

**Application by Highways England for an Order Granting Development Consent for the A38 Derby Junctions Scheme  
Action points arising from Issue Specific Hearing 1 dealing with matters relating to the draft Development Consent  
Order, which was held on 8 October 2019**

**Issued on Friday 11 October 2019.**

The following table sets out the actions that were requested by the Examining Authority during the hearing. "Question No." refers to the item number in the "The Examining Authority's issues and questions for Issue Specific Hearing 1 dealing with matters relating to the draft Development Consent Order" that was discussed during the hearing and is available from the following link:

<http://infrastructure.planninginspectorate.gov.uk/document/TR010022-000747>

**Responses should be received by the Examining Authority (ExA) by Tuesday 5 November 2019.**

Please start your response to each action by quoting the action number and the question number.

**Abbreviations used and Examination Library catalogue references**

<b>Abbreviation</b>	<b>Document or Person</b>	<b>Examination Library reference</b>
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]
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>

Action No.	Question No.	Action requested of	Action requested
1.	General	Applicant	Applicant to provide a written response to the matters raised in the hearing. The EM is to be updated to cover all matters relating to the explanation of the dDCO.
2.	1.	Applicant	Applicant to comply with the requests in this question, subject to the validation of the dDCO being undertaken on the Applicant's final version of the dDCO and periodically during the Examination, rather than at every iteration.
3.	2.	Applicant	Applicant to comply with the requests in this question. Multiple documents that currently come under a single heading in Schedule 10 (for example, parts of the ES) will be tracked individually and named individually in Schedule 10.
4.	3.	Applicant	Applicant to comply with the requests in this question.
5.	4.	Applicant	Applicant to respond in writing.
6.	5.	Derby City Council Derbyshire County Council Erewash Borough Council Environment Agency	The Local Authorities and the Environment Agency will respond with any concerns about their ability to meet the various 28 day 'guillotines' reference Articles 15, 19, 20 and 22.
7.	6.	Applicant	dDCO to be amended to refer to a panel of two members.
8.	7.	Applicant	Applicant to respond in writing on the matters raised.
9.	8.	Applicant	Applicant to provide an update to the definition of Associated Development.
10.	9.	Applicant	Applicant to review the drafting of the dDCO to ensure that appropriate controls are in place for any pre-commencement activities. This is likely to include provisions for preliminary works being undertaken in accordance with the certified OEMP.

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11.	10.	Applicant	Applicant to respond in writing.
12.	11.	Applicant	Applicant will review the dDCO to ensure the consistency of the terms used.
13.	12.	Applicant	Applicant to respond in writing on the need for further clarification of 'carrying out the authorised development'.
14.	13.	Applicant Derby City Council Derbyshire County Council Erewash Borough Council Local Authorities Environment Agency	Disapplication of legislative provisions to be discussed further between the parties and to be covered in the SoCG, LIR or Written Submissions.
15.	14.	Applicant	The maintenance of drainage works will be subject to separate agreements. Applicant to provide a more detailed written response to this question and question 15.
16.	15.	Applicant	See question 14. Applicant to respond in writing. It will clarify the scope of Highways England's statutory obligation to maintain and to consider cases where maintenance will be required to areas of land that will fall outside their permanent control, such as flood alleviation areas or environmental mitigation areas.
17.	16.	Examining Authority	Applicant and LA agreed that the impacts of development carried out in accordance with a planning permission would be dealt as part of the determination of the planning application. Examining Authority to consider further.
18.	17.	Applicant	Applicant to respond in writing and to consider the quantification of limits of deviation and review the provisions for the proposed gantries given the proximity of residential properties.

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19.	18.	Applicant	Applicant to respond in writing and to review Article 10 with a view to making it more precise.
20.	19.	Derby City Council	Derby City Council to respond in writing following consideration of the Applicant's position that Article 11 was drafted on that basis that, potentially, it would be necessary to enter all of the streets within the Order limits.
21.	20.	Applicant	Although the Applicant considers that Article 11 is a standard provision and that the powers it conveys are limited by clauses (a) to (d), it will consider that need for greater precision and provide examples of similar provisions.
22.	21.	Applicant Derby City Council Derbyshire County Council	Disapplications and Derbyshire City Council's specific concerns about how Section 4 of the Highways Act would be affected to be discussed further between the parties and to be covered in the SoCG, LIR or Written Submissions.
23.	22.	Applicant	Article 13 provisions to be discussed further between the parties and to be covered in the SoCG, LIR or Written Submissions.
24.	23.	Applicant	Applicant to address these matters in writing and in the next iteration of the dDCO.
25.	General	Applicant	There is recurring issue of how 'materially new' or 'materially worse' effects would be judged and who would make the judgement. Should the LAs and the EA be consulted and have a role in giving approvals? The Applicant considers that the dDCO provides various control points within the approval process but will consider the need to provide greater clarity.
26.	24.	Applicant	The Applicant would prefer to retain the existing wording in order to allow flexibility but will consider further, provide justification and address the concern that there may additional impacts in the event of substantial delays after the works are completed.
27.	25.	Applicant	The issue regarding maintenance will covered as part of the response to question 10. Applicant to insert new wording into Article 14 to deal with materially new or worse effects.

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28.	26.	Applicant	Applicant to respond in writing.
29.	27.	Applicant	Applicant to give a detailed written response, to include consideration of the effects on residents.
30.	28.	Applicant	Some consultation on the Clearways proposal has taken place. Applicant considers that the Examination process provides for appropriate consultation.
31.	29.	Applicant Derby City Council Derbyshire County Council	Applicant to respond in writing. Traffic Regulation matters not agreed and discussions are on-going.
32.	30.	Applicant Derby City Council	Applicant to respond in writing following further discussion with the Local Authorities and consideration of the Environment Agency's view that the suggested additional provisions are required. Derby City Council to make a written submission on discharges to non-main river watercourses.
33.	31.	Applicant Environment Agency	Applicant and Environment Agency to respond in writing and to consider whether matters may be overlooked where Protective Provisions are divorced from Requirements in the dDCO.
34.	32.	Applicant	Applicant advised that Article 22 uses standard wording but will look again at how to deal with re-instatement and will respond in writing.
35.	33.	Applicant Derbyshire County Council	Applicant considers that provision for the temporary closure of footpaths is made through Article 15 but will consult further with Derbyshire County Council on specific concerns and will respond in writing.
36.	34.	Applicant	Applicant to correct drafting error.
37.	35.	Applicant	Applicant to respond in writing to the request for greater precision in Article 33.
38.	36.	Applicant	Applicant will respond in writing after considering whether agreement with

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			landowners may be difficult and lead to delays and after considering Erewash Borough Council's suggestion that re-instatement of land to the original condition may not always be appropriate, e.g. for the main construction compound that will be formed on a landfill site.
39.	37.	Applicant	Applicant to respond in writing and to review the suggested change in the next iteration of the dDCO.
40.	38.	Applicant	See question 36.
41.	39.	Applicant	Applicant considers that the wording of Article 38 does not create uncertainty but will review to provide greater clarity.
42.	40.	Applicant	Applicant to review and tighten the wording of Articles 39 and 40.
43.	41.	Applicant	See answer to question 40.
44.	42.	Applicant	See answer to question 40.
45.	43.	Applicant	See answer to question 40.
46.	44.	Applicant	Applicant to provide a written response that clarifies any relationship between the protections sought and whether potential significant effects have been identified in the Environmental Statement.
47.	45.	Applicant	Agreement has yet to be reached with the Crown Estate but is being sought and an update will be provided in writing.
48.	46.	Applicant Derbyshire City Council Environment Agency	Applicant, Derbyshire City Council and the Environment Agency will cover this matter in the SoCGs.
49.	47.	Applicant	Applicant will respond in writing and will address this matter in the next iteration of the dDCO.

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50.	48.	Applicant	Applicant will respond in writing and will address this matter in the next iteration of the dDCO.
51.	49.	Applicant	Applicant to review whether any of the further development specified in Schedule 1 items (a) to (o) can be incorporated into Works 1 to 37 and will provide clarification of the remaining further development.
52.	50.	Applicant	Applicant to consider if more precise information can be provided on whether the proposed works are Principal, Associated or Ancillary Development in order to help the consideration of whether they meet the tests for Compulsory Acquisition and Temporary Possession.
53.	51.	Applicant	Applicant to clarify who will appoint the Ecological Clerk of Works.
54.	52.	Applicant	Applicant to clarify the position regarding no materially new or materially worse effects. Applicant to look again at whether Requirement 3 should provide for approval by the LA/EA, whether the HEMP should be substantially in accordance with the OEMP and the need for the HEMP to be approved by the SoS.
55.	53.	Applicant Derby City Council	Applicant to respond in writing on question 53(a) and (b). Derby City Council will consider and respond on 53(c).
56.	54.	Applicant	This matter will be covered by responses to earlier questions.
57.	55.	Applicant	This matter will be covered by responses to earlier questions.
58.	56.	Applicant Derby City Council Derbyshire County Council Erewash Borough Council Environment Agency	Applicant considers that it would be helpful to include timescales in Requirement 4. Will discuss with the Local Authorities and with the Environment Agency.

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59.	57.	Applicant	Applicant to consider further and respond in writing, addressing the Environment Agency's view that it should be consulted under Requirement 8.
60.	58.	Applicant Derwent Valley Mills World Heritage Site Partnership Derby City Council Derbyshire County Council Erewash Borough Council	Applicant to discuss directly with Derwent Valley Mills World Heritage Site Partnership and the Local Authorities and will review Requirement 9, the OEMP and the Heritage Impact Assessment to ensure consistency of terms and requirements.
61.	59.	Applicant	This matter will be covered by responses to earlier questions.
62.	60.	Applicant	Applicant to address Derby City Council and Derbyshire County Council concerns about the level of detail in the submitted Traffic Management Plan and whether input can be obtained from a contractor to provide a higher level of detail.
63.	61.	Applicant	Applicant to respond in writing.
64.	62.	Applicant	This matter will be covered by responses to earlier questions.
65.	63.	Applicant	(a) EA considers that it should be consulted. Applicant to consider the Environment Agency's view that it should be consulted and respond in writing. (b) EA satisfied with 50% allowance. (c) This matter has already been covered.
66.	64.	Applicant	Applicant to clarify who will be consulted under this Requirement.
67.	65.	Derby City Council Derbyshire	The Local Authorities and the Environment Agency are to consider the Applicant's view that that the model provisions identified are covered by other provisions of the dDCO and respond with any concerns regarding the omission of the identified



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		County Council Erewash Borough Council Environment Agency	model provisions.
68.	66.	Applicant	Applicant to provide clarification regarding the management plans listed in the OEMP.
69.	67.	Derby City Council Derbyshire County Council Erewash Borough Council	Local Authorities to respond with any concerns regarding Schedule 3
70.	68.	Applicant	Amendments to be made in the next iteration of the dDCO.
71.	69.	Applicant	This matter will be covered by responses to earlier questions.
72.	70.	Applicant	The 4 <sup>th</sup> column will be omitted in the next iteration of the dDCO.
73.	71.	Applicant	Applicant will provide an update on any voluntary agreements reached. It is undertaking a rolling audit of the Book of Reference and will provide revised versions in accordance with the Examination timetable.
74.	72.	Applicant	Applicant to respond in writing.
75.	73.	Applicant	Applicant to respond in writing.
76.	74.	Applicant	Applicant to amend Schedule 8.
77.	75.	Examining Authority	This matter is to be dealt with in the Examining Authority's first written questions.
78.	76.	Applicant Statutory	Applicant is in discussion with statutory undertakers with the aim of agreeing Protective Provisions and will provide updates in writing and clarify which

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		Undertakers	Protective Provisions apply to which statutory undertakers.
79.	77.	Applicant	See question 76.
80.	78.	Applicant Environment Agency	Applicant and Environment Agency are continuing discussions about Protective Provisions and will respond in writing.
81.	79.	Applicant Network Rail	Applicant is in on-going discussion with Network Rail on the relevant Protective Provisions and will provide an update in writing.
82.	80.	Applicant	Applicant to update Schedule 10 and ensure that it covers each individual document.
83.	81.	Applicant	See question 80.
84.	82.	Applicant	Applicant to review the application documents and clarify whether any further documents are relied on by the dDCO and need to be included in Schedule 10.
85.	83.		