

The Planning Inspectorate
Room 4/04
Temple Quay House (2 The Square)
Temple Quay
Bristol
Avon
BS1 6PN

Our ref: LT/2019/124720/01-L01
Your ref: A38 NSIP
Date: 4 November 2019

Dear Sir/Madam

A38 DERBY JUNCTIONS - ACTION POINTS ARISING FROM ISSUE SPECIFIC HEARING 1 DEALING WITH MATTERS RELATING TO THE DRAFT DEVELOPMENT CONSENT ORDER - ENVIRONMENT AGENCY RESPONSE A38 DERBY JUNCTIONS

Dear Sirs,

Thanks you for the opportunity to respond to the points raised in the issue specific hearing dealing with matters relating to the draft Development Consent Order. The Environment Agency are happy to respond to the points raised in the action point document released by the Planning Inspectorate on the 11th October 2019.

Environment Agency Response

Question 5 – Guillotine Provisions

We note that the applicant mentioned the Guillotine matters, issue no 5, stating that matters will be deemed accepted within 28 days of an application regarding certain matters. On reviewing the draft DCO it would appear that the guillotine provision within Clause 20 “discharge of water” is of relevance to the Environment Agency. It is presumed that Clause 20 relates to private law matters regarding the right to connect to and use drains, water courses etc only. In the event that the Environment Agency has ownership and other rights which may be affected by private law issues the Environment Agency will seek to respond within the 28 day period specified. The Environment Agency does not consider that Clause 20 has any application in respect of the current regulatory framework in respect of water discharges under the Environmental Protection (England and Wales) Regulations 2016 and would require the applicant to submit a permit application if required by that legislation. However, we would also highlight that a number of the Environment Agency permits have longer determination timescales than 4 weeks, including the discharge permit (mentioned above) and the flood risk activity permit (FRAP). We note that the permits that may be required have so far not been applied for and so at the moment the Environment Agency are not in a position to be able to provide any detail on the progress of these permits. As the detailed design of the scheme progresses we would expect the applicant to start the process of applying for all relevant permits and the Environment Agency would respond within own timescales.

Question 13 – Disapplication of legislative provisions

The Environment Agency are still in discussions with the applicant with the disapplication of legislative provisions and will update at all the relevant deadline stages as the discussions progress.

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Question 31 – matters being overlooked where Protected Provisions are divorced from requirements in the draft DCO

We note the concern raised by the inspector that the Environment Agency's roles and responsibilities may be diminished by some elements of the draft DCO as it is currently written as raised in issues 31 and 78 of the issues and matters document produced for the issue specific hearing. We reiterate our comments that the Environment Agency have provided our own protected provisions over to the applicant who are now in receipt of this and we await a response from the applicant to determine whether any negotiation is needed on this. At the moment as the scheme is not at the detailed design stage, and matters of disapplication are not confirmed in relation of the Environment Agency, we would expect our protected provisions to cover all matters. The applicant has also committed to apply for all relevant permits and consents such as discharge permits, flood risk permits, relevant fish permits, waste permits etc, as when required, or in some cases if required to.

Question 56 – Timescales for CEMP

As mentioned in the document we will wait for discussions to be initiated by the applicant.

Question 65 – Model Provisions – Ecological Management Plan

We have been engaged with the applicant through the pre app process and are comfortable with how matters within our remit are being addressed from a water based biodiversity perspective. We will allow the applicant to explain their reasoning behind not providing an ecological management plan.

Question 78 – For the protection of the Environment Agency

The Environment Agency has sent through our protective provisions to Highways England and we are awaiting further discussion on this matter. The protective provisions are designed to protect the interests of the Environment Agency in respect of its statutory role in the event that the Environment Agency agrees to the disapplication of legislative provisions relating to its role as part of the DCO. If the Applicant is unable to agree the terms of the protective provisions with the Environment Agency the Environment Agency will not agree to the disapplication of legislation as part of the DCO.

Yours faithfully

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