

A38 Derby Junctions
TR010022
8.x Statement of Common Ground with
Euro Garages Ltd

Planning Act 2008

Rule 8 (x)(x)

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 8

November 2019

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure) Rules 2010**

**A38 Derby Junctions
Development Consent Order 202[]**

**Statement of Common Ground
Euro Garages Ltd**

Regulation Number	Rule 8 (x)(x)
Planning Inspectorate Scheme Reference	TR010022
Application Document Reference	XXXXXX
Author	A38 Derby Junctions Project Team, Highways England

Version	Date	Status of Version

Table of contents

Chapter	Pages
1 Introduction	1
1.1 Purpose of this Document	1
1.2 Parties to this Statement of Common Ground	1
1.3 Terminology	1
2 Record of Engagement	3
3 Issues	7
3.1 Introduction and General Matters	7
3.2 Issues related to the Assessment and Mitigation of Potential Impacts, Including in Relation to Access, Safety and Economic Impact.....	8
3.3 Other Matters	13

1 Introduction

1.1 Purpose of this Document

- 1.1.1 This Statement of Common Ground ('SoCG') has been prepared in respect of the proposed A38 Derby Junctions ('the Application') made by Highways England Company Limited ('Highways England') to the Secretary of State for Transport ('Secretary of State') for a Development Consent Order ('the Order') under section 37 of the Planning Act 2008 ('PA 2008').
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application documents. All documents are available in the deposit locations and/ or the Planning Inspectorate's website¹.
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared by Highways England as the Applicant and Euro Garages Ltd (EG).
- 1.2.2 Highways England became the Government-owned Strategic Highways Company on 1st April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing Highways England made provision for all legal rights and obligations of the Highways Agency to be conferred upon or assumed by Highways England.
- 1.2.3 Euro Garages Ltd (EG) is one of the largest independent fuel station and convenience retailers, with a portfolio of sites across eight countries in Europe and North America.
- 1.2.4 EG owns the freehold interest and operates the service station facility known as EG Mackworth which together with the adjoining McDonalds restaurant provides services of fuel, refreshment and rest to passing motorists on the A38 and A 52 at Markeaton junction, Derby.

1.3 Terminology

- 1.3.1 In the tables in the Issues chapter (Section 3) of this SoCG, "Not Agreed" indicates a final position, and "Under discussion" is where points will be the subject of on-going discussion

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/>

wherever possible to resolve, or refine, the extent of disagreement between the parties.
“Agreed” indicates where the issue has been resolved.

- 1.3.2 Whilst the parties have sought to isolate the key issues EG reserves its position in relation to any additional matters that become apparent once further information has been received from HE or its consultants over the proposals.

2 Record of Engagement

2.1.1 A summary of key meetings and correspondence that has taken place between Highways England and EG in relation to the Application is outlined in Table 2.1.

Table 2.1: Record of engagement

Date	Form of Correspondence	Key topics discussed and key outcomes
07.11.14	Meeting with Euro Garages CEO at head office	Explained scheme to them (including closure of access from A38) – EG advised we should speak to their transportation consultant (SCP).
12.11.14	Meeting with SCP (Euro Garages transportation consultant)	Explained scheme to them (including closure of access from A38).
01.02.15	Public Consultation Exhibition	No response from Euro Garages because this was not considered necessary by EG having regard to direct discussion over the detail of the scheme.
15.06.15	Email (to McDonald's and Euro Garages)	Provided sketches of various alternative junction layouts for the access onto the A52.
06.07.15	Meeting with SCP (Euro Garages transportation consultant)	Discussed several options for roundabout or signalised junction with A52 – main issue noted is that HGVs (including fuel tankers) would not be able to turn within the filling station site to exit back onto the A52.
15.06.16	Email (to McDonald's and Euro Garages)	Highways England issued a sketch layout of the A38 diverge slip road with full access/ egress to McDonald's and the filling station as, at that time, Highways England's specialist advised it may be an acceptable solution.
21.06.16	Information submission to Aecom	SCP submitted plans of tanker routing through site together with Land Registry Plan for EG site
31.08.16	Meeting (joint with Euro Garages)	To review the proposed junction arrangement for access to/from the Euro Garages/McDonalds site with a view to reaching an agreement in principle.
20.12.16	Email (to McDonald's and Euro Garages)	Sketches issued to McDonald's and Euro Garages showing swept paths for fuel tankers entering site.
07.02.17	Email (to McDonald's and Euro Garages)	Current scheme layout and traffic signals Technical Note (for proposed A52 signalised junction with McDonald's and filling station access) were sent to McDonald's and Euro Garages.
20.02.17	Meeting (joint with Euro Garages)	Meeting to discuss general progress of the scheme.
20.04.17	Email (to McDonald's and Euro Garages)	AutoCAD (AutoCAD is a commercial computer-aided design and drafting software application) files of the current proposals issued to McDonald's and Euro Garages.
08.08.18	Meeting with SCP and Euro garages Estates rep	Update ahead of Statutory Consultation – update included the fact that the access to McDonald's and Euro Garages from the A38 slip road would now be one-way (an exit only).

24.08.18	Email (to McDonald's and Euro Garages)	Issued the AutoCAD version of access layout and the traffic signals (TRANSYT) analysis output (as agreed at the meetings) and requested a follow up meeting with them.
07.05.19	Meeting (joint with Euro Garages)	Meeting held (following a series of email requests and reminders) to update position with respect to DCO submission and programme and to further consider issues.
08.05.19	Information Provided to Aecom	Email submitted by SCP to Aecom with Tanker route plan through site, land registry plans for EG site. Plans originally submitted in June 2015.
05.08.19	Written representation comments provided	McDonald's provided written representation comments related to access, land take, operational and construction impacts of the Scheme.
20.08.18	Meeting (joint with Euro Garages)	<p>Meeting to discuss responses made to issues raised at previous meeting – no substantive responses were tabled.</p> <p>Tim Hancock of Tim Hancock Associates attended and was introduced – he prepared Euro Garage's written representation.</p> <p>Mr Hancock is a surveyor specialising in the valuation of service stations, and he explained the likely adverse consequences for the service station if its access arrangements were implemented as currently envisaged. He also stressed the importance in considering all options to mitigate the adverse effects of the scheme and that this might reduce the costs of the scheme through reducing compensation.</p> <p>In particular, he stressed the importance of advance warning signs on all approaching flows in mitigating reductions in trade where a service station was taken offline and away from the passing traffic as will occur for A38 through traffic in this case.</p> <p>Mr Hancock also stressed that the detailed arrangements for internal access movements within the larger site once the scheme was implemented would need to be mutually enforceable as between EG and McDonalds.</p> <p>He said that this would need detailed consideration once the arrangements were finalised. He confirmed that he would agree to discuss these arrangements with HE's surveyor.</p> <p>Based on Mr Hancock's experience of similar cases, he considers that HE is not entitled to assume that a claimant will mitigate its losses by acquiring third party rights of way that are needed to operate the new traffic circulation arrangements. Such rights may not be securable. There can be no assumption that such rights would be available on any or commercial terms.</p> <p>In his experience a competent acquiring authority will ensure that it secures the requisite powers that are needed to acquire all requisite rights for new access arrangements to work safely,</p>

		<p>effectively and legally. In default of agreement between landowners, it can then ensure that the requisite rights are granted against the background of the threat of compulsory powers or using these if necessary. This has the effect of reducing the overall compensation paid through ensuring that a site that suffers interference with its rights can still operate effectively following the completion of the relevant scheme.</p> <p>Mr Hancock added in the meeting that the Lands Tribunal would only be able to make an order for compensation and not procure the granting of additional rights. If the site is deficient in rights to allow it to operate effectively following the scheme, compensation will be assessed having regard to the depreciation in the value of the claimant's interest without the additional rights that might be needed or desirable unless the orders make provision for them to be granted to the claimant. `</p> <p>In considering the internal traffic movements regard needed to be had to all categories of vehicle. The service station serves HGV traffic. Even where minimum design standards might be met the site-specific commercial quality of the revised access proposals should be considered in expert terms. Whilst Mr Hancock accepted that compensation is a matter for the Lands Tribunal the scheme should offer value for money. Service stations are very valuable assets and it would be sensible to explore any cost effective improvements to the revised access and circulation arrangements within the scheme.</p> <p>He therefore stressed the need to review all traffic movements proposed together with delivery movements against the existing legal rights held by the parties.</p>
22.10.19	Site meeting between Mr Hancock & Mr Bulmer, acting for Highways England and instructed by the Valuation Office Agency.	<p>Mr Hancock has since attended a site meeting with Mr David Bulmer, a service station compensation expert who has been appointed by the Valuation Office Agency.</p> <p>The surveyors discussed issues relating to advance warning signs and access and internal movements from the perspective of compensation. Mr Hancock considers that a high-quality overlay plan is required to establish accurately the impact of the scheme on EG's property and in particular the rights of way which EG currently uses to access the service station over the adjoining land owned by McDonalds.</p>

- 2.1.2 It is agreed that this is an accurate record of the key meetings and consultation undertaken between Highways England and EG in relation to the issues addressed in this SoCG.

3 Issues

3.1 Introduction and General Matters

- 3.1.1 This chapter sets out the 'issues' which are agreed, not agreed, or are under discussion between EG and Highways England.
- 3.1.2 The letter provided to Highways England by The Planning Inspectorate on the 23rd of August 2019 under Section 88 of the Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 6 (hereafter referred to as the 'Rule 6 Letter'), sets out the issues that The Planning Inspectorate want Highways England and the relevant parties to address in their Statements of Common Ground. Specifically, Annex E sets out the parties that The Planning Inspectorate wants Highways England to produce a SoCG with and the issues that they want to see addressed. This bullet point list has been replicated using a numbered list and is available at Appendix A of this SoCG. The issues set out below refer to this numbered list, making it clear which issues have been addressed.

3.2 Issues related to the Assessment and Mitigation of Potential Impacts, Including in Relation to Access, Safety and Economic Impact

Issue reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
Issue ref: I.1, access and economic impact	Written Representation Comments	-	-	As readily accessible facilities [the service station], passing motorists can visit them without the need to depart from the strategic road network towards the town centre in search of services. The proposed scheme will have a serious and adverse effect on the trading operation of the service station. Petrol filling stations are trade related properties and trading performance is directly affected by certain key factors including accessibility and prominence to substantial traffic flows. The effect of the Scheme will be to allow traffic on the A38 to freely flow underneath the junction. This critical source of north and southbound trade will be lost to the service station, although this loss would be partially mitigated if advanced warning signs were provided as part of the scheme.	<p>Euro Garages' concerns regarding the potential loss of trade is noted.</p> <p>Highways England is currently investigating how/whether the combined site (Euro Garages and McDonald's) can be designated as a Trunk Road Service Area (TRSA). TRSAs can be signed as 'services' directly from the Trunk Road network.</p> <p>Progress on this issue will be reported in updates of this SoCG.</p>	Under discussion

Issue reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
				Highways England has yet to determine whether such signage could be provided.		
Issue ref: I.1, access and safety	Written Representation Comments	-	-	The scheme will also seriously reduce the accessibility to the site for traffic that continues to use the junction through interference with existing access arrangements, including works of stopping up and modification of accesses. We have further concerns over the Scheme in relation to the access arrangements that are currently proposed within the Scheme, in substitution of the existing access arrangements, because of their adverse effect on essential safe fuel delivery arrangements and access for HGV traffic.	The site will continue to enjoy entry and exit arrangements with the A52. The existing entry and exit arrangements with the A38 are to be modified to exit only (onto the proposed A38 slip road) for safety reasons. It is envisaged that fuel delivery will continue as it does at present, i.e. the tanker will enter the site from the A52 and will leave the site onto the A38 slip road.	Under discussion
Issue ref: I.1, access and	Written Representation Comments	-	-	Additionally, Euro Garages Ltd property currently enjoys direct and satisfactory access to the public highways of both the A38	Currently it is necessary to cross land owned by McDonald's to gain access to the filling station from both the A38 and the A52.	Under discussion

Issue reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
economic impact				<p>and A52 without the need to cross land in third party ownership. Unless the orders make provision for continued direct and satisfactory accesses that would allow the effective use of the service station in commercial terms, Euro Garages Ltd property would be further and unnecessarily depreciated in value.</p> <p>Additional Comment on Highways England's Statement</p> <p>The statement that the proposed scheme will not change these existing arrangements is not accepted on the basis of the preliminary investigations that have been undertaken on behalf of Euro Garages Limited.</p> <p>These investigations, which have involved producing a draft</p>	<p>A check with the land registry confirms that there are appropriate rights, by way of a conveyance dated 1982 to allow those who need to access the filling station to cross the land owned by McDonalds which abuts the highway at any time, day or night.</p> <p>The proposed scheme will not change these existing arrangements.</p>	

Issue reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
				<p>overlay plan, illustrate that the documentary rights of way referred to in Highways England's response will be interfered with as a consequence of the scheme. Whilst the detail needs to be verified through detailed site survey to check the overlays, it appears that the proposed scheme will involve access over land lying outside the existing rights of way which is not within the control of Euro Garages Limited. If detailed investigation confirms this position, the adverse consequences on the operation of the service station and the resultant depreciation in value are likely to be significant. Euro Garages Limited considers that it would be possible for Highways England to ensure that appropriate rights of way can be made available to accommodate these issues and mitigate the adverse effects of the scheme.</p>		

Issue reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
Issue ref: n/a	Written Representation Comments	-	-	Euro Garages Ltd does not object to the principle of the Scheme.	Noted.	Agreed.

3.3 Other Matters

In regard to the Scheme, EG needs to reserve the right to reserve further matters that become apparent as more detailed aspects of the design emerge. Given however that EG does not object to the principle of the scheme, the key points are likely to remain advance warning signs; modifications to rights of way to allow legal post scheme operation and mitigate compensation and detailed modification to design and layout of a relatively minor nature including on-site signage, kerb alignments and surface treatments that are likely to have disproportionate benefit in the post-scheme forecourt operation.

Appendix A: The Planning Inspectorate SoCG Issues List (Annex E, Rule 6 Letter)

SoCGs are requested to be prepared between the Applicant and:

A. Derby City Council, Derbyshire County Council and Erewash Borough Council to include:

1. Compliance with the development plans, impacts on land use and the acceptability of proposed changes to land use
2. The need for development
3. Alternatives and compliance with relevant legal requirements and policy, including with respect to the Environmental Impact Assessment (EIA), flood risk and Compulsory Acquisition
4. Whether the business case and economic case adequately consider local matters
5. Minimisation of land take
6. Impacts on local transport networks, impact and mitigation of temporary and permanent closures of roads and other rights of way
7. Traffic management and communication with residents and businesses during construction
8. Air quality and the potential for a zone compliant with the Air Quality Directive to become non-compliant and the potential for delays for a non-compliant zone to achieve compliance
9. Dust, odour, artificial light, smoke, steam impacts and nuisance
10. Noise and vibration and impacts on local residents and others, construction noise and working hours limits, noise barriers, other mitigation and the need for any specific requirements in the draft Development Consent Order (dDCO)
11. Biodiversity and impacts on sites and habitats and species and mitigation
12. Impacts on open space, any assessments of whether any open space is surplus to requirements and the suitability of proposed replacement
13. “Good design” including functionality and aesthetics, the replacement bridge, noise barriers, site restoration, and “good design” in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform and vegetation.
14. Landscape and visual impact assessment and lighting
15. Green Belt
16. Impacts on Public Rights of Way, on pedestrians, cyclists and horseriders, and opportunities to improve
17. Temporary and permanent impacts on recreation
18. Socio-economic impacts
19. Community isolation, severance and accessibility, including by disabled users
20. Common law nuisance and statutory nuisance, nuisance mitigation and limitations and appropriate provisions in the dDCO
21. Whether the maintenance and decommissioning activities have been adequately defined in the dDCO and whether they have been appropriately assessed and mitigated
22. Measures to avoid, reduce or compensate for adverse health impacts, including cumulative impacts on health
23. Safety impact assessment and consistency with relevant highways safety frameworks
24. Whether appropriate bodies have been consulted about national security implications and whether any issues have been adequately addressed
25. The assessment of civil and military aviation and defence matters in accordance with the National Networks National Policy Statement

B. The Environment Agency, Derby City Council, Derbyshire County Council, Erewash Borough Council and Severn Trent Water to include:

1. Dust, odour, artificial light, smoke and steam scope and methodology of assessment
2. The water environment including main rivers, groundwater and other water bodies, any concerns on impacts on water quality/resources and the need for any specific requirements in the dDCO
3. Flood risk, adequacy of the Flood Risk Assessments, the selection of mitigation sites and any concerns about the proposal on flood risk grounds
4. Drainage, Sustainable Urban Drainage Systems (SuDS), compliance with national standards and the appropriate body to be given the responsibility to maintain any SuDS
5. Water abstraction, discharge, pollution control and permits and whether potential releases can be adequately regulated under the pollution control framework
6. Contaminated land
7. Climate change, including the appropriate use of UK Climate Projections, identification of maximum credible scenarios, adaptation, impacts, radical changes beyond the latest projections
8. Whether processes are in place to meet all relevant Environmental Permit requirements (including with respect to waste management), timescales, and any comfort/impediments to them being granted

C. Natural England, Derby City Council, Derbyshire County Council and Erewash Borough Council to include:

1. The Applicant's Habitat Regulation Assessment – No Significant Effects Report (NSER) and the included matrices which exclude the potential for likely significant effects to arise alone or in combination with other plans and projects
2. Impacts on habitats and species, habitat replacement and opportunities for enhancement
3. Assessment of noise, vibration, air and water quality impacts on designated nature conservation sites, protected landscapes, protected species or other wildlife.
4. Agreement of biodiversity and ecological conservation mitigation measures, any comfort/impediments for the granting of relevant licences and their timescales
 - Waterbodies
 - Agricultural land
 - Green infrastructure

D. Historic England, Derby City Council, Derbyshire County Council and Erewash Borough Council to include:

1. Whether heritage assets have been identified and assessed appropriately
2. Derwent Valley Mills World Heritage Site
3. Darley Abbey Scheduled Ancient Monument
4. The approach to archaeology
5. Other historic assets, including non-designated historic assets identified by local authorities and in Historic Environmental Records
6. Written scheme of investigation
7. Historic landscape character areas

8. The need for any specific requirements in the dDCO

SoCGs A-D to include:

1. The applicable legislation and policy considered by the Applicant
2. The Environmental Impact Assessment methodology, including the assessment of cumulative effects and the other plans/projects included
3. The extent of the areas of potential impact considered
4. Baseline information, data collection methods, data/statistical analysis, approach to modelling, presentation of results and forecast methodologies
5. The application of expert judgements and assumptions
6. Identification and sensitivity of receptors with the potential to be affected by the proposed development, magnitude and the quantification of potential impact
7. Likely effects (direct and indirect) on protected (or equivalent) biodiversity sites, habitats and species
8. Nature of the likely effects (direct or indirect) on receptors
9. “Reasonable worst case” Rochdale Envelope parameters
10. Mitigation that is necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable
11. Whether the secured mitigation measures are likely to result in the identified residual impacts
12. The significance of each residual impact
13. Whether the mitigation identified in the Environmental Statement (ES) is adequately secured by the combination of Requirements in the dDCO with other consents, permits and licenses
14. dDCO provisions
15. The Outline Environmental Management Plan, The Construction Environmental Management Plan, the Transport Management Plan and the Handover Environmental Management Plan
16. Matters for which detailed approval needs to be obtained and the roles of the local authorities and of other independent statutory and regulatory authorities
17. The identification of consents, permits or licenses required before the development can become operational, their scope, any management plans that would be included in an application, progress to date, comfort/impediments and timescales for the consents, permits or licenses being granted
18. Whether the effectiveness of consents, permits or licenses as mitigation have been accurately identified in the impact assessment
19. Whether potential releases can be adequately regulated under the pollution control framework
20. Whether contaminated land, land quality pollution control and waste management can be adequately regulated by Environmental Permits
21. Any other relevant matters included in the Initial Assessment of Principal Issues in Annex B
22. Any other relevant and important considerations
23. Any other matters on which agreement might aid the smooth running of the Examination

E. Network Rail to include:

1. Bridge widening comfort/impediment
2. Any other matters on which agreement might aid the smooth running of the Examination

F. Statutory Undertakers to include:

1. Impacts on rights/apparatus and on the transmission/distribution systems that could be interfered with and their mitigation
2. The adequacy of the provisions in the dDCO to protect the public interest
3. The Outline Environmental Management Plan
4. Any other matters on which agreement might aid the smooth running of the Examination

G. The Royal School for the Deaf to include:

1. The assessment and mitigation of potential impacts, including in relation to the use and reinstatement of temporary possession land, noise and vibration, air quality, safety and security, access and liaison during construction
2. Any other matters on which agreement might aid the smooth running of the Examination

H. Cherry Lodge children's residential care home to include:

1. The assessment and mitigation of potential impacts, including in relation to parking, noise and vibration, air quality, other changes to the local environment and potential impacts on well-being, access and operation
2. Any other matters on which agreement might aid the smooth running of the Examination

I. Existing Businesses in the vicinity of Markeaton junction to include:

1. The assessment and mitigation of potential impacts, including in relation to access, safety and economic impact
2. Any other matters on which agreement might aid the smooth running of the Examination