

A38 Derby Junctions
TR010022
8.x Statement of Common Ground with
McDonald's

Planning Act 2008

Rule 8 (x)(x)

Infrastructure Planning (Examination Procedure) Rules 2010

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

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

**Statement of Common Ground
McDonald's**

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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 McDonald's (McD's).
- 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 ~~McDonald's Corporation is an American fast food company with restaurants throughout the world.~~ McDonald's Real Estate LLP ("McDonald's") owns the freehold site at Markeaton junction, Derby DE22 4AA, (the "Property"). McDonald's Restaurants Limited has a leasehold interest in the site. McDonald's and McDonald's Restaurants Limited are interested parties.

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

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

- 1.3.2 ~~It can be taken that any matters not specifically referred to in the Issues chapter of this SoCG are not of material interest or relevance to McD's, and therefore have not been the subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to McD's.~~
This paragraph not is agreed.

2 Record of Engagement

2.1.1 A summary of key meetings and correspondence that has taken place between Highways England and McD's 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
03.12.14	Meeting with McDonald's estates representative	Explained scheme to them (including closure of the access from A38 as accesses are not permitted off slip roads by Highways England's standards) – no issues or concerns raised at the time. This statement is not agreed. The first record on file relates to the Public Consultation Exhibition. Please share the minutes from this meeting.
February 15	Public Consultation Exhibition	Delegation of McDonald's reps made representation regarding closure of access off A38.
30.04.15	Meeting	To discuss McDonald's concerns with the proposed Scheme layout – agree to have a follow up meeting in June.
15.06.15	Email (to McDonald's and Euro Garages)	Provided sketches of various alternative junction layouts for the access onto the A52.
17.06.15	Meeting	Discussed several options for roundabout or signalised junction with A52 – McDonald's still not content that A38 access will be removed – Highways England agreed to investigate the option of seeking a 'Departure from Standard' from Highways England's to permit the provision of an access from the slip road. McDonald's were not informed of the outcome of the review of the roundabout option. Please share the reasoning for why this is no longer being considered. It is the view of McDonald's that this would be favourable over the proposed traffic signals.
15.06.16	Email (to McDonald's and Euro Garages)	Highways England issued a sketch layout of the A38 diverge slip road with access to McDonald's and the filling station as, at that time, Highways England's specialist advised it may be acceptable.
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)	Highways England provided a Technical Note, titled, 'Current scheme layout and traffic signals Technical Note' (for proposed A52 signalised junction with McDonald's and filling station access) 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.
25.07.18	Meeting	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 CAD 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.
20.08.19	Meeting (joint with Euro Garages)	Meeting to discuss responses made to issues raised at previous meeting.
05.08.19	Written Representation Comments	McDonald's raised issues of access and congestion; delivery issues; and encroachment onto their land.

2.1.2 It is believed that this is ~~an accurate record~~ a brief summary of the meetings and consultation undertaken between Highways England and McDonald's in relation to the issues addressed in this SoCG.. It is worth noting, very little progress has been made at the meetings referred to, and therefore, not all matters are agreed.

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 McD's 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 SoCG. 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 Access and Congestion

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
Issues ref: I.1, access and economic impact	Written Representation Comments*	Point 1	a)	The Works involve closing the entrance to the Property from the A38. This would cause increased queuing at the Ashbourne Road entrance and exit to the Property, posing a health and safety risk to road users, as well as negatively impacting McDonald's business, brand, sales, operations and the amenity of the local area for residents (in each case during and after the works). Additionally, the increased capacity at the Ashbourne Road junction will go beyond its capability.	<p>Exiting the site onto the A38 will continue to be an option after implementation of the scheme. Entry to the site from the A52 will be via a new signal-controlled junction so will not cause queuing within the site.</p> <p>This is a contradictory statement and not agreed. The signals will cause vehicles to wait, i.e. queue at the stopline.</p> <p>Despite its contradictory nature, the above response does not fully respond to our concern. Our concern is the health and safety and impact on McDonald's as a result of the proposed closure of the A38 entrance.</p>	Under discussion
Issue ref: I.1, access and safety	Written Representation Comments*	Point 1	b)	The proposed installation of traffic lights at the Ashbourne Road junction will cause gridlock and queuing inside the McDonald's site, especially	The proposed exit onto the A38 slip road will be able to perform better than the existing exit due to the greatly reduced flow passing the exit on the A38 slip	Under discussion

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
				around the access and egress to the Drive-Thru lanes.	<p>road. The proposed exit on the A52 will be able to perform better than the existing exit due to the introduction of traffic signals.</p> <p>The TRANSYT model does not provide sufficient information to accurately assess the local impact on the proposed junction serving the site. Within the 90 second cycle time, McDonald's (and PFS traffic) will only have 2x 7 seconds of green time in every 90 second cycle to exit.</p> <p>As referred to above, the signals will cause vehicles to wait at the stopline; this will cause congestion in the site where currently cars can exit with limited or manageable queuing.</p>	
Issue ref: I.1, assessment of impacts	Written Representation Comments*	Point 1	c)	The site traffic survey undertaken in 2015/16, which formed the assessment of the Works, is outdated and guest numbers to the Property have	A Technical Note covering this and point 1a and 1b above has been prepared by Highways England's designers and this will be shared with McDonald's with	Under discussion

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
				subsequently risen. The assessment of the impact does not account for this increase; the Works and increased site traffic will exacerbate already existing congestion.	<p>a view to meeting again to discuss further. This provides details of the traffic signal phasing and queue lengths for the design traffic flows.</p> <p>No LINSIG results have been provided for review. There is very limited stacking space behind the stop line for a period of high demand. The alignment of the queuing space behind the stop line is inappropriately designed in terms of the alignment with the McDonald's car park exit and the left turn in is very tight for large vehicles</p>	
* https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/?ipcsection=relreps&relrep=37025						

3.3 Issues relating to Delivery Issues

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
Issue ref: I.1, access and potential impacts	Written Representation Comments*	Point 2	a)	<p>Currently, deliveries to the Property are received five times per week from the A38 entrance. The Works necessitate a change in delivery routes into the restaurant. The proposed route does not account for how McDonald's delivery vehicles manoeuvre around the Property or potential health and safety concerns. Delivery cages weigh hundreds of kilograms and McDonald's' car park is reinforced in the south part only. By closing the A38 entrance, delivery vehicles will no longer be able to service the Property; they are too heavy to safely cross the unreinforced north section of the Property.</p>	<p>Swept path diagrams have been provided to demonstrate that access for deliveries from the proposed new A52 access is feasible within the current car park layout (and crossing onto the Euro Garages land as they do at present).</p> <p>McDonald's does not have generic rights to encroach on the Euro Garages site. Unless the new delivery route crosses the Euro Garages land in the same place and manner as the existing delivery route, in the absence of a formal arrangement with Euro Garages, McDonald's may not have the necessary rights and will be at risk of a third party preventing deliveries to (and refuse collection from) the restaurant, which would leave it unviable.</p>	Under discussion

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
					<p>Highways England has advised that, during the detailed design stage, pavement surveys could be carried out to determine the strength of all parts of the car park – strengthening could be carried out as accommodation works if required.</p> <p>No description is provided of how the car park could be strengthened, or how business would be maintained at the restaurant while these works were undertaken.</p>	
Issue ref: I.1, access and safety	Written Representation Comments*	Point 2	b)	Servicing via Enfield Road (if this remains open) is not appropriate since it is unsafe for heavy trolleys to pass across a non-flat route. There are also practical concerns relating to the safe operation of large commercial vehicles.	<p>It will not be necessary to consider routing deliveries via Enfield road if the above proposals are accepted.</p> <p>The above proposals introduce a greater amount of HGV manoeuvres within the McDonald's customer car park, including greater risk of a delivery being affected by a</p>	Under discussion

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
					badly parked car, and also increasing exposure of customers to delivery vehicles.	
Issue ref: I.1, safety	Written Representation Comments*	Point 2	c)	A new route for waste collection has been proposed (by Highways England – this would route vehicles through the residential street Enfield Road) which is likely to inconvenience local residents and therefore strain their neighbourly relationship with McDonald's.	<p>If the refuse vehicles are to access the same collection point as they do at present, they would need to come through Enfield Road residential street (as the A38/Enfield Road access is to be closed by the scheme). McDonald's are concerned that this could lead to complaints from the residents.</p> <p>Highways England has suggested that the vehicles could access the site from the A52 and use the delivery vehicle route – the scheme could include appropriate work (regrading or widening paths) to facilitate getting the bins from the storage area to the pick-up location</p> <p>This will introduce a management issue for</p>	Under discussion

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
					McDonald's who will have to co-ordinate delivery and refuse collections, whereas previously these two activities did not affect each other.	
Issue ref: I.1, access and potential impacts	Written Representation Comments*	Point 2	d)	McDonald's does not have rights to cross over the adjoining Euro Garages site. The Works rely on McDonald's taking deliveries by crossing over land which it neither owns nor has rights over; this is problematic and allows an adjoining landowner to control the viability of the restaurant.	Highways England has been advised by McDonald's that this arrangement is how the delivery vehicles currently operate. The scheme proposals are utilising the arrangements that currently exist. McDonald's does not have generic rights to encroach on the Euro Garages site. Unless the new delivery route crosses the Euro Garages land in the same place and manner as the existing delivery route, in the absence of a formal arrangement with Euro Garages, McDonald's may not have the necessary rights and will be at risk of a third party preventing deliveries to (and	Under discussion

Issues Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
					refuse collection from) the restaurant, which would leave it unviable.	
* https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/?ipcsection=relreps&relrep=37025						

3.4 Issues relating to Land Encroachment

Issue Reference (see Appendix A)	Document	Paragraph Ref	Sub-section	Comment	Highways England Response	Status
Issue ref: I.1, potential impacts	Written Representation Comments*	Point 3	a)	It appears as though the Works at the junction between the Property and Ashbourne Road encroach onto the Property.	<p>Highways England does not believe that the proposed layout encroaches onto land owned by McDonald's. However, it may be necessary to install some items (such as signal detector loops) within land owned by McDonald's so an agreement relating to future maintenance of such items will need to be reached.</p> <p>HE are proposing that queuing traffic up to the stop line is on McDonald's land. It may be possible that detector loops or similar equipment are required on McDonald's land. This is not standard practice and no detail of maintenance, liability or consideration of McDonald's private plant has been provided</p>	Under discussion
<p>* https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/?ipcsection=relreps&relrep=37025</p>						

3.5 Other Matters

- 3.5.1 In regard to the Scheme, McD's has not raised any other relevant matters (beyond the Principal Issues set out in Annex B of the Rule 6 Letter), important considerations, or matters which require agreement in order for the Examination to run smoothly (Issues ref: I.2).

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