

**A38 Derby Junctions**  
**TR010022**  
**8.30 Written Summary of Oral**  
**Submissions to ISH on dDCO 8 October**  
**2019**

Planning Act 2008

Rule 8 (1)(i)

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[ ]

---

**Written Summary of Oral Submissions to ISH on dDCO  
8 October 2019**

---

<b>Regulation Number</b>	Rule 8 (1)(i)
<b>Planning Inspectorate Scheme Reference</b>	TR010022
<b>Application Document Reference</b>	TR010022/APP/8.30
<b>Author</b>	A38 Derby Junctions Project Team Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Version 1	05 November 2019	Deadline 1 submission

## Table of contents

Chapter	Pages
1 INTRODUCTION.....	1
1.1 Purpose of this Document.....	1

# 1 INTRODUCTION

## 1.1 Purpose of this Document

- 1.1.1 This document sets out Highways England's written summary of the oral submissions made by Highways England at the first Issue Specific Hearing (ISH) on the draft Development Consent Order for the A38 Derby Junctions Scheme. The ISH focussed on the written issues and questions published by the Examining Authority (ExA) on 26 September 2019. The ISH took place at 1.30pm on 8 October 2019 at the Stuart Hotel (Best Western) in Derby.
- 1.1.2 The 'ExA written question no.' referred to in the first column of Table 1-1 below is a reference to the questions in the ExA's detailed list of issues and questions relating to this ISH. The ExA's questions (and any additional comments made in the ISH) are reproduced in the second column of the table.
- 1.1.3 It should be noted that where Highways England provided that it will respond to the relevant question in writing, those responses are included in its Responses to Examining Authorities' Questions on the Draft Development Consent Order, document **[TR010022/APP/8.4]** submitted at Deadline 1.

**Table 1-1 Written Summary of Oral Submissions to ISH on dDCO 8 October 2019**

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
		Highways England agreed to provide this document summarising its responses to the questions raised at the ISH.
1	<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> <p>(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;</p> <p>(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;</p> <p>(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</p>	<p>Points a), b) and d) were agreed by Highways England.</p> <p>Highways England confirmed that the dDCO version submitted to the Examination complied with all requirements sought by the ExA, other than the inclusion of a number of dates which could only be included once the dDCO is finalised e.g. the date of the Order.</p> <p>In respect of point c), Highways England suggested that it would only produce the SI validation report with the final version of the dDCO only given the time it takes to produce a Statutory Instrument report (it can take up to a day or a day and a half for Her Majesty's Stationary Office to produce one).</p> <p>The ExA noted that it would consider this point but confirmed that an update for every iteration is not necessary, whilst providing that if Highways England could provide one more frequently then that would be appreciated.</p> <p>Highways England will add further detail to the Schedule to take account of the documents that are not listed.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>the publishing section of the legislation.gov.uk website; and</p> <p>(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.</p>	
<p><b>2</b></p>	<p>The Applicant is asked to ensure that:</p> <p>(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;</p> <p>(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;</p> <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>Points a), b) and c) were agreed by Highways England.</p> <p>In respect of d), Highways England confirmed that the latest versions of plans and documents (including revision numbers) will be detailed in a document schedule, but not referenced to in the dDCO until the final version. This is to avoid the potential for errors and contamination of documents which are being updated concurrently.</p> <p>In respect of point e), Highways England confirmed that tracked changes of revisions to plans and documents (with comments) will be submitted to the ExA.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<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	<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>	<p>Highways England confirmed that a final audit of plans and documents referred to in the dDCO will be undertaken and the results will be reflected in the 'record of plans and documents' requested by the ExA (see question 2 above).</p> <p>In respect of point b), Highways England confirmed that changes to the 'record of plans and documents' will be submitted to the ExA at each Examination Deadline.</p>
4	<p>(a) Several articles make provision for "compensation to be determined, in case of dispute, under Part 1 of the 1961 Act". It is acknowledged that a provision in this</p>	<p>Highways England explained that the purpose of these provisions is to import the process under the 1961 Act only.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>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> <p>(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.</p>	<p>Highways England acknowledged the issue raised by the ExA and confirmed that it will provide a written response to this question.</p>
<p><b>5</b></p>	<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>Highways England confirmed, for the sake of clarity, that the Articles in the dDCO which include guillotine provisions are articles 15, 19, 20 and 22 and that these had not specifically been agreed with the relevant authorities but would be picked up in discussions on the SoCGs.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	(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?	
6	Please could the preamble be updated to reflect the appointment of a Panel of 2 members, rather than a single appointed person?	Highways England confirmed that this would be updated.
7	<p>(a) Replace "Part 15 of Schedule 5" with "Part 1 of Schedule 5"?</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>	Highways England confirmed that the dDCO would be updated in accordance with a). Highways England explained that it would provide written responses to b) and c).
8	<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>	Highways England confirmed that it would provide written response to a) and b).

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>“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</p>	
<p><b>9</b></p>	<p>(a) Replace “conditions establishment” with “conditions, establishment”?</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</p>	<p>Highways England confirmed that the OEMP sets out the Preliminary Works and mitigation associated with these works. It is not Highways England's intention for there to be no controls over these works; however, they are necessary to give Highways England flexibility and to ensure works can commence on site as quickly as possible.</p> <p>Highways England confirmed that these issues will be addressed in written submissions with a suggestion that a definition of Preliminary Works would be included in the dDCO and linked to the mitigation set out in the OEMP. Highways England does not consider it necessary to include a further sign-off stage as long as the dDCO included appropriate protections for pre-commencement activities.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>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 Rochdale envelope as specified and assessed in the certified plans and documents?</p>	
<p><b>10</b></p>	<p>(a) Please provide an explanation of what is meant by "any derivative of maintain".</p> <p>(b) Please provide examples of "any derivative of maintain" activities and explain how these differ from "maintain" activities.</p> <p>(c) Please provide examples of "remove, replace or reconstruct" 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 15 , please identify where all the activities in the definition, including those noted above, have been assessed in the ES.</p>	<p>Highways England will respond to these points in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<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>	
11	<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</p>	Highways England confirmed that it will check the use of these terms in the dDCO to ensure consistency.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>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>	
<b>12</b>	<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>	<p>Highways England confirmed that it will review this point and respond to the ExA in writing.</p>
<b>13</b>	<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>	<p>Highways England confirmed that it has not yet agreed the disapplication provisions with the relevant flood authorities or with the EA, but it hopes to get consent to disapply for inclusion in the relevant Statement of Common Ground (SoCG) or a separate letter.</p>
<b>14</b>	<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</p>	<p>Highways England confirmed that maintenance would be subject to a detailed local operating agreement (DLOA) between Highways England and the relevant local highway authority. This would be outside of the DCO process. Notwithstanding this point, Highways England confirmed that it will respond to these points in detail in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>maintenance of drainage works while it has taken temporary possession? If not, why not?</p> <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>	
15	<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"> <li>• Associated and Ancillary Development?</li> <li>• Flood storage areas and drainage?</li> <li>• Noise barriers?</li> <li>• Trees, hedgerows and landscaping?</li> <li>• Public rights of way?</li> </ul>	<p>Highways England confirmed that maintenance is covered in two ways:</p> <ol style="list-style-type: none"> <li>1. maintenance of the works themselves will be Highways England's responsibility, as it has a duty to maintain its network; and</li> <li>2. maintenance for mitigation works are dealt with in the draft Requirements.</li> </ol> <p>Highways England confirmed that it will respond to the ExA in writing on the specific point of maintaining works on land outside of the Highways England's ownership.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<ul style="list-style-type: none"> <li>Other environmental mitigation and enhancement areas?</li> </ul>	
16	<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>	<p>Highways England is of the opinion that nothing further is needed in relation to cumulative effects because these will be dealt with and considered by the decision maker determining any subsequent planning application.</p>
17	<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 “highway work limit of deviation” currently indicated on the works plans appears to have the potential for 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>	<p>Highways England will review this point and provide further detail to the ExA in writing.</p>
18	<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</p>	<p>Highways England will review this point and provide further detail to the ExA in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>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>	
<p><b>19</b></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>	<p>Highways England explained that there is no such schedule in this scheme because of the potential need to enter all streets within the Order Limits. The Order Limits have been tightly drawn around the proposed works and therefore Highways England has taken the view that, rather than listing every street within the Order limits, provision should remain general to give it flexibility.</p>
<p><b>20</b></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 “any works required for, or works incidental to” 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 “any works required for, or works incidental to, any works referred to in sub-paragraphs (a), (b), (c) and (d)”.</p> <p>(c) How can it be ensured that such works will not give rise to any materially new or materially worse adverse environmental</p>	<p>Highways England will review these points and provide further detail to the ExA in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>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	<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>	<p>Highways England acknowledged that this point has not been agreed with the Highway Authorities yet.</p> <p>Highways England will review this point and provide further detail to the ExA in writing.</p>
22	<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>	<p>Highways England will review this point and provide further detail to the ExA in writing.</p>
23	<p>(a) Should sub-paragraph (2) identify the local highway authority in whose area the highway lies?</p>	<p>Highways England will review this point and provide further detail to the ExA in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>(b) Should sub-paragraph (3) identify the street authority in whose area the street lies?</p> <p>(c) Should sub-paragraph (4) identify the local highway authority in whose area the bridge lies?</p>	
<p><b>24</b></p>	<p>(a) Should each instance of this phrase be amended to "On the date on which the authorised development is completed and open for traffic"?</p> <p>(b) Could timing be specified more precisely to avoid any additional impacts or require further assessment if there are substantial delays?</p>	<p>Highways England would prefer to retain the existing drafting to give it flexibility as to when classification takes place.</p> <p>Highways England will review this point and provide further detail to the ExA in writing.</p>
<p><b>25</b></p>	<p>(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?</p> <p>(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?</p>	<p>In response to point a), Highways England is content to include wording in the DCO to say 'provided there are no materially new or adverse effects to those assessed in the ES.' Without looking at individual cases, the intention is to have a series of filters to ensure that this is effective, for example a number of schemes or plans will be approved by the Secretary of State, with input from the relevant planning authorities. There are therefore a number of control points where these can be applied and tested.</p> <p>For point b), the maintenance point will be addressed in the answers that Highways England provides to the ExA as part of questions 10, 14, 15, 22 and 23.</p> <p>Highways England will review these points and provide further detail to the ExA in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	(c) Please correct the final underlined phrase.	
26	<p>Please clarify the provisions for streets, highways and the relevant authorities:</p> <p>(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...?</p> <p>(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...?</p> <p>(c) If a street or highway authority which receives ...?</p>	<p>Highways England will review these points and provide further detail to the ExA in writing.</p>
27	<p>(a) Is this likely to result in vehicles being temporarily parked further from properties than currently?</p> <p>(b) If so, what are the anticipated impacts and mitigation, and how is the mitigation secured?</p> <p>(c) How will any people with special requirements, emergency access and any</p>	<p>Highways England noted that given where the Scheme is in terms of its detailed design and the sequencing of works, it is not possible to give this detail yet. However, Highways England considers that this will be secured through the TMP.</p> <p>Highways England will provide a written response to the ExA on this point.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	requirement for parking permits be catered for?	
<b>28</b>	<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>	<p>Highways England noted that there was statutory and non-statutory pre-application consultation undertaken as part of the Scheme which would have demonstrated its proposals in this respect. As such, Highways England confirmed that all the entities that would normally come within the scope of a TRO consultation would have been included as part of this process.</p>
<b>29</b>	<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>	<p>Highways England confirmed that these had not yet been agreed with the Local Highway Authorities but it will seek agreement on them.</p>
<b>30</b>	<p>Should the following provisions be added:</p> <p>(a) 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?</p> <p>(b) This article does not authorise any groundwater activity or water discharge</p>	<p>Highways England suggested that further discussion will be progressed with the EA on this point alongside the disapplication of legislative provisions.</p> <p>Highways England explained that Article 20 deals with consent to discharge into watercourses and this might be helpful to look at to alleviate concerns.</p> <p>Highways England confirmed that it will discuss these issues with Derby City Council as well as the EA.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010 or 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?</p> <p>(c) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be 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)?</p>	
31	Clarify where consultation and agreement are required with the Environment Agency and where their consent is required?	Highways England will provide a written response to this question.
32	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?	Highways England noted that this wording is a standard provision in relation to the power to survey/investigate. Highways England will provide a written response to this question.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
33	<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>	<p>Highways England noted that these powers are secured through Article 15 (temporary stopping up).</p> <p>With regard to the detail, Highways England has not provided this at present. Highways England will provide a written response to this question.</p>
34	Should the underlined text be in a separate paragraph?	Highways England agreed this point.
35	<p>(a) Please clarify the meaning of "any other mitigation works".</p> <p>(b) Could the phrase "in connection with" potentially allow "any other mitigation works" to fall outside the definition of the authorised development?</p>	Highways England will provide a written response to this question.
36	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>Highways England stated that there is a process in this Article for agreeing restoration. To include 'to reasonable satisfaction' could lead to a lack of agreement and delay. Highways England's position is that the drafting at present is fair and reasonable.</p> <p>Highways England will provide more detail in its written response to this question but notes that protection is written into Article 15.</p>
37	<p>Should this read as follows:</p> <p>(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the</p>	Highways England agreed to this point.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	amount of the compensation, is to be determined under Part 1 of the 1961 Act.	
<b>38</b>	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?	Highways England will respond to this point in writing (see response to question 36 above)
<b>39</b>	<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 certain that the replacement land will be provided in accordance with s131 and s132 of PA2008?</p>	<p>Highways England disagreed that uncertainty is created because the process of special category land vesting in the undertaker can only take place if the Secretary of State is satisfied.</p> <p>Highways England will respond to this point in writing to clarify the position for the ExA.</p>
<b>40-43</b>	<p>For the avoidance of doubt, please add the following:</p> <p>“Nothing in this article authorises any works to any tree subject to a Tree Preservation Order”?</p> <p>Should specific provisions and a plan be provided for the extent of removal of existing screening vegetation alongside the A38 corridor?</p> <p>This article includes a power to remove hedgerows within the Order limits without the</p>	Highways England will look at these again and provide a response in writing.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>need for consent under the Hedgerows Regulations 1997.</p> <p>Paragraph 22.1 and Good practice point 6 of Advice Note 15 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> <p>To comply with advice and good practice, please therefore:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(b) Identify each specific hedgerow, or part of hedgerow, that cannot be identified for removal, if any, and justify why it cannot be identified.</li> <li>(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.</li> </ul>	

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	Is the wording "take steps to avoid" sufficiently clear and precise?	
44	<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>	Highways England will respond to this point in writing to clarify the position for the ExA.
45	Can the Applicant provide evidence that the Crown has agreed to the inclusion of this article in the DCO?	Highways England confirmed that it is confident that the Crown's agreement will be secured.
46	<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>	Highways England will respond to this point in writing to clarify the position for the ExA.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
47	Please could this reflect that some of the works at Little Eaton are in the administrative area of Derby City Council?	Highways England confirmed that it will clarify this in the next version of the dDCO.
48	<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>	Highways England confirmed that it will clarify this in the next version of the dDCO.
49	<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> <p>(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?</p>	<p>Highways England is preparing a schedule explaining where the identified further development will be needed for each of the identified Works. This will be provided at Deadline 1.</p> <p>Highways England will respond to this point in writing to clarify the position for the ExA.</p>
50	DCLG guidance sets out the core principles for Associated Development and states that "As far as practicable, applicants should explain in their explanatory memorandum which parts (if any) of	To explain its approach Highways England gave an example, listing the sub-works detailed in Work No. 1. Highways England explained why it has not sought to differentiate the associated development in the dDCO for the principal development, this is because for many of the works there is no clear distinction and they could be argued to fall into either category. Many works could be integral to the scheme (and

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>their proposal are associated development and why".</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"> <li>• Itemises all proposed works (Works Nos. 1 – 37 and "further development" items (a) – (o))</li> <li>• Categorises each of the works in the following terms:</li> </ul>	<p>therefore principal development), or could be associated development, or could be both.</p> <p>Highways England offered to provide a schedule explaining the principal/associated development to illustrate this and that it would respond in full to this point in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<ul style="list-style-type: none"> <li>○ Principal Development;</li> <li>○ Associated Development;</li> <li>○ Ancillary Development; or</li> <li>○ 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.</li> <li>● Includes comments on why each of the works should be classified accordingly.</li> </ul>	
51	<p>(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?</p> <p>(b) Given the importance of this role for mitigation, would a direct appointment to the Undertaker be preferable?</p>	Highways England will respond to this point in writing.
52	<p>(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?</p>	Highways England will respond to this point in writing.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>(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?</p> <p>(c) Should the HEMP be “be substantially in accordance with the outline environmental management plan certified under article 46 (certification of plans etc.)”?</p> <p>(d) Should the HEMP be required to be submitted to and approved in writing by the SoS?</p>	
53	<p>(a) Please provide a detailed explanation as to why each activity (i) to (viii) cannot be carried out during the specified working hours.</p> <p>(b) Does “core hours” need to be defined?</p> <p>(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</p>	Highways England will respond to this point in writing.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>environmental effects in comparison with those reported in the ES?</p> <p>(d) (i) night time closures for Markeaton footbridge demolition and installation of a new footbridge; (ii) junction and slip road tie-in works to existing highways; (iii) installation of bridge decks; (iv) installation of sign gantries; (v) installation of temporary and permanent line markings; (vi) overnight traffic management measures, as agreed with the local highway authority; (vii) works associated with traffic management and signal changes; and (viii) any emergency works.</p>	
<p><b>54 and 55</b></p>	<p>Should agreement, as well as consultation, be required with the relevant planning authority or local highway authority?</p> <p>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.</p>	<p>These points are covered above re: consultation with other parties. Highways England will respond to these points in writing.</p>
<p><b>56</b></p>	<p>Should timescales be identified for consultation to ensure that there is enough time for any</p>	<p>Highways England confirmed that this point will be discussed with the local highway authorities.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	responses to be reflected in the details to be submitted to the SoS for approval?	
57	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?	Highways England will respond to this point in writing.
58	<p>(a) Should it be secured that the Derwent Valley Mills World Heritage Site Partnership is to be consulted?</p> <p>(b) Please ensure consistency of the provisions and terms used here with those used in the OEMP.</p>	<p>Highways England confirmed that it considers that the local authority should liaise directly with the relevant local heritage entity, rather than HE doing so directly.</p> <p>Highways England noted the request for it to consult with the Partnership and with each council.</p> <p>Highways England will respond to these points in writing.</p>
59	Please include provisions for the consultation, agreement and approval of the written scheme for the protection and mitigation measures for the protected species.	Highways England will respond to this point in writing.
60	<p>(a) Should reference be made to the Traffic Management Plan submitted with the application?</p> <p>(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</p>	<p>Highways England noted that whilst a contractor has been identified there are issues around the detailed information that can be provided to the ExA at this stage.</p> <p>Further detail will be provided in writing.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>construction be required to be substantially in accordance with it?</p> <p>(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?</p>	
61	<p>(a) Is "compatible with" sufficiently precise?</p> <p>(b) Which other bodies should be consulted with or should agreement be required from?</p> <p>(c) Are the process and roles sufficiently clear?</p> <p>(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?</p>	Highways England will respond to this point in writing.
62	Do the provisions for maintenance need to be clarified?	HE will ensure that the 'maintenance' definition is consistent with earlier points on this issue (see questions 10, 14, 15, 22, 23 and 25). Highways England will respond to this point in writing.
63	(a) Consultation and agreement with the relevant flood authorities?	In respect of point a), Highways England confirmed that it will consider naming specific authorities for consultation and will respond to this point in writing.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<p>(b) Please clarify the meaning and basis for a 50% allowance for climate change?</p> <p>(c) What does "maintained" include for and by whom? Is a definition required?</p>	<p>or point b), the EA confirmed the climate change allowance figure included here is acceptable to it.</p> <p>In terms of point c), this will be picked up when Highways England responds to the other points regarding maintenance (noted above).</p>
64	Who will be consulted on and who will agree alternative noise barrier or highway lighting proposals?	Highways England will respond to this point in writing.
65	Please justify the omission of the model provisions for Tree Planting, Ecological Management Plan and Dust Emissions.	Highways England noted that the model provisions have been repealed and are not legally in force. Nevertheless, aspects relating to these three points are dealt with elsewhere in the dDCO and other requirements. For example, ecological management is included in the CEMP.
66	Should the dDCO include requirements for any of the key management plans referenced by table 3b of the OEMP?	The ExA confirmed that this issue would be raised in its First Written Questions and Highways England does not need to address this point.
67	<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</p>	Highways England confirmed that it has not agreed these classifications with the local highways authorities yet. The ExA asked the local highway authorities to review these schedules in detail and to consider the impacts of their inclusion in the dDCO.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	Authorities identified for each section of road or public right of way at Little Eaton?	
68	Should the underlined phrase be "the classification of roads plans"?	Highways England agreed this change.
69	<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>	The ExA and Highways England considered that responses to these points have been covered elsewhere in their questions.
70	The 4th column is superfluous.	Highways England agreed this point.
71	Is this schedule consistent with the Book of Reference and with the Statement of Reasons?	Highways England confirmed that it will operate a rolling audit of the Book of Reference and Statement of Reasons and provide updated during the Examination.
72	This schedule is not covered by the EM. Please could its purpose and effect be clarified, including with reference to the model provisions?	<p>Highways England confirmed that it will undertake a rolling audit of the DCO in relation to the Book of Reference and make changes as needed.</p> <p>Highways England noted that the Book of Reference is a significant (large) document and that it may be appropriate to update this at the end of the Examination.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
		Highways England confirmed that it would provide the ExA with an update on its progress with securing voluntary agreements with landowners.
73	Is this schedule consistent with the Book of Reference and with the Statement of Reasons?	Highways England's responses were the same response as for questions 71 and 72 above.
74	With reference to paragraph 22.3 of Advice Note 15 , please ensure that each tree subject to a tree preservation order (TPO) is specifically identified with reference to an appropriate plan.	Highways England confirmed that TPOs affected by the Scheme cover areas of trees, rather than individual trees.
75	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.	Highways England will respond to this point in writing.
76	<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>	<p>Highways England are in discussion with Western Power Distribution with a view to agreeing separate provisions. Part 1 is a catch-all for other statutory undertakers that have not engaged with HE. It provides protection for all parties at a generic level.</p> <p>Highways England will provide evidence of its efforts to engage with statutory undertakers where possible, but may not be able to do so (e.g. from past experience, it is likely that there will be no engagement with electronic communications code operators).</p>
77	(a) Please identify the name of each operator that these protective provisions apply to.	Highways England's response for this point is the same as 76 above.

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	<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>	
<p><b>78</b></p>	<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> <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</p>	<p>Highways England is in discussions with the EA and will provide an update at Deadline 1.</p>

ExA written question no.	ExA Question or issue	Summary of Highways England's Oral Submissions (unless otherwise stated)
	Applicant is a private sector developer? If so, how and why?	
79	(a) Have these provisions been agreed with Network Rail? (b) What matters, if any, are still subject to agreement and what steps are being taken to resolve them?	Highways England confirmed that discussions with Network Rail are ongoing.
80	Please could the Applicant update this schedule in each subsequent version of the dDCO?	See answer to question 1 above.
81	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?	See answer to question 2 above.
82	Why other documents submitted with the application not to be certified, particularly those referenced by documents which are to be certified?	Highways England confirmed that it would review this point and provide a written response to the question.