public rights of way set out in Part 7 (public rights of way) of Schedule 3 and identified on the streets rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on a date to be determined by the undertaker</u></i> | a) Unless otherwise agreed with the relevant planning authority and subject to their being no materially new or materially worse adverse effects in comparison with those reported in the ES? b) Is it necessary to make this provision more precise and/or to clarify how actions construed as maintenance will remain within the Rochdale envelope as specified and assessed in the certified plans and documents? c) Please correct the final underlined phrase. |
| 26. | Article 15 - Temporary stopping up and restriction of use of streets and highways <i>(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street or highway for which it is not the <u>street authority</u> without the consent of the <u>street authority</u>...</i> <i>(6) If a <u>street authority</u> which receives ...</i> | Please clarify the provisions for streets, highways and the relevant authorities: a) The undertaker must not temporarily stop up, alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority...? b) The undertaker must not temporarily stop up, alter, divert or restrict the use of any highway for which it is not the highway authority without the consent of the highway authority...? c) If a street or highway authority which receives ...? |
| 27. | Article 15 - Temporary stopping up and restriction of use of streets and highways | a) Is this likely to result in vehicles being temporarily parked further from properties than currently? b) If so, what are the anticipated impacts and mitigation, and how is the mitigation secured? |

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| | | c) How will any people with special requirements, emergency access and any requirement for parking permits be catered for? |
| 28. | Article 18 - Clearways | <p>This article imposes waiting restrictions which would otherwise require an Order under the Road Traffic Regulation Act (a TRO). There are specific consultation and publicity requirements for such orders.</p> <p>Is the Applicant able to point to any elements of the consultation and publicity for the dDCO application that was targeted at those entities that might have expected to be consulted on a TRO for the Clearway proposals?</p> |
| 29. | Article 19 – Traffic regulations | <p>a) Have these provisions been agreed with the Local Traffic Authorities?</p> <p>b) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> |
| Part 4 – Supplemental Powers | | |
| 30. | Article 20 - Discharge of water | <p>Should the following provisions be added:</p> <p>a) <i>The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river?</i></p> <p>b) <i>This article does not authorise any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010 <u>or</u> nothing in this article overrides the requirement for an environmental permit under Regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016?</i></p> <p>c) <i>This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be</i></p> |

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| | | <i>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> |
| 31. | Article 20 - Discharge of water | Clarify where consultation and agreement are required with the Environment Agency and where their consent is required? |
| 32. | Article 22 – Authority to survey and investigate the land | Add a requirement for the Undertaker to restore the land to the condition and level it was in on the date on which the Undertaker started to survey or investigate the land or such other condition as may be agreed with the owners of the land? |
| Part 5 – Powers of Acquisition | | |
| 33. | Article 27 – Public rights of way | <p>a) How are the provision of temporary closures and diversions to public rights of way during construction secured, for example Little Eaton FP17?</p> <p>b) For clarity, can these be set out in a Schedule and plan?</p> |
| 34. | Article 30 - Application of the 1981 Act (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit "(as modified by section 4 of the Acquisition of Land Act 1981)". <u>In Schedule A1(c) (counter-notice requiring purchase of land not in general vesting declaration) for...</u> | Should the underlined text be in a separate paragraph? |
| 35. | Article 33 - Temporary use of land for carrying out the authorised development | a) Please clarify the meaning of " <i>any other mitigation works</i> ". |

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| | <p><i>(1)(d) construct any permanent works specified in relation to that land in column (2) of Schedule 7 (land of which temporary possession may be taken), or any other mitigation works in connection with the authorised development.</i></p> | <p>b) Could the phrase “<i>in connection with</i>” potentially allow “<i>any other mitigation works</i>” to fall outside the definition of the authorised development?</p> |
| 36. | <p>Article 33 - Temporary use of land for carrying out the authorised development <i>(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition and level it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land ...</i></p> | <p>For the specific case of this Proposed Development, and with reference to the comment on Article 34 below, should the removal of temporary works and restoration of the land be to the reasonable satisfaction of the owners of the land?</p> |
| 37. | <p>Article 33 - Temporary use of land for carrying out the authorised development <i>(7) Any dispute as to a person’s entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.</i></p> | <p>Should this read as follows: <i>(7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.</i></p> |
| 38. | <p>Article 34 - Temporary use of land for maintaining the authorised development <i>(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and</i></p> | <p>Should the removal of temporary works and restoration of the land be to the reasonable satisfaction of the owners of the land, as noted in the EM?</p> |

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| | <i>restore the land to the condition and level it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.</i> | |
| 39. | Article 38 – Special category land | <p>a) Should the replacement land be required to be provided prior to, or at the same time as, the vesting of the special category land, as in the model provisions?</p> <p>b) Otherwise, how can the SoS be <u>certain</u> that the replacement land will be provided in accordance with s131 and s132 of PA2008?</p> |
| Part 6 - Operations | | |
| 40. | Article 39 - Felling or lopping of trees and removal of hedgerows | For the avoidance of doubt, please add the following: <i>“Nothing in this article authorises any works to any tree subject to a Tree Preservation Order”?</i> |
| 41. | Article 39 - Felling or lopping of trees and removal of hedgerows | Should specific provisions and a plan be provided for the extent of removal of existing screening vegetation alongside the A38 corridor? |
| 42. | Article 39 - Felling or lopping of trees and removal of hedgerows <i>(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), <u>remove any hedgerow within the Order limits that is required to be removed.</u></i> | <p>This article includes a power to remove hedgerows within the Order limits without the need for consent under the Hedgerows Regulations 1997.</p> <p>Paragraph 22.1 and Good practice point 6 of Advice Note 15² recommends that, provided they can be identified, provisions of this kind are made relevant to specific hedgerows to be removed by including a Schedule and a plan to specifically identify the hedgerows to be removed, whether in whole or in part.</p> |

² Advice note 15: Drafting Development Consent Orders, The Planning Inspectorate, July 2018

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| | | <p>To comply with advice and good practice, please therefore:</p> <p>a) Include for a Schedule and a plan to specifically identify any hedgerows whose removal, in whole or in part, would otherwise require consent under the 1997 Regulations.</p> <p>b) Identify each specific hedgerow, or part of hedgerow, that cannot be identified for removal, if any, and justify why it cannot be identified.</p> <p>c) Add a paragraph to require consent from the relevant Local Authority prior to the removal of any hedgerow, or part of hedgerow, that is not specifically identified on the Schedule and plan.</p> |
| 43. | <p>Article 39 - Felling or lopping of trees and removal of hedgerows</p> <p><i>(1)(c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(a) and the Conservation of Habitats and Species Regulations 2017(b) or any successor acts and regulations.</i></p> | <p>Is the wording “<i>take steps to avoid</i>” sufficiently clear and precise?</p> |
| Part 7 – Miscellaneous and General | | |
| 44. | <p>Article 43 - Defence to proceedings in respect of statutory nuisance</p> <p><i>(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g) or (ga) of</i></p> | <p>Please justify why the following potential nuisances, as defined by s79(1) of the Environmental Protection Act 1990, have been included in this article when the ES does not identify a potentially significant effect:</p> <p>(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance?</p> <p>(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance?</p> |

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| | <i>section 79(1) (statutory nuisances and inspections therefor) of that Act ...</i> | |
| 45. | Article 45 – Crown Rights | Can the Applicant provide evidence that the Crown has agreed to the inclusion of this article in the DCO? |
| 46. | Article 50 - Appeals relating to the Control of Pollution Act 1974 | <p>a) Have these provisions been agreed with the Local Authorities?</p> <p>b) Do the Local Authorities consider that the process and timescales are fair and reasonable?</p> <p>c) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> |
| Schedule 1 – Authorised Development | | |
| 47. | Authorised development Little Eaton | Please could this reflect that some of the works at Little Eaton are in the administrative area of Derby City Council? |
| 48. | Authorised development Work No. 23 | <p>a) Should the Work No. 3 item be identified as (a), consistent with the Works plans, rather than (b)?</p> <p>b) Should the Work No. 23 items be identified as (a) to (d), consistent with the works plans, rather than (i) to (l)?</p> |
| 49. | Further development | <p>This is an extensive list of further development, for which no location is identified.</p> <p>a) Is each activity sufficiently certain and justified, as it may imply uncertainty as to the extent, location and effect of what is being permitted?</p> |

| No | Reference | Issue or question |
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| | | b) If these items are necessary, why can they not be identified in more detail in connection with the works to which they are relevant? |
| 50. | Associated and Ancillary Development | <p>DCLG guidance³ sets out the core principles for Associated Development and states that “<i>As far as practicable, applicants should explain in their explanatory memorandum which parts (if any) of their proposal are associated development and why</i>”.</p> <p>The dDCO seeks powers for Associated Development but neither it nor the EM distinguish between Principal Development and Associated Development. Section 2 of the EM argues that there is no requirement to distinguish between those categories, that to do so could potentially lead to an error and refers to precedent for this approach in previous DCOs, including A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016.</p> <p>Paragraphs 8.3.1 – 8.3.7 of the A14 Recommendation Report make it clear that the Panel accepted equivalent drafting from a position of having received detailed submissions explaining which works were understood to be Principal, Associated or Ancillary Development. It was able to use those submissions to assure itself that the dDCO in that case was legally sound and that relevant guidance had been responded to. For these reasons, the Applicant is requested to prepare a table that:</p> <ul style="list-style-type: none"> • Itemises all proposed works (Works Nos. 1 – 37 and “<i>further development</i>” items (a) – (o)) • Categorises each of the works in the following terms: <ul style="list-style-type: none"> ○ Principal Development; ○ Associated Development; ○ Ancillary Development; or ○ Composite development, being works having the character of a composite of any two or all three of Principal, Associated or Ancillary development at the same time. |

³ Planning Act 2008, Guidance on associated development applications for major infrastructure projects, DCLG, April 2013

| No | Reference | Issue or question |
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| | | <ul style="list-style-type: none"> Includes comments on why each of the works should be classified accordingly. |
| Schedule 2 - Requirements | | |
| 51. | Requirement 1 <i>"Ecological Clerk of Works" means the individual appointed as such by the undertaker</i> | a) Will the Ecological Clerk of Works be appointed directly to the Undertaker, or to the Principal Contractor, as noted in Table 2.1 of the OEMP? b) Given the importance of this role for mitigation, would a direct appointment to the Undertaker be preferable? |
| 52. | Requirement 3 | a) Should it be secured that the Construction Environmental Management Plan (CEMP) and the Handover Environmental Management Plan (HEMP) are to ensure no materially new or materially worse adverse environmental effects in comparison with those reported in the ES? b) Should provisions be included for the consultation and agreement of the initial version and every subsequent revision of the CEMP and HEMP with the relevant planning authority, the local highway authority and the Environment Agency? c) Should the HEMP be <i>"be substantially in accordance with the outline environmental management plan certified under article 46 (certification of plans etc.)"</i> ? d) Should the HEMP be required to be submitted to and approved in writing by the SoS? |
| 53. | Requirement 3 <i>(2)(b) require adherence to working hours of 07:30 to 18:00 on Mondays to Friday</i> | a) Please provide a detailed explanation as to why each activity (i) to (viii) cannot be carried out during the specified working hours. |

| No | Reference | Issue or question |
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| | <i>and 08:00 to 13:00 on Saturdays, except for ...</i> | b) Does "core hours" need to be defined? c) Should any other work carried out outside the core hours or any extension to the core hours only be possible with the prior agreement of the relevant environmental health officer and only be possible provided that there are no materially new or materially worse adverse environmental effects in comparison with those reported in the ES? |
| 54. | Requirements 3, 5, 8, 11, 12, 13, 14, 15, 16, etc.. | Should agreement, as well as consultation, be required with the relevant planning authority or local highway authority? |
| 55. | Requirements 3, 8, 13, 14, etc.. | For clarity, the avoidance of doubt and to avoid confusion, should requirements for consultation and agreement with the Environment Agency be identified for each relevant requirement in Schedule 2. |
| 56. | Requirement 4 | Should timescales be identified for consultation to ensure that there is enough time for any responses to be reflected in the details to be submitted to the SoS for approval? |
| 57. | Requirement 8 <i>(4) Where the undertaker determines that remediation is necessary ...</i> | Should any consultation and agreement be required from Local Authorities or the Environment Agency before the Undertaker can determine that remediation is necessary be identified? |
| 58. | Requirement 9 | a) Should it be secured that the Derwent Valley Mills World Heritage Site Partnership is to be consulted? b) Please ensure consistency of the provisions and terms used here with those used in the OEMP. |
| 59. | Requirement 10 | Please include provisions for the consultation, agreement and approval of the written scheme for the protection and mitigation measures for the protected species. |

| No | Reference | Issue or question |
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| 60. | Requirement 11 | <ul style="list-style-type: none"> a) Should reference be made to the Traffic Management Plan submitted with the application? b) Should the Traffic Management Plan submitted with the application be certified under article 46 and should the Traffic Management Plan to be submitted for construction be required to be substantially in accordance with it? c) Should it be secured that the Traffic Management Plan is to ensure no materially new or materially worse adverse environmental effects in comparison with those reported in the ES? |
| 61. | Requirement 12 | <ul style="list-style-type: none"> a) Is "<i>compatible with</i>" sufficiently precise? b) Which other bodies should be consulted with or should agreement be required from? c) Are the process and roles sufficiently clear? d) Will records be maintained of the revised plans, documents, consultations, agreement and approvals, who do these need to be made available to and how will they be made available? |
| 62. | Requirement 13 | Do the provisions for maintenance need to be clarified? |
| 63. | Requirement 14 | <ul style="list-style-type: none"> a) Consultation and agreement with the relevant flood authorities? b) Please clarify the meaning and basis for a 50% allowance for climate change? c) What does "<i>maintained</i>" include for and by whom? Is a definition required? |

| No | Reference | Issue or question |
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| 64. | Requirements 15(2) and 16(2) | Who will be consulted on and who will agree alternative noise barrier or highway lighting proposals? |
| 65. | Model provisions | Please justify the omission of the model provisions for Tree Planting, Ecological Management Plan and Dust Emissions. |
| 66. | Other management plans | Should the dDCO include requirements for any of the key management plans referenced by table 3b of the OEMP? |
| Schedule 3 – Classification of Roads, etc. | | |
| 67. | Parts 1-7 | <p>a) Have these provisions been agreed with the Local Authorities?</p> <p>b) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> <p>c) Some of the works at Little Eaton fall within the area of Derbyshire County Council and some within the area of Derby City Council. Are the correct Local Authorities identified for each section of road or public right of way at Little Eaton?</p> |
| 68. | Part 1 Truck Roads <i>A38 northbound carriageway between point A and point B, as shown on Sheet 1 (Kingsway junction) of the <u>classification of roads plan</u>, comprising of 1200 metres.</i> | Should the underlined phrase be " <i>the classification of roads plans</i> "? |
| Schedule 4 – Permanent Stopping Up of Highways, etc. | | |
| 69. | Parts 1-4 | a) Have these provisions been agreed with the Local Authorities? |

| No | Reference | Issue or question |
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| | | <p>b) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> <p>c) Some of the works at Little Eaton fall within the area of Derbyshire County Council and some within the area of Derby City Council. Are the correct Local Authorities identified for each section of road or public right of way at Little Eaton?</p> |
| 70. | Part 1 Highways to be stopped up for which no substitute is to be provided | The 4th column is superfluous. |
| Schedule 5 – Land in Which New Rights, etc. May be Acquired | | |
| 71. | Consistency | Is this schedule consistent with the Book of Reference and with the Statement of Reasons? |
| Schedule 6 – Modification of Compensation and Compulsory Purchase Enactments, etc. | | |
| 72. | Paragraphs 1-5 | <p>This schedule is not covered by the EM.</p> <p>Please could its purpose and effect be clarified, including with reference to the model provisions?</p> |
| Schedule 7 – Land for Which Temporary Possession Might be Taken | | |
| 73. | Consistency | Is this schedule consistent with the Book of Reference and with the Statement of Reasons? |
| Schedule 8 – Trees Subject to Tree Preservation Orders | | |

| No | Reference | Issue or question |
|---|---|--|
| 74. | Identification of all trees subject to tree preservation orders | With reference to paragraph 22.3 of Advice Note 15 ⁴ , please ensure that each tree subject to a tree preservation order (TPO) is specifically identified with reference to an appropriate plan. |
| 75. | Extent of loss of trees | For TPO No. 160, please justify the extent of loss of trees within G361 - categorised as A1,2, as referenced by Appendices B and F of the Arboricultural Impact Assessment. |
| Schedule 9 – Protective Provisions | | |
| 76. | Part 1 – For the protection of electricity, gas, water and sewerage undertakers | <p>a) Please identify the name of each Statutory Undertaker that these protective provisions apply to.</p> <p>b) Have these provisions been agreed with each Statutory Undertaker?</p> <p>c) What matters, if any, are still subject to agreement with each Statutory Undertaker and what steps are being taken to resolve them?</p> |
| 77. | Part 2 – For the protection of operators of electronic communications code networks | <p>a) Please identify the name of each operator that these protective provisions apply to.</p> <p>b) Have these provisions been agreed with each operator?</p> <p>c) What matters, if any, are still subject to agreement with each operator and what steps are being taken to resolve them?</p> |
| 78. | Part 3 – For the protection of the Environment Agency | <p>a) This part departs from the model provisions and is not covered by the EM. Please could its purpose and effect be clarified, including with reference to the model provisions?</p> |

⁴ Advice note 15: Drafting Development Consent Orders, The Planning Inspectorate, July 2018

| No | Reference | Issue or question |
|--|--|---|
| | | <p>b) Please justify the inclusion of protective provisions for the Environment Agency for the specific case of this Proposed Development and how they relate to the DCO?</p> <p>c) Have these provisions been agreed with the Environment Agency?</p> <p>d) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> <p>e) Do these provisions in any way reduce the Environmental Agency's role and/or responsibilities when compared with those on Nationally Significant Infrastructure Projects where the Applicant is a private sector developer? If so, how and why?</p> |
| 79. | Part 4 – For the protection of Network Rail | <p>a) Have these provisions been agreed with Network Rail?</p> <p>b) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?</p> |
| Schedule 10 – Documents to be Certified | | |
| 80. | Updates during the Examination | Please could the Applicant update this schedule in each subsequent version of the dDCO? |
| 81. | Identifying the correct revision numbers of individual plans and documents | Some of the Document References cover several plans or documents that may have different revision numbers by the end of the Examination. How will this schedule identify those different revision numbers and, for clarity, should each plan and document be itemised individually? |
| 82. | The completeness of the list of plans and documents to be certified | Why other documents submitted with the application not to be certified, particularly those referenced by documents which are to be certified? |