

Application by Highways England for an Order granting Development Consent for the A38 Derby Junctions Development Consent Order

Network Rail's response to the Examining Authority's First Written Questions

Network Rail Reference No. 20022825

Planning Inspectorate Reference No. TR010022

1 Introduction

- 1.1 The Examining Authority published its First Written Questions (FWQ's) on 11 October 2019 [PD-005] alongside the publication of its Rule 8 letter [PD-006].
- 1.2 Two questions have been raised by the Examining Authority for Network Rail to respond to:

No	Question to	Reference	Question
13.52	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited	Clarification of Statutory Undertakers' issues RR by Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited [RR-007]	a) Please provide details and clarify your reasoning for why your client considers that there is no compelling case in the public interest for the acquisition of the compulsory powers. b) Please provide details and clarify your reasoning for how the exercise of compulsory powers sought would have serious detriment on your client's undertaking.

2 Response to question no. 13.52

a) Please provide details and clarify your reasoning for why your client considers that there is no compelling case in the public interest for the acquisition of the compulsory powers.

The A38 currently crosses over the River Derwent and the Midland Main Line railway line. The proposal for the Little Eaton junction element of the Proposed Development seeks to realign and widen the existing railway bridge (extending it to the south to carry the widened A38). The existing northbound carriageway would be retained on the railway bridge and form the northbound diverge slip road.

The works will comprise significant engineering works over the Midland Main Line railway line, a line that runs from London St Pancras to Sheffield. The railway line is used extensively by both passenger (commuter and inter city services) and freight transport.

Network Rail considers that there is no compelling case in the public interest for the use of compulsory acquisition powers over its land. It considers that such matters should be resolved by way of negotiation of private agreements given the serious impact (including risk of serious injury and/or death) that such extensive engineering works would have as the bridge is constructed over an extensively used railway line by passengers and freight.

Please see further in the response below and in Network Rail's Written Representations in respect of the serious detriment which would be caused to Network Rail's undertaking if compulsory acquisition powers were used against Network Rail.

b) Please provide details and clarify your reasoning for how the exercise of compulsory powers sought would have serious detriment on your client's undertaking.

Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993.

Network Rail considers that the exercise of compulsory purchase powers proposed by Highways England for this DCO scheme would, if consented without satisfactory protections for Network Rail, adversely affect and have a detrimental impact on the operation of the railway and will prevent Network Rail from operating the railway safely and efficiently and in accordance with its network licence.

Network Rail therefore requires:

- a set of Protective Provisions that are acceptable to it to be included in the Order including (amongst other matters) a provision that no compulsory powers will be exercised in respect of Network Rail's property without Network Rail's consent (a set are attached to Network Rail's Written Representations);
- a Framework Agreement is entered into between Highways England and Network Rail to govern, amongst other matters, Network Rail's ability to retain its existing rights in land and any unknown existing rights in operational railway land;
- a bridge agreement is entered into and a deed of grant of easement;
- a Basic Asset Protection Agreement and/or Asset Protection Agreement is/are entered into due to the direct interface and impact of the project on an extensively used operational railway. Such agreement would regulate the construction works.

In the absence of such regulation it is considered that the project would have a serious detrimental effect on the safe, economic and efficient use of the railway.

Addleshaw Goddard LLP

5 November 2019