A38 Derby Junctions
TR010022
8.43 Written Summary of Oral Submissions to CAH 10 December 2019

Planning Act 2008

Rule 8 (1)(i)

Infrastructure Planning (Examination Procedure) Rules 2010

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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
11 December 2019

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Rule 8 (1)(i)</th>
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<tr>
<td>Planning Inspectorate Scheme Reference</td>
<td>TR010022</td>
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<td>Application Document Reference</td>
<td>TR010022/APP/8.43</td>
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<tr>
<td>Author</td>
<td>A38 Derby Junctions Project Team Highways England</td>
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<tr>
<th>Version</th>
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<tr>
<td>Version 1</td>
<td>19 December 2019</td>
<td>Deadline 3 submission</td>
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1.1 PURPOSE OF THIS DOCUMENT

1.1.1 This document sets out a written summary of the oral submissions made by Highways England (the Applicant) at the Compulsory Acquisition Hearing for the A38 Derby Junctions scheme, which took place at the Derby Conference Centre in Derby at 10am on Tuesday 10 December 2019.

1.2 INTRODUCTIONS

1.2.1 Elizabeth Dunn (“ED”) of Burges Salmon LLP confirmed that she represents the Applicant. She introduced Simon Peart (“SP”) of the District Valuation Office, Gavin Sawyer (“GS”) of Aecom, Georgie Harding-Edgar (“GH-E”) of Gateley Hamer and Joe Mulqueen of Highways England.

1.3 PURPOSE OF CAH1 AND HOW IT WILL BE CONDUCTED

1.3.1 Under Item 3 of the Agenda set out in the Rule 14 letter dated 3 December 2019, the ExA invited the Applicant to present and justify its case for CA and TP under headings (a) – (j) (see table in section 4 below).

1.3.2 Under item 4 of the Rule 14 Agenda, the ExA sought to review the status of CA/TP objections and issues with respect to specific plots: (i) residential land and property, (ii) other land and property – including commercial, and (iii) other CA or TP rights issues.

1.3.3 Under Item 5 of the Rule 14 Agenda, the ExA sought to review the status of CA and/or TP objections and issues with respect to: Crown interests and consent, Statutory Undertakers (“SUs”) and Special Category Land (including open space and replacement land).
<table>
<thead>
<tr>
<th>ITEM 3 (Applicant's case for CA and TP)</th>
<th>ExA Question headings</th>
<th>Summary of Highways England's Oral Submissions</th>
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</thead>
<tbody>
<tr>
<td>a</td>
<td>The Applicant’s overall approach to Compulsory Acquisition (CA) and Temporary Possession (TP) in the context of the relevant tests under the Planning Act 2008 and DCLG Guidance (Sept 2013)</td>
<td>Highways England noted that Item 3 responses would be kept at a fairly high level with detail to be addressed under Item 4.</td>
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In terms of approach to CA and TP, Highways England noted the conditions that must be met under s122 of Planning Act 2008 and explained that the Secretary of State (SoS) must also be satisfied as to the application. Highways England referred to the general conditions in the DCLG guidance at paragraph 8 (all reasonable alternatives to be explored, the need to demonstrate that interference with rights in land is legitimate), paragraph 9 (clear idea as to how the land to be acquired will be used, requisite funds for acquisition are available), paragraph 10 (SoS must be persuaded that purposes are legitimate and sufficient).

Highways England stated that all of the order land is either required or required to facilitate the scheme. What does ‘required’ mean? According to case law it means ‘necessary in the circumstances of the case’.

S122(2)(b) of PA 2008/DCLG Guidance paragraph 11: the land is required to facilitate or is incidental to the proposed development. The DCLG guidance gives the example of landscaping: the SoS must be satisfied that land is landscaped to a satisfactory standard. Highways England noted that whilst it is important that the land to be acquired is the minimum needed, this is not an absolute test. The s122(2)(b) wording is that it must be ‘no more than is reasonably necessary’ and that it is ‘proportionate’. Highways England considers that all the land to be compulsorily acquired meets this test.

S122(2)(c) of PA 2008 contains a requirement for replacement land to be given in exchange for land lost to a proposed scheme. The DCLG guidance example refers to a
situation where the land to be acquired forms part of an open space or common. In such cases, the SoS needs to be satisfied that no more land is taken than is reasonably necessary and that the land take is proportionate.

Highways England noted that some of the land to be acquired under the A38 Derby Junctions Scheme is Crown Land subject to s135 PA 2008 consent.

S122(3) PA 2008/DCLG Guidance paragraph 12 requires that in order for land to be compulsorily acquired, there must be a compelling case in the public interest. DCLG guidance paragraph 13 stipulates that there must be ‘compelling evidence that public benefits outweigh private loss’. The guidance also recognises the overlap between CA tests and other factors to which the SoS must have regard in deciding whether to grant development consent.

Highways England stated its position that all the land being sought meets the both the CA and DCO tests.

Highways England explained how the Book of Reference (App doc 4.3 – APP-022) identifies each plot of land and the powers sought and ties these elements into the development order. Highways England stated that it has identified the minimum amount of land for the scheme. None of the land interests/owners are objecting in principle to the CA or TP; rather representations have been made about the way in which the acquisition will take place.

As set out in s 5.3.6 – 5.3.10 of the Statement of Reasons, the approach taken by Highways England in the DCO is that all land for permanent acquisition can also be acquired temporarily.

Highways England discussed the ‘compelling case test’, recognising that this is a test for the SoS to determine supported by the National Policy Statement for National Networks (2014) at paragraph 4.2 (in favour of development) and at 2.2 (critical need to improve national networks) in addition to the Roads Investment Strategy 2015-2020 under which
the government is committed to improving the national road network. Local planning policy also recognises that these junctions are a constraint on local growth as a result of delays and growth in anticipated housing/employment need.

Paragraph 8 of the DCLG guidance on CA requires all reasonable alternatives to CA to be explored. Highways England noted that it has undertaken a lengthy design and consultation process. It has sought to engage with all landowners and occupiers and will continue to do so if necessary although, as paragraph 25 of the DCLG CA guidance acknowledges, it may not be possible to acquire all the necessary land by agreement.

Paragraph 9 of the DCLG guidance requires applicants to demonstrate that there is a reasonable prospect of the funds needed for acquisition becoming available. Highways England noted that the Book of Reference identifies each plot with reference to plans and that the cost estimate for the scheme takes account of scheme itself and any compulsory acquisition that may be necessary.

Paragraph 10 of the DCLG guidance stipulates that the SoS must be persuaded that the purposes for which the DCO authorises CA are legitimate and sufficient to justify interference with the human rights of those with an interest in the land affected. Highways England stated that it has brought the scheme forward in order to provide additional road capacity and that interference with human rights in this context is proportionate and justified.

Highways England contended that the relevant tests have been met such that the SoS can authorise the powers sought within the dDCO.

With reference to Statutory Undertakers and Network Rail, Highways England noted that discussion with affected undertakers is ongoing in order to reach agreement.

In response to the ExA’s First Written Question about how compulsory purchase will revert to temporary acquisition at a later stage, Highways England confirmed that that commitment is secured in the dDCO under article 22. Highways England referred to the
overriding obligation in complying with CP legislation for an applicant to seek the minimum land take possible. This is a continuing obligation. Highways England stated that it had no intention to acquire land it does not need and that temporary possession would be used wherever possible.

Highways England agreed to set out the obligations relating to minimisation of land take and minimisation of interference with human rights in writing.

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<th>b</th>
<th>The purpose, structure and content of the BoR, the SoR and the Funding Statement</th>
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<td>Highways England noted that these three documents are necessary under the Planning Act 2008 when CA is required. Specifically:</td>
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The BoR is a requirement of Regulation 5(2)(d) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Annex D to the DCLG CA guidance also explains what a BoR is. Highways England explained the various parts of the A38 Derby Junctions BoR and the fact that for each plot of land there is a need to show the required area in sq m. Highways England’s A38 Derby Junctions BoR adopts a standard approach to numbering with measurements rounded up to nearest whole square metre. As to identification of detail, Highways England noted the requirement for ‘diligent inquiry’ (s 57 Planning Act 2008/ DCLG guidance para 9) and confirmed that these processes have all been followed.

The SoR: In accordance with Regulation 5(2)(h) of the APFP Regulations and DCLG guidance, Highways England noted that the SoR effectively makes the case for CP and outlines how each of the legal/policy tests have been met. Highways England maintained the position that there is a ‘compelling public interest’ in the scheme and noted that the SoR provides for ‘private treaty negotiations’, the commercial details of which are confidential. Highways England confirmed that the SoR is up to date to April 2018 and that the authorised works in the SoR replicate the works in the dDCO.

Funding statement is also required by regulation 5(2) (h) of AFPP Regulations. Guidance is given at paragraphs 17-18 of the DCLG guidance. Highways England noted that there are 4 sections to the statement.

In reply to a query from DCiC about part 1 and section 10 claims and whether post-scheme observations would be undertaken, Highways England noted that it is generally a matter for the claimant to make a claim for injurious affection, but that if such a claim
Highways England would carry out inspections relating to the specific areas of claim.

Highways England stated that it would carry out inspections in relation to pre-existing conditions of which it was aware (such as noise) and that the position would be assessed in relation to evidence of pre- and post-sales valuation as well as technical information.

Highways England confirmed that it would continue diligent inquiries with respect to registrations at the Land Registry. As Highways England continues discussions with landowners, it will also continue its desktop and site enquiries. With respect to unregistered land and unidentified tenants, Highways England confirmed that it has put up notices and spoken to landowners to try to obtain further details.

Highways England agreed to submit an updated BoR for Deadline 6.

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<th>c</th>
<th>The need for CA and TP and the minimisation of need</th>
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Highways England explained that it has looked to minimise land take as much as possible and that it already owns 62% of land take in the proposed development. The proportion of private interests in land is therefore relatively small. Highways England confirmed that where CA powers are sought, these have been identified as necessary for the design of the scheme e.g. to accommodate health and safety requirements (width of carriageway), for mitigation, or to clear off rights. All of the land sought will become either part of the A38, or be used for mitigation, access or egress to the existing network. Highways England stated that it is not Highways England practice to acquire land it does not need.

Highways England stated its intention to use land on a temporary basis wherever possible, e.g. for working compounds. Highways England noted that the scheme does involve CA of residential properties on Ashbourne Road and Queensway. Highways England maintained that it has conducted a robust examination of need for CP. If unanticipated design modifications mean less land needs to be taken Highways England stated that it would adjust land take accordingly.
Highways England also made it clear that the DCO only authorises land take within the order limits. If additional land were to be required this would have to be acquired by agreement, or through a further CP process. Highways England emphasised that the red line boundary is very prescriptive and expressed confidence in being able deliver the project within that.

In response to questions regarding possible deviations of the route within the red line, Highways England noted that the works plans submitted to the Examination show the proposed position of works with deviation. Highways England also made the point that Requirement no. 12 contains provision that the details of any change to the General Arrangement Plans are subject to approval by the SoS. If it is necessary to move anything shown on the plans, that would have to be approved by the SoS following approval of DGiC and Derbyshire County Council.

Highways England stated that there was no intention to create wide limits of deviation. The limits shown on the plans currently include carriageways, footways and/or cycle ways. Highways England maintained that the main line and highways edge would not deviate by more than ONE metre. It also noted that this is a very constrained level within a tight boundary such that it would not be possible to move the carriageway by e.g. 10m.

Highways England made reference to the controls on limits of deviation that are in place and stated that there is a process by which the local authorities can comment if they have concerns.

Highways England agreed to review those controls and to look at how these are secured in the Environmental Statement. It also agreed to respond to the point that the Works Plans show lateral deviation only i.e. they do not take potential vertical deviation into account.

In relation to the Temporary Possession of large plots at Markeaton Park and Mackworth Park, Highways England agreed to discuss with DGiC the practical implications e.g. the need for fencing, the extent to which other activities can take place, the storage of
Statutory Undertaker equipment. Highways England also suggested that it respond to these point in writing with reference to the rights set out in the BoR.

In the meantime, Highways England agreed to give an indication of how park land will be used and what effect this will have on other uses. It will also provide details to the ExA of how mitigation can be secured if necessary and how the current wording of the dDCO and OEMP will ensure this.

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<th>The consideration of alternatives</th>
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<td>Paragraph 8 of the DCLG guidance requires ‘all reasonable alternatives’ to be explored. Highways England noted that there are 2 sides to this: (1) alternatives to scheme and (2) alternatives to CA.</td>
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<td>Highways England stated that it has followed a detailed process over many years going back to about 2000 which has involved design processes where different alternatives were considered for each of the junctions. Members of public have made suggestions which have been explored. Highways England expressed confidence that a robust process has been followed.</td>
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<td>Highways England noted that the impact of CA has been an important consideration in the assessment of alternatives, especially the design of the scheme at Little Eaton and in relation to residential properties (the mobile home park). Highways England stated that the impact of the scheme on residential properties has been a key consideration in determining the most appropriate option. At Mark Eaton, for example, Highways England noted the importance of finding a balance between CA and public open space, which involved juggling to make sure relevant design standards could be met while minimising impacts on properties and businesses. Highways England made the point that none of the options would have removed need for CA.</td>
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<td>(2) Highways England referred to its engagement with landowners and to the fact that not all plots can be acquired by agreement. Highways England noted that it is under a duty to acquire plots at best value and that the cost may be disproportionate in respect of a negotiated settlement. Highways England stated that it does not intend any plots to be</td>
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removed from the scheme, even if agreement is reached, because there may be unknown/3rd party rights. Highways England stressed that it is absolutely necessary that it retains control over all acquisition within the DCO.

In response to the ExA’s question regarding the possibility of moving the proposed route further north so as to reduce the impact on properties at Queensway, Highways England responded that if the carriageway were to be moved towards the park after Euro Garages, it would be constrained by the geometry of safety standards. In order to avoid land take at Queensway, the route would need to move further West, which would mean affecting Euro Garages, McDonald’s, Markeaton Park, and Markeaton Lake. Highways England made the point that the proposed alignment of the scheme seeks to fit into the existing A38 corridor, which is the basis on which the scheme has been designed.

In response to the ExA’s question about alternative geometry at Little Eaton, Highways England stated that one of the key drivers for the scheme design is loss of public open space. Highways England referred to combined departures agreed in principle relating to alignment, weaving lengths etc. from Markeaton to Kedleston. If the carriageway were to be moved further West, Highways England indicated that it would need to take additional Crown Land.

Returning to the public open space issue, Highways England noted that there have been substantial discussions with DCiC during which Highways England understood DCiC to be happy with the replacement land being offered.

If Highways England was to seek to take additional public open space for the scheme and not provide replacement land this would require a certificate from the SoS under special parliamentary procedure, which would create uncertainty as to timescales and the start date of scheme.

In terms of how the scheme design has been arrived at, Highways England noted the need to balance different interests. Highways England showed its concern at the impact on the park in terms of permanent land take and noted its efforts to keep this to a minimum.
Even if Highways England were able to move the carriageway further to the north, it maintained that there would be further impact on Markeaton Park and that this would not obviate the need to acquire properties on Queensway.

Highways England agreed to provide the ExA with a written explanation of the evolution of the scheme to show (a) open space/replacement land issues and (b) design issues/the constraints on the scheme design. Highways England also agreed to provide sketches and drawings of alternatives considered.

With reference to the ExA’s First Written Questions 13.22 and 13.24 (regarding a possible left in-left out option for properties on Ashbourne Road), Highways England stated that this option had been considered, but that access would be difficult because there would not be a safe place to make a U-turn to come back to those properties. Highways England drew attention to the risk of drivers making unsafe manoeuvres.

Highways England noted that the scheme auditors are satisfied with the current suggested provision and made it clear that Highways England considers this to be the safest solution.

Highways England confirmed that it is in discussion with Sutton Turner Homes on the access point, but noted that refuse/blue light access must be taken into account. Highways England has discussed the left in-left out option with affected persons in part, however Highways England’s view is that loss of front gardens is preferable to losing access to the properties.

Highways England agreed to consider whether the acquisition of the gardens is essential and to discuss with the property owners the left in- left out option.

e Crown interests and consent

Highways England confirmed that the Crown Land to be acquired at TA base is to compensate for open space lost to scheme [This was later corrected to confirm that the Crown Land is not replacement land]. There is a prohibition in s135 Planning Act 2008
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<th>f</th>
<th>Statutory Undertakers and any other parties benefiting from SU protections that may be affected</th>
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<td><strong>Highways England</strong> set out the position as follows:</td>
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<td>There are various SUs identified as having equipment within the order limit which will need to be moved as a result of the proposed development - in particular a corridor of land just outside Markeaton park. Highways England confirmed that the services that need to be diverted are identified in dDCO and that it is engaged in discussions with all who have asked to be included.</td>
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<td>Highways England noted, however, that the telecoms providers have not made any representations and so proposed to follow standard provisions for them. In respect of other parties potentially affected: Highways England confirmed that it is in discussion with Cadent Gas regarding protective provisions and that the expectation is that once these are in place Cadent Gas will withdraw its objection to the scheme. Highways England confirmed that it is also in discussion with Network Rail, Severn Trent Water and Western Power (formerly Eon) with a view to agreeing protective provisions.</td>
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<td>The ExA requested a separate written submission on the telecoms companies. However, Highways England’s position is that, since there has been no engagement from those companies, the only option is to put standard protective provisions in place on their behalf.</td>
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<td>g</td>
<td>Special Category Land, including open space &amp; replacement land</td>
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<td><strong>Highways England</strong> summarised the position with regard to special category land: under s131 of the PA 2008, special parliamentary procedure is required where no replacement land is provided. The two applicable tests are that the special category land should be: ‘no less in area’ and ‘no less advantageous’.</td>
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<td>Highways England noted that CA of replacement land is necessary because it doesn’t hold any suitable surplus land. Relevant guidance at Annex A of the DCLG CA guidance</td>
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<td><strong>The availability and adequacy of funds</strong></td>
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<td>Highways England summarised the starting point for the scheme as follows: funding for the scheme was announced in the 2014 Roads Investment Strategy with the expectation that funds would transfer across. Highways England confirmed that the estimated cost for delivery of the scheme includes likely CA. This estimate has been refined in relation to new info coming forward.</td>
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<td>Highways England agreed to provide an update for Deadline 6 on the funding statement (to include availability, land cost estimates, Road Investment Strategy 2 update – and the implications for funding arising from this – plus any other matters).</td>
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Highways England described the nature of the land being taken as ‘little slivers here and there’. Highways England is looking at these as a whole and has taken a cautious approach focusing on suitable replacement land as close as possible to the land being lost.

Highways England agreed to provide a schedule of public open space that identifies rights over the land.

Highways England confirmed that existing rights over public open space will be replicated in the replacement land.

Highways England agreed to provide a written response to DCIC’s request for a guarantee that the major area of replacement land on the Queensway side will be retained as public open space.

Highways England agreed to clarify in writing whether, in relation to replacement land, ‘no intention’ means ‘will not happen’.
In response to the ExA’s FWQ (13.6 (2), (3) (4)) regarding a possible funding reduction and potential changes to the scheme outside the Examination, Highways England outlined the statutory process for making changes to DCOs. Fundamental changes to the scheme would need to go through the NSIP prescribed process involving an application to SoS who must accept the non-materiality of any changes. If such changes were to occur, Highways England noted that there is guidance on what is considered to be a ‘material’ change (though there is no set definition of this) and also the fact that the material change process can in itself be as detailed as Examination.

<table>
<thead>
<tr>
<th>i</th>
<th>Potential impediments to the Proposed Development</th>
<th>Highways England confirmed that it does not see any impediments for the purposes of the relevant tests applicable to the DCO process.</th>
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<tr>
<td>j</td>
<td>Human rights and the compelling case in the public interest.</td>
<td>Under s122 of the PA 2008, the SoS can only authorise CA under a DCO if land is required and if there's a compelling case in public interest. Highways England noted that Section 6 of the A38 Derby Junctions SoR addresses this and that its position on public benefits is contained in section 2 of the Planning Statement and Appendix A (accordance table). Highways England stated that it has sought very carefully to balance land take, environmental impacts etc. and to have regard to Article 8 and Article 1 to minimise impacts on affected parties. Highways England noted that a blight scheme is available to affected properties at any point.</td>
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**ITEM 4**

**Individual objections and issues**

| a | Residential land and property | CA properties:  
257 Ashbourne Rd - Plot 14 and 3/2 (b) |
Highways England confirmed that it had met with Mr Inglis early in the process and has had recent discussions on how to accommodate his tenants. Highways England noted that it is negotiating with Mr Inglis on market value. He is not eligible for statutory blight. The student tenancy ends in July 2020 and there is a potential issue around loss of rent into September. Highways England has discussed this point with Mr Inglis.

259 Ashbourne Rd - Plot 3/13 (c)
Highways England confirmed that it has spoken to the owner on the phone to offer a meeting and has written to him separately. To date Highways England has received no acceptance of this meeting or telephone discussion. Highways England confirmed that the property is required for part of the slip road. The garden will form landscape mitigation.

2 Queensway - Plot 3/23
Highways England confirmed that a blight notice has been submitted and that the property has been inspected and valued. A market value has been agreed and a draft transfer produced. Highways England noted that it is now a matter of assessing disturbance compensation. Highways England said it hoped to acquire the property within 3 or 4 months depending on the owner finding new property.

4 Queensway (Plot 3/24)
Highways England confirmed that it has acquired the property under statutory blight and that it has been in Highways England ownership since 27/09/19. The property is unoccupied.

6 Queensway (Plot 3/25)
Highways England noted that a blight notice has been submitted. Completion was due on 12 Dec 2019. There are no tenants.

8 Queensway
Highways England stated that this is an investment property let to students and therefore does not qualify for statutory blight. Highways England is looking to acquire the property
by agreement. A meeting with Mr and Mrs Lewis is scheduled for 6 Jan 2020. Highways England noted that Mr and Mrs Lewis also own 26 Queensway. The student tenancy ends summer 2020 and the intention is that the tenancy will continue until the property is acquired.

Highways England agreed to amend Plot 4/18 to Plot 4/8

10 Queensway - plot 3/27
Highways England noted that this property is subject to a blight notice submitted in the last 4 weeks. The property has been inspected and the surveyor’s report is awaited as is a valuation figure from the District Valuation officer.

12 Queensway – plot [4/3]
Affected person and owner, Mr Gartside, observed that as the scheme has evolved, residents of Queensway have experienced an erosion of their environment including increasing difficulties with regard to access. Mr Gartside stated that his primary aim is to get certainty as to how and when purchase will take place and how much financial compensation he will receive for the effects of the scheme on his wedding car business.

Highways England noted that this is an unusual case due to the residential/business interlink. The challenge has been to find a suitable replacement property with the same storage capacity (for 10 cars), which is difficult in an urban setting. Highways England confirmed that it has been looking at more rural properties and has suggested these to Mr Gartside’s agent and considering an agreement which would enable relocation, rather than extinction. Highways England has compared the Statutory compensation rules with what the Gartsides need. Highways England also emphasised the need to be consistent in its valuations.

Highways England acknowledged comments about the length of time it has taken for this scheme to come forward and explained that the reason why it has been delayed is due to lack of availability of funding. Highways England stated categorically that it has not used the delay to ‘grind residents down’ [a phrase used by Mr Gartside in his representations].
Highways England agreed with the ExA that it would provide an update to Annex B of the SoR before Deadline 6.

14 Queensway – Plot [4/4]
Acquired 12/04/29 under blight by HE. Vacant property.

16 Queensway - Plot 4/5
Blight notice submitted. Homeowner has agent. Market value agreed. Disturbance compensation dependent on owner finding new property to move to.

18 Queensway – Plot [4/6]
Highways England confirmed that it is in discussion with residents. The owner also owns 255 Ashbourne, but resides at no. 18. He is aware of blight provisions and is considering whether to submit a blight notice. He intends to review his position at the end of 2019. He knows he is entitled to professional advice paid for by Highways England.

20, 22 and 24 Queensway
These properties are now owned by Highways England and let to tenants under shorthold tenancies. Highways England believes that the properties are managed by Highways England Exeter.

In response to the ExA’s question regarding tenants’ rights, Highways England stated that by way of diligent inquiry tenants have been identified through the Land Registry. In terms of statutory consultation, letters have been sent to all land interests of which Highways England is aware. Highways England offered to draw together this information in writing.

Highways England noted that under the DCO process it has written to all those it can identify who are directly affected by the scheme and who have a compensatable interest.

26 Queensway - Plot 4/8
Highways England noted that this property is owned by Mr and Mrs Lewis (of no. 8 Queensway). Student let. Meeting arranged for 16 Jan 2020.

30 Queensway – Plot 4/10
A blight notice has been served and Highways England has carried out a survey. The market value is yet to be established.

32 Queensway – Plot 4/12
A blight notice has been served. Highways England has inspected/surveyed. The property and put forward a valuation. Now awaiting a response from the owner’s agent.

253 (a) and (b) Ashbourne Rd
The property for vulnerable residents is owned by Metropolitan Housing Trust. Highways England noted that the owners are instructing an agent. Highways England’s current instructions are to purchase the property. On behalf of Highways England, the District Valuer has recommended that Highways England should acquire the property by way of blight notice. The owners want Highways England to acquire plot 3/16, but not as part of the DCO. Highways England noted that the health professionals feel that this is the appropriate way to take account of the needs of residents.

1 and 14 Sutton Close/ Sutton Turner homes – Plots 3/17, 3/18 and 3/19
Highways confirmed that there have been a number of meetings with Sutton Turner Homes and that discussion is ongoing. Highways England noted that it is seeking to maintain all-direction access and to minimise permanent landtake. Access will be subject to refinement by discussion.

Highways England confirmed that CA is not a question of acquiring the absolute minimum land needed. The test is what is reasonably necessary. There may be fine tuning in certain areas. However, the scheme is deliverable as shown, if unanticipated refinements can be made then only the land needed would be taken.
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<th>b</th>
<th>Other plots, including commercial, land and property</th>
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<td></td>
<td>DCiC requested clarification on:</td>
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<td>- the impact of temporary possession during construction period</td>
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<td>- Highways England will respond to this in writing.</td>
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<td>- maintenance in future (5-year maintenance?)</td>
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<td>- Highways England will respond to this in writing.</td>
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<td>- ownership of the noise barrier at the back of public open space</td>
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<td>- Highways England will respond in writing.</td>
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<td>- permanent emergency egress from Markeaton park (see Landscape design drawing)</td>
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<td>- Egress is provided for in DCO work number 16(d). Highways England noted that the plans are for indicative purposes at present and that the words in the DCO override the plans at this stage.</td>
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<td>- covenant attaching to the land (Mundy family).</td>
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<td>- Highways England requested DCiC to provide detail around how the covenant restriction operates, so that it can work out who is best placed to address it.</td>
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<td>Royal School for the Deaf.</td>
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<td>- Highways England confirmed that there is a draft SoCG, but it is not complete. Compensation matters will not be dealt with in the SoCG. The Mundy wall and gates and relocation of the sensory garden will be clarified in Highways England’s post-hearing response</td>
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<td>Cherry Lodge children’s residential care home (255 Ashbourne Rd) - Plot 3/6</td>
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<td>- Highways England confirmed that it will look to minimise permanent landtake. The ExA requested an update on negotiations with the owners and raised the issue of temporary parking during construction.</td>
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Highways England confirmed that if there are special requirements around parking, these will be accommodated.

The ExA requested further detail of the impact on the property and asked for clarification of this in the OEMP, together with an indication as to duration.

EuroGarages and McDonald’s
Highways England noted that EuroGarages do not own land they need to cross from the A38/A52, but there is a right of way in existence since 1980s and the scheme will not interfere with that. There is no agreement for delivery vehicles reversing.

Highways England emphasised that the rights it is seeking do not alter the situation as it currently exists.

Millennium Isle of Man Limited
Highways England confirmed that a meeting was held on 2 Sept 2019 to discuss temporary possession. There is no SoCG at the moment.

Network Rail
Highways England noted that protective provisions and standard agreements are under discussion. Highways England stated that it is necessary to keep NR land within the DCO in case there are rights to be cleared off in relation to that land. The acquisition of rights is in respect of the bridge. The agreement will provide for Highways England to maintain the bridge.

Highways England agreed to set out the argument for still needing to acquire the 4 embankment plots and the air rights (with evidence of NR agreement).

Ford Lane Bridge - plot 7/13
Highways England noted the ongoing concern with this Derbyshire County Council asset and the 7.5 tonne weight limit. Derbyshire CC would welcome certainty on future maintenance liability or potential ownership.

Highways England confirmed that its structural team have established that 40 tonne vehicles can be accommodated if they pass one at a time. The relevant interests have
also confirmed that this weight limit is suitable for their requirements. Highways England confirmed that it has submitted a report to Derbyshire CC and that the next stage is to meet and agree a way forward.

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<tr>
<th>ITEM 5</th>
<th>Crown, SU and Special Category Land issues</th>
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<tr>
<td>a</td>
<td>Crown interests and consent</td>
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<tr>
<td>b</td>
<td>Statutory Undertakers</td>
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<td>c</td>
<td>Special category land</td>
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In relation to replacement land at Queensway and its acceptability as replacement land for POS, Highways England proposed a discussion of the land being lost before addressing the question of land being provided. Highways England re-stated the statutory test: the replacement land must be of the same size and function as land lost and ‘no less advantageous’.

Highways England stated that its approach to the Queensway land has been to follow a ‘worst case scenario’. The pumping station has been excluded from replacement land provision. With reference to the pond feature, Highways England still believes there is opportunity to build landscape elements around it to make it more attractive. There is scope to make it a destination in its own right. There is also safe access via an existing footbridge.

Highways England made it clear that it needs to deliver its obligations in relation to public land and cannot agree to a deficit. Whilst Highways England is happy to discuss how open space is managed, it reiterated its starting point that the land must be no smaller and ‘no less advantageous’. In the context of that starting point, Highways England is happy to discuss refinements with DCiC (the principal landowner at Queensway) and to provide an update in the next SoCG.

Highways England noted that Table 5.3 clarifies that the pond feature is excluded from calculation of replacement land, so Highways England is achieving its obligations even without it.

Highways England stated that it would provide a historic overview of replacement land discussion with DCiC and referred to Table 5.1 (Special category land plans, sheet 2). Brackensdale Ave land was discussed, but there is evidential use of that land for recreational purposes therefore it is not suitable replacement land. Sheet A (land between Greenwich Drive north and Kingsway) was thought to have some potential, but is enclosed by roads, so less desirable in qualitative terms and informal recreational use could not be ruled out.
Highways England noted that there had been some discussion of acquiring land by agreement, but this was not pursued due to the uncertainty of the process to be used by DCiC when selling off land.

With regard to the possibility of a financial contribution to land outside the redline, Highways England was emphatic that this is not an option as it would not meet the relevant statutory tests for the acquisition of open space and provision of replacement land.

| ITEM 6 Any other CA or TP matters | No parties raised additional CA or TP matters. |
| ITEM 7 issues and actions arising | Deadline for written submissions following hearing is 19 December. |
| ITEM 6 AOB | Highways England noted that it has had meetings with Derbyshire County and the Derwent Valley Mills World Heritage Partnership and has reached agreement respect of issues around: Impact on DVMWHS site Appropriateness of scheme design at Little Eaton in terms of World Heritage setting Scheme effects on World Heritage site are as detailed in the Environmental Statement […] Agreement in principle about mitigation at Little Eaton Derbyshire County Council will not pursue viaduct suggestion |