

A38 Derby Junctions
TR010022

8.44 Written Summary of Oral
Submissions to ISH 11 December 2019

Planning Act 2008

Rule 8 (1)(i)

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 8

December 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 ISH2
11 December 2019**

Regulation Number	Rule 8 (1)(i)
Planning Inspectorate Scheme Reference	TR010022
Application Document Reference	TR010022/APP/8.44
Author	A38 Derby Junctions Project Team Highways England

Version	Date	Status of Version
Version 1	19 December 2019	Deadline 3 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 second Issue Specific Hearing (ISH) 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 10.00am on 11 December 2019 at the Derby Conference Center.
- 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.

Table 1-1 Written Summary of Oral Submissions to ISH 2 11 December 2019

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
Air quality		
17a	Further to the Applicant's responses and comments, are DCiC and EBC (still) satisfied with the Applicant's consideration of baseline conditions and with the Applicant's assessment methodology?	<p>Highways England noted that this discussion relates to question 19 (see below). Highways England confirmed that there has been additional sharing of material and that the information provided by Aecom has now been agreed with DCiC. This additional material will be submitted for D3, together with a note on DMRB (included as a response to ExA question 17).</p> <p>With reference to DMRB, Highways England noted that this is guidance, not a statutory/regulatory document. The new DMRB air quality guidance was published in November 2019. Highways England made the point that the A38 scheme was designed and prepared in accordance with the previous guidance. Highways England's position is that it is not appropriate to retrofit the scheme to the new guidance. Highways England stated that it would not be undertaking a new assessment of the scheme against the new DMRB guidance.</p>
17b	The Applicant considers that changes in pollution concentration should only be considered significant when they exceed health-based quality objectives and limit values. Is this approach agreed by the local authorities? Should large magnitude changes in pollution concentration be considered significant? Is the consideration of the impact of large magnitude changes in emissions on health in the Design Manual for Roads and Bridges standard LA105 relevant and helpful?	At the ExA's request, Highways England agreed to respond to the second part of 17b in writing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
18a	What certainty is there that dust deposition at the closest receptors to construction (preliminary works and main works) would not be significant?	At the ExA's request, Highways England agreed to provide an answer to 18(a) in writing.
18b	EBC considers that dust monitoring during the preliminary works should be a firm requirement. Should the provisions for dust monitoring in the OEMP during the preliminary works be like those identified for construction in MW-AIR3?	Highways England noted that PW AIR 1 already refers to MW AIR 3. Highways England will clarify this if necessary. In respect of the OEMP, Highways England anticipated that there may be additions to the drafting. Highways England welcomed comments on the OEMP and other outline documents. Highways England will issue an updated OEMP for D3.
18c	How would complaints or any significant dust deposition identified during the preliminary works be communicated, consulted on and dealt with?	Highways England noted that this point is set out in OEMP Table 2.1, with the Community Relations Manager having a key role to play. Highways England agreed to clarify how communications/complaints will be dealt with for preliminary works. Highways England confirmed that matters raised during the hearing in relation to the OEMP and DCO would be picked up and included if appropriate.
18d	Should any of the other provisions for air quality during the main works in OEMP MW-AIR1, MW-AIR2 or MW-AIR3 be required during the preliminary works?	Highways England has provided a written response.
19a	The use of both the "Highways Agency gap analysis method" and the "DEFRA method" for predictions of NO2 concentrations in Stafford Street during construction?	Discussed under question 17(a) above.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
19b	Consideration of the methods prescribed for European Union Air Quality Directive (EU AQD) compliance monitoring and that there would not be any new exceedances of NO ₂ concentrations during construction or operation?	Discussed under question 17(a) above.
20a	The risks of non-compliance with the EU AQD in Stafford Street, or elsewhere during construction (preliminary works and main works); the need for more investigation; and the need for traffic management during the preliminary works?	Response provided by DCiC.
20b	Risks and implications of delays to the implementation of DCiC's traffic measures for Stafford Street and related mitigation?	DCiC noted that it is under ministerial order to deliver the traffic measures for Stafford Street by end December 2020 and intends to do so. Preliminary works for the Derby Junctions scheme are due to begin in November 2020, with the main works starting in March 2021. Thus the traffic measures for Stafford Street should be in place prior to the start of the main Scheme works.
20c	Should NO ₂ monitoring be required of the Applicant during construction and, if so, where?	DCiC confirmed that NO ₂ monitoring is not required during Scheme construction.
20d	Whether the OEMP provisions for communication and liaison with DCiC in respect to NO ₂ in Stafford Street are clear and adequate?	Response provided by DCiC. Note that such provisions are included in the updated OEMP being submitted at D3.
20e	Whether DCiC or the Secretary of State should have the power to require action for changes to be made to the construction arrangements where monitoring suggests that the existing situation could be putting compliance with the EU AQD at risk; and whether DCiC would have other suitable options available to it?	Highways England noted that, following assessment, it has identified Stafford Street as a key location. Highways England's assessment also notes that the impact on Stafford Street from the A38 project would be minimal and that any exceedances may well be caused by other traffic, not related to the A38 works. Thus it was not considered appropriate that DCiC or the Secretary of State should be required to request changes to be made to the construction

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
		<p>arrangements. DCiC also pointed out that the NO₂ monitoring programme considers annual averages and would thus not pick up real-time air quality issues.</p> <p>Highways England maintained that it would not be appropriate to put controls on the A38 scheme when the air quality issue could be managed by DCiC which has overall responsibility for traffic management within Derby City.</p> <p>Highways England noted that further material would be included in the OEMP requiring engagement with DCiC on air quality issues. Highways England stressed that it would not be appropriate for the A38 scheme to be required to mitigate where it will have minimal impact.</p>
20f	Whether mitigation measures are clear, adequate and secured appropriately by Requirement 3 and the OEMP?	DCiC: no concerns.
21a	The sense checking suggested by DCiC, and the associated risks of non-compliance during operation, including to receptors located close to the A38 or other roads experiencing notable increases in traffic volume, or where there are already high NO ₂ concentrations.	DCiC: covered under question 17(a) above.
21b	Whether partial removal or a delay in the complete removal of DCiC's Stafford Street Traffic Management Scheme could result in any significant air quality impacts in Stafford Street, or elsewhere? The need for modelling of this scenario?	Response provided by DCiC. Modelling is not needed as the Scheme has a beneficial effect on air quality on Stafford Street during the operational phase.
21c	Should NO ₂ monitoring be required of the Applicant during operation and, if so, where.	DCiC: no, not required.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
21d	The mitigation, if any, required to ensure no exceedances due to the proposed development and compliance with the EU AQD during operation.	Covered already under question 17(a) above.
Noise and Vibration		
22a	Whether ES Chapter 9 [APP-047] should be updated to clarify the Applicant's advice that all exceedances of Significant Observed Adverse Effect Level (SOAEL) during construction have been identified as being significant, whatever the duration?	Highways England confirmed that the standard construction noise and vibration methodology for considering the duration of the impact i.e. the '10 days in 15' approach has been set out in the ES chapter 9, but that this duration aspect was not applied to the assessment of construction noise and vibration impacts as reported in the ES to give a worst case approach and ensure nothing was missed. This is set out in the chapter in para 9.3.23, para 9.10.5 and para 9.10.66.
22b	Whether the Applicant intends to adopt a different approach to identifying significant noise effects to that considered in the ES once the details of construction works are known? If so, how that is justified?	Highways England noted that once contractors are on board, and the detailed design and programming has taken place, it will have the level of detail needed to apply the 10 days in 15 methodology. Highways England noted the need to make clear how the methodology will be applied going forward. Highways England also noted that it has taken a worst case approach for the overall ES assessment.
22c	Examples of the use of professional judgement and any "other factors" that would be considered to identify significant noise effects during construction in addition to those identified in paragraph 9.3.23 of ES Chapter 9, once the details of the construction works are known. Could this	The ExA called for an agreed approach as to what is significant or not and requested that Highways England reconsider '10 in 15 days'. Highways England stated that the duration criteria comes from BS 5228, and the approach for noise insulation and temporary re-housing. Professional judgement would be applied for example a large exceedance of the SOAEL for 8 or 9 days would likely be considered significant.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	include exceedance of SOAEL for up to 10 days in 15 not being considered significant?	The ExA also asked Highways England to look more closely at the British Standard and how appropriate it is.
22d	The duration of significant effects currently anticipated during construction.	Highways England advised that an indication of the durations of the significant adverse construction noise effects identified in the ES was provided in response to FWQ6.15 as a table of durations in months. Noted that just because the SOAEL was exceeded within a month this would not necessarily be for the whole month.
22e	Whether DCiC has any outstanding concerns about the Applicant's use of professional judgement to identify likely locations of significant effect during construction, either now or once the details of construction work are known?	Response provided by DCiC.
23a	Whether measures are required to ensure that the noise and vibration created by construction plant and equipment (including vibrating rollers and piling methods) would be no greater than considered in the Applicant's assessment.	<p>Highways England noted that its piling vibration assessment is based on rotary board piling which is not a significant source of vibration, as advised by the Scheme buildability advisors. Highways England confirmed that the D3 revision to the OEMP will make this more explicit (to exclude impact and vibratory piling in the vicinity of sensitive receptors). The ExA noted 'in the vicinity' introduced a grey area - Highways England agreed to look again at the wording in the OEMP.</p> <p>In response to the ExA's question as to why Highways England cannot specify a particular type of plant, Highways England referred to 'Best Practical Means' (BPM) as a recognised standard. Highways England noted the need for flexibility and innovation and stated that it would be inappropriate to specify equipment; rather it is a question of setting controls within the OEMP.</p>

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
23b	How uncertainties in relation to construction methods and the locations and durations of noise and vibration generating activities during construction would be dealt with. For example, how would contractors establish whether mitigation such as the use of hoarding, would be "practical and effective"?	At the ExA's request, the revised wording of the OEMP for D3 will cover 23 (b).
23c	Local authority requirements for work to be carried out outside core construction working hours to be subject to their prior "agreement" or "approval". Whether those requirements are achieved by the "consultation" provisions in the dDCO and Outline Environmental Management Plan (OEMP).	In response to the ExA's observation that the core hours are now included in the draft DCO but do not make reference to excluding Bank Holidays and Sundays, Highways England confirmed that they will check this. With regard to works outside of core hours Highways England stated work outside of core hours which is not listed in the OEMP requires approval from the local authorities. Highways England referred to the list of excepted works and noted that these are included for programming reasons. It made the point that a requirement to agree each of these could create unnecessary delay for the programme.
23d	Whether Control of Pollution Act 1974 Section 61 consent for work to be carried out outside core construction working hours should be a firm requirement in the OEMP.	Response provided by DCiC and Erewash BC.
23e	DCiC consider that agreement with them in the development of the Construction Environmental Management Plan is vital. Do dDCO Requirements 3 and 4 secure an acceptable process for consultation on the development of the Construction Environmental Management Plan to be used during construction and how would any matters not agreed with consultees be handled?	In response to ExA's question about how matters not agreed would be handled, Highways England noted that Highway England DCOs are unusual in that signoff for requirements is with the Secretary of State. The DCO requires consultation with relevant authorities (Requirement 3). Specific requirements as to how consultation should be carried out are set out in Requirement 4. Highways England noted that there should not be dual sign-off, since this would create a second tier of approval that is not necessary.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
24a	Whether the OEMP is sufficiently clear and adequate in requiring noise and/or vibration monitoring during the preliminary works "as is necessary".	ExA requested a written response.
24b	Should there be a firm requirement for monitoring at locations of potential significant impact where noise and vibration limits might be exceeded, as EBC suggest?	ExA requested a written response.
24c	Are OEMP provisions for dealing with noise or vibration complaints and for dealing with significant noise and/or vibration identified during construction clear and adequate?	ExA requested a written response.
25a	Comparison of SOAEL for operational traffic noise with those normally accepted for other types of development.	ExA requested a written response.
25b	Justification of SOAEL for operational traffic noise being higher than for other types of development.	ExA requested a written response.
25c	Has the use of professional judgement and consideration of "other factors" resulted in operational noise at any receptors experiencing noise above SOAEL being assessed as not significant?	ExA requested a written response.
26a	The Applicant has stated that very low surfacing would be effective at speeds greater than 75km/h. It is noted that A38 speed limits would be greater than 75km/h. What would be the difference in noise levels from the use of very low surfacing on the main carriageway of the A38 at receptors in the vicinity of the three junctions, other sections of the A38	ExA requested a written response.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	included in the Proposed Development, or other parts of the A38 where the speed limit would be increased?	
26b	The difference in sound levels on the opposite side of the road to reflective barriers and whether the difference compared with absorptive noise barriers could approach 3dB, i.e. a doubling of noise levels. The decrease in noise levels in Markeaton Park that would result from the use of absorptive noise barriers.	ExA requested a written response.
27a	Further to the Applicant's responses and comments, do the Royal School for the Deaf Derby or DCiC have any further comments on the Applicant's assessment or proposed mitigation measures with respect to noise and vibration impacts on the Royal School for the Deaf Derby during the construction and operation of the proposed development?	Highways England confirmed that it has been talking to the School and intends that the School will be involved in the design of the noise barrier. This change will be included in the OEMP.
27b	Should the installation of the 4m high noise barrier, or a temporary equivalent, adjacent to the Royal School for the Deaf Derby before the demolition of the houses on Queensway should be a requirement? Should best endeavours to do so be a requirement?	With regard to the timing of installation, Highways England noted that the barrier is to be located on land to be compulsorily acquired. Until the properties have been acquired, the barrier cannot be installed. Highways England stated that it is looking to obtain CA powers to be able to do this as soon as possible. Highways England agreed to provide a written response following a review of technical issues relating to CA to see if a greater commitment can be made.
Transport networks and traffic		
1a	What further modelling of changes in travel patterns on local roads during construction, if any, do the Local Highways	Highways England noted that the baseline model has been developed on the basis of information from DCiC. This model has been used by Highways England

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	Authorities (LHAs) consider are required for the purposes of identifying likely significant impacts?	<p>for different construction scenarios and different peak hours. It also picks up effects as far as Leeds and Birmingham.</p> <p>Highways England confirmed that it had prepared a technical note in 2018 for DCC, which is not in the DCO, but explains the approach to be taken in the Environmental Statement. Highways England agreed to re-send the technical note to Derbyshire CC and discuss as necessary.</p> <p>Highways England pointed out that a right turn ban on the A61 is included in the note.</p>
1b	Is there an acceptable process for LHA engagement in the modelling to be carried out during detailed design?	Highways England invited the LHAs to review the TMP consultation requirements at paragraphs 3.1.9, 5.1.2, section 5.6, paragraphs 5.5.1, 5.18.1, 5.2.22 and 7.2.7 and to provide feedback.
2a	Further to the Applicant's responses and comments, are there any outstanding concerns about impacts on local roads during construction?	<p>DCiC raised a question regarding the impact of journey times on queue lengths at traffic signals. Highways England noted that this was the first time this issue had been raised and agreed to look at it and provide a response.</p> <p>In response to the ExA's suggestion that certainty around the impact of construction on local roads would be helpful, Highways England responded that it can provide assurance at a high level at this stage, with more detailed analysis later on.</p> <p>Highways England confirmed that its analysis is based on a one-hour flow model, which uses the industry standard approach to solving gridlock problems. HE noted that a different type of model involving micro analysis (which is not appropriate at this stage) would be required to provide information on queue lengths.</p>
2b	Are these all capable of being addressed by the TMP?	Highways England drew attention to paragraph 3.1.7 of the TMP and the fact that it is a 'live document'.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
2c	Are any other measures likely to be required to ensure that impacts would be in line with those identified in the ES?	Highways England has provided a written response.
3a	DCiC consider it important that the TMP is 'agreed' with them. Do dDCO Requirements 4 and 11 secure an acceptable process for consultation on the development of the TMP to be used during construction? How would any matters not agreed with consultees be handled?	Response as for 23(e) above.
3b	Should the TMP be subject to approval by the LHA rather than, or as well as, by the SoS?	Response as for 23(e) above.
3c, d, e, f, g	All these items relate to review of the TMP by LHAs.	The ExA requested LHA responses by D3 in order to progress this.
3h	Will the Applicant provide an updated TMP to the Examination?	Highways England confirmed that the TMP is being updated and that a revised version would be submitted in due course. The ExA agreed to allow time for discussion on this.
4	With the mitigation measures in place, would there be likely to be any residual significant impacts on users of the A38 or local roads during construction?	Response provided by DCiC and Derbyshire CC.
5a	Further to the Applicant's responses and comments, do the LHAs have any outstanding concerns about adverse impacts on local roads during operation, e.g. those identified in DCiC's LIR?	Highways England noted that, following DfT modelling guidance, it has not modelled any improvements to 'secondary' junction impacts. Highways England confirmed that its appraisal for the scheme is based on junctions that are not being upgraded (ie a worst case). Highways England emphasised that its remit is to improve 3 grade separated junctions on the strategic highway network, not to improve the local road network .

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
5b	Has the Applicant assumed that the LHA will make improvements to local roads (e.g. at Kedleston Road and Five Lamps)? If so, is it reasonable to assume that they will be delivered?	Highways England stated that the conclusions it has reached do not rely on further upgrades and that to this extent, the impacts it has assessed are conservative. Highways England noted the importance of drawing a distinction between the nature of the impacts of the scheme on the local road network and the fact that Highways England is not responsible for that local road network.
5c	Is any more information required for an assessment to be made of adverse impacts on local roads during operation?	Highways England agreed to look at the EIA it has undertaken and will confirm whether an additional assessment of key junctions is required. Highways England noted that the A38 scheme is not the only factor affecting traffic flows and asked that other developments coming forward should also be taken into account.
5d	How should any adverse impacts be mitigated?	Highways England noted that improvements will be required to reconnect Ford Lane and Brackensdale Street to the local network.
6, 7, 8	Junction layouts, A38 speed limit at Little Eaton Junction, Permanent stopping up of highways and TROs	ExA requested written responses from LHAs and Highways England
9	Ford Lane closure and bridge weight restrictions	Discussed under Item 4b of Compulsory Acquisition Hearing 1 (December 10 2019). Not revisited here.
10	Car parking at Cherry Lodge children's residential care home	Discussed under Item 4b of Compulsory Acquisition Hearing 1 (December 10 2019). Not revisited here.
11	Public transport	ExA requested written responses from LHAs and Highways England
Landscape and visual impact		

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
28a	Update on the additional photomontages based on the North Avenue Inquiry. Issues, outcome and relevance of that Inquiry.	<p>Highways England confirmed that additional photomontages distributed to DCiC, DCC and the Derwent Valley Mills World Heritage Site Partnership (DVMWHSP) will be submitted to the Examination at D3.</p> <p>With reference to the North Avenue appeal (in close proximity to the scheme), Highways England noted that the impact of the North Avenue scheme for 49 houses would be very different from that of the A38 scheme. Highways England noted that the A38 flood compensation area is a very different intervention to 49 houses and that the appeal decision, although relevant, is not comparable.</p>
28b	Do the revised representative viewpoints and new photomontages allow the landscape and visual impacts of the proposal to adequately assessed?	<p>DCiC, DCC and Erewash BC confirmed they were all very satisfied with additional photomontages and visualisations of impacts on the WHS.</p> <p>Breadsall PC will have the opportunity to see these at D3. Highways England noted that image 24 (showing Breadsall) is already available.</p>
29a	What is the essential character of the landscape at and around the Little Eaton junction; is its sensitivity to change set out in the ES appropriate and agreed?	<p>Highways England confirmed that it would consult with DCC, DCiC and the DVMWHSP on the layout of the floodplain compensation area, landscaping and lighting in relation to the WHS during the detailed design stage.</p> <p>In response to the ExA's request for a more naturalistic drawing, Highways England noted that it did not propose to provide a further visual submission, but agreed to consider whether this might be possible.</p> <p>Highways England noted that under Requirement 16 (highway lighting), Requirement 12 (detailed design) and Requirement 5 (landscaping), consultation in relation to detailed design is already built in. Highways England agreed to consider whether further provision for consultation should be made.</p>

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
29b	What is the contribution of the existing junction to that character and sensitivity?	See response to 29a.
29c	What would be the effect of the proposal on that character?	See response to 29a.
29d	Would the replacement of the proposed embankments and planting with a viaduct significantly reduce the impact of the proposal on landscape character?	Response provided by DCC (at question 30).
30	The Applicant, DCC and EBC agree that the proposal would have 'an impact' on openness, although the Applicant considers that it would not result in 'material harm'. Having regard to the spatial and visual aspects of Green Belt openness, and to the purpose of the proposed development, would its impact amount to harm such that it would not preserve the openness of the Green Belt?	Highways England confirmed its position that there is no additional impact on green belt openness from the existing A38 as a result of this scheme.
The Historic environment		
31a	How, and to what extent, does the character of the landscape at the Little Eaton junction, existing built features and the heritage assets within it, contribute to the OUV (having regard to its attributes, authenticity and integrity) of the WHS?	Highways England confirmed that this information has already been provided and agreed with the applicable local authorities and the Derwent Valley Mills World Heritage Site Partnership.
31b	How, and to what extent, would the junction proposal and the flood compensation works impact on the OUV of the WHS?	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
31c	How, and to what extent, would the proposals impact on other heritage assets which contribute to the significance of the WHS?	Highways England confirmed that the potential impact on other assets had been addressed within the Heritage Impact Assessment.
31d	What would be the effect of the proposed mitigation measures?	Question not addressed at the hearing.
31e	Are there other measures, or amendments to the scheme, which could reduce its impact?	Question not addressed at the hearing.
31f	What would be the residual impact of the junction proposal and the flood compensation works on the OUV of the WHS?	Question not addressed at the hearing.
31g	Has the Department for Culture, Media and Sport been consulted regarding the effect of the proposal on the WHS?	Question not addressed at the hearing.
32a	Is there anything to suggest that the harm to heritage assets would not be less than substantial?	Question not addressed at the hearing.
32b	Would the public benefits of the proposal outweigh that harm?	Question not addressed at the hearing.
Other policy and factual issues		
33a	What is the logic for magnitude of increase being considered for CO2 when exceedance of limit values is considered for other emissions?	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
33b	Has any assessment been made of the proportion of the UK carbon budget that can be allocated to the proposed development?	Question not addressed at the hearing.
33c	What level or increase in greenhouse gas emissions due to the proposed development would be considered significant?	Question not addressed at the hearing.
34a	NPSNN suggests that consent could be refused if carbon emissions resulting from the proposed development would be so significant that they would have a material impact on the ability of Government to meet its carbon reduction targets. Does the Applicant's assessment of this consider cumulative increases in carbon emissions of the proposed development with that of other highways developments and with other changes to carbon emissions in the UK?	In response to a question from a member of Derby Cycling, Highways England made it clear that the A38 scheme has been promoted on the basis that it is supported by Government policy, the local councils and national roads strategy. Highways England acknowledged issues around the UK's position in relation to net zero, but reinforced the point that this scheme has been brought forward within the existing policy and legal context.
34b	Are there clear and adequate mitigation measures to ensure that, in relation to design and construction, the carbon footprint of the proposed development would not be unnecessarily high? How would the effectiveness of the mitigation measures be demonstrated?	Question not addressed at the hearing.
34c	Should the effectiveness of the mitigation measures be demonstrated through the quantification of the carbon footprint of the proposed development, benchmarking and the setting of carbon footprint targets and/or limits?	Question not addressed at the hearing.
35a	Given the scale of the project and that it is nationally significant, should the target for recycled aggregate be the	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	East Midlands target of 14%, the national target of 25%, or another figure?	
35b	Should the OEMP require the Site Waste Management Plan to consider: <ul style="list-style-type: none"> • waste minimisation; and • who waste would be passed to and whether they have appropriate authorisation? 	Question not addressed at the hearing.
36	Measures to be taken to mitigate safety risks to pedestrians and cyclists from construction vehicles and how they are secured.	Question not addressed at the hearing.
Biodiversity and ecological conservation		
37a	What weight should be placed on National Planning Policy Framework (NPPF) policies to enhance the natural environment and provide net gains for bio-diversity?	Question not addressed at the hearing.
37b	Do the Applicant's submissions provide sufficient information to properly assess whether the proposal would lead to a net gain in biodiversity? Should the Biodiversity Metric Assessment undertaken by the Applicant be incorporated into the Examination process? Has the methodology for the Biodiversity Metric Assessment been agreed?	Question not addressed at the hearing.
37c	Are additional mitigation, compensation or enhancement measures necessary to ensure that the proposal accords	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	with NPSNN on biodiversity – in particular paragraphs 5.20, 5.23 and 5.30 and NPPF paragraph 170 to the extent that it is relevant?	
37d	Update on discussions regarding the potential conflict between depositing silt from Markeaton Park at Kingsway and the proposed translocation of soil from the Kingsway Local Wildlife Site.	Question not addressed at the hearing.
The water environment		
38a	Do the proposals provide adequate measures to prevent siltation and other pollutants at Markeaton Lake and Mill Pond?	Question not addressed at the hearing.
38b	Have any steps been taken to ensure that the proposed discharges would not impact on the integrity of the dam feature at Mill Pond. Who is responsible for the structural security and maintenance of the dam feature?	Question not addressed at the hearing.
38c	Has adequate information on existing and proposed discharge rates been provided to allow a proper assessment of flood risk?	Question not addressed at the hearing.
38d	Do the proposals provide for adequate treatment of highway runoff before it discharges to outfalls?	Question not addressed at the hearing.
38e	Do the proposals provide adequate safeguards to prevent flooding upstream of the realignment of Dam Brook? Any	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	comments on the hydraulic calculations appended to the Applicant's comments on D1 submissions?	
38f	Is it necessary to provide further details at this stage to ensure that the realignment of Dam Brook would be appropriately 'naturalised'?	Question not addressed at the hearing.
38g	How would the monitoring and maintenance of the alleviation works associated with the Dam Brook realignment be secured through the dDCO?	Question not addressed at the hearing.
39a	Having regard to NPSNN and NPPF advice and the limitations of the scheme, are the proposed attenuation storage facilities appropriate at: <ul style="list-style-type: none"> • Kingsway – use of SuDS and Natural Flood Management; • Markeaton – use of SuDS in Queensway open space; • Little Eaton – use of SuDS in preference to by-pass separators. 	Question not addressed at the hearing.
39b	Does the dDCO provide adequate provisions to secure the maintenance of the proposed attention storage facilities?	Question not addressed at the hearing.
The draft Development Consent Order; other consents, permits and licenses; other general matters		
40	The need for a provision if the Tribunal does not accept jurisdiction.	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
41a	Update on discussions between the Applicant and relevant consultees regarding the agreement of provisions that confer deemed consent if a consultee does not respond within a specified period.	<p>With regard to so-called 'guillotine' provisions, Highways England confirmed that discussions with DCiC are ongoing and that there are no concerns from Erewash BC or the EA.</p> <p>In response to DCiC's query around the wording of Articles 15, 19, 20, 22 (which are worded differently), Highways England noted that Article 20 is a standard provision, even though it is short.</p> <p>Highways England agreed to review the wording in question and confirmed that discussions with DCiC would continue and include the EA going forward.</p>
41b	Whether the "guillotine" should fall after 28 days, 42 days or any other period?	Although there is no set timescale as yet, Highways England would like things to be done or approved as soon as possible. 42 days is too long. If there is to be a guillotine provision, Highways England stated this should be after 28 days.
41c	Whether provisions should contain an express requirement that any application for consent should contain a statement drawing the consultee's attention to the guillotine?	Highways England noted that an express requirement for a written guillotine statement is probably not necessary, given that the parties are already engaged in the process.
42a	Is it secured that activities to be carried out before commencement would not fall outside the scope of the ES and that any mitigation measures relied on in the ES for the assessment of significant effects would be applied?	Question not addressed at the hearing.
42b	Should it be secured that the OEMP applies to any activities to be carried out before commencement?	Question not addressed at the hearing.
42c	Should it be secured that activities to be carried out before commencement should be those identified as Preliminary Works listed in the OEMP?	Highways England acknowledged that the OEMP definition of preliminary works is out of step with the dDCO. Requirement 3 of the dDCO will therefore be amended to include an obligation to provide a preliminary works CEMP in accordance with the OEMP.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
		Highways England also confirmed that a new definition of 'preliminary works' will be provided in the dDCO.
42d	Noting the definition of "commence" in the dDCO, can it be clarified in the dDCO and/or OEMP whether the "preliminary works" referenced in the OEMP come under the use of the term "construction" in the dDCO, or whether the use of the term "main works" in the OEMP equates to the use of the term "construction" in the dDCO?	<p>Highways England explained that the current definition of 'commence' within dDCO excludes works which typically wouldn't be considered development under the TCPA 1990. Highways England recognised concern about remedial works in relation to preliminary works and agreed that these will be removed from the dDCO.</p> <p>Highways England confirmed that the consultation process for the preliminary works CEMP will be the same as that required under the CEMP.</p>
42e	Following from the previous point, does the use of the term "construction" in the ES include both "preliminary works" and "main works" and thereby differ from the use of "construction" used in the dDCO? If there is a difference, should this be clarified given the references to the ES in the dDCO?	Question not addressed at the hearing.
43	The ExA is minded that the dDCO should not inadvertently authorise major construction works during operation. There is concern about the potential for such works to fall outside the scope assessed in the ES. There is concern about the potential for future confusion about the application of relevant consenting processes for such works. How can these concerns be addressed?	Question not addressed at the hearing.
44a	Article 3 (disapplication of legislative provisions): Updates on discussions between the Applicant, local authorities and the	EA provided a response.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	EA regarding the disapplication of the Water Resources Act 1991 and of the Land Drainage Act 1991.	
44b	What is the inter-relationship between the disapplication of legislative provisions and the protective provisions for the EA?	In relation to the disapplication of legislative provisions, Highways England noted that this is set out in Article 3 and that it works together with protective provisions to give certainty to the EA as a statutory undertaker.
44c	Are there still conflicts with the ability of a Lead Local Flood Authority to perform its duties and, if so, how can these be avoided?	Highways England requested that DCC look at the disapplication Land Drainage Act provisions in DCO Article 3, noting that this only relates to certain provisions: s23 (prohibition on obstructions) and s 32 (variation of awards).
45a	The Applicant's assurance that it would maintain drainage whilst in temporary possession appears to conflict with Article 4. Should Article 4 be amended?	Highways England made clear that it will maintain drainage works during construction, but that the rights are not being compulsorily acquired, so this would not be a permanent transfer of responsibility. Highways England agreed to review article 4.
45b	Update on discussions regarding who would be responsible for maintaining the flood alleviation channels, swales, etc. How would that be secured?	Highways England confirmed that maintenance interface plans have been circulated to the Councils. These address the question of who has maintenance responsibility at various stages. Highways England confirmed that supporting plans and meeting minute have been sent to DCiC and DCC.
46a	Article 6: Do the local authorities have any comments regarding responsibilities for maintenance during construction or operation, including where these may not be taken by Highways England?	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
46b	What is the potential for maintenance responsibilities not to be agreed, to fall into the gaps between different parties, or not to be capable of being discharged? How can this be mitigated?	Highways England noted the importance of the maintenance documents referred to under question 45(b) and offered to resend them if the Councils cannot locate them.
47a	Article 8: How has the assessment of potential significant effects in the ES considered the range of positions of the Works allowed for by the limits of deviation?	Question not addressed at the hearing.
47b	As a specific example, what position(s) of the main carriageway have been considered for the assessment of noise effects for receptors adjacent to opposite sides of the highway work limits of deviation?	Question not addressed at the hearing. Written response to be provided.
48	Article 11 (street works): Would the ability to enter any streets within the Order Limits conflict with the ability of a LHA to perform its duties and, if so, how can these be avoided?	Highways England stated that it had not previously understood DCiC's concern. Highways England confirmed that it would provide further clarification if needed.
49	Article 12 (Application of the 1991 Act): Update on discussions between the Applicant and LHA regarding agreement of the provisions.	Question not addressed at the hearing.
50	Article 13 (construction and maintenance of new, altered or diverted streets and other structures): Update on discussions between the Applicant and LHA regarding agreement of the provisions.	Question not addressed at the hearing.
51a	Article 15 (temporary stopping up and restriction of use of streets and highways): Recognising that it is not possible to	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	be definitive at this stage, what is the likely potential, during construction, for vehicles to be parked further from properties than currently?	
51b	What distances from temporary parking to the properties, and what durations for parking not being accessible, are anticipated?	Question not addressed at the hearing.
51c	How are impacts mitigated, including for people with special requirements, emergency access, any requirements for temporary parking provision, parking permits and deliveries to businesses?	Question not addressed at the hearing.
51d	How is the mitigation secured?	Question not addressed at the hearing.
52	Article 18 (Clearways): Update on discussions between the Applicant and LHA regarding agreement of the provisions.	Question not addressed at the hearing.
53	Article 19 (Traffic regulations): Update on discussions between the Applicant and LHA regarding agreement of the provisions.	Question not addressed at the hearing.
54a	Article 27 (Public rights of way): Recognising that it is not possible to be definitive at this stage, what temporary closure of footpaths or cycle tracks is anticipated, particularly to those considered to be well-used?	Question not addressed at the hearing.
54b	What durations are anticipated for any temporary closures?	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
54c	Would any temporary routes, diversions, signage or other mitigation be provided?	Question not addressed at the hearing.
54d	How is the mitigation secured?	Question not addressed at the hearing.
55	Article 33 (Temporary use of land for carrying out the authorised development): Would it better serve the justification and ongoing minimisation of temporary possession if the specific purposes are all described in Schedule 7 and the term "or any other mitigation works in connection with the authorised development" is avoided?	Question not addressed at the hearing.
56a	Article 39 (Felling or lopping of trees and removal of hedgerows): Do the local authorities have any comments on the importance of the existing screening trees and shrubs along the A38 corridor and how their removal should be controlled?	Question not addressed at the hearing.
56b	Please could the Applicant identify any hedgerows within the Order Limits that are subject to protection under the Hedgerows Regulations 1997?	Question not addressed at the hearing.
57	Article 45 (Crown rights): Update on discussions between the Applicant and Crown bodies and progress on achieving Crown consent under s.135 of the Planning Act 2008.	Question not addressed at the hearing.
58	Article 50 (Appeals relating to the Control of Pollution Act 1974): Update on discussions between the Applicant and local authorities regarding agreement of the provisions.	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
The draft Development Consent Order: Schedule 2 – Requirements		
59a	Provisions for consultation with the EA in Requirements 3, 8 and 14.	EA is now content: it is named in Requirements 3, 8 and 14.
59b	Add provisions for consultation with Derwent Valley Mills World Heritage Site Partnership to Requirements 9 and 12?	Highways England's position is that this is not necessary as consultation with other bodies will pick this up through their officers.
59c	Add a provision for consultation with the Lead Local Flood Authority to Requirements 12(1), 12(2), 13(1), 13(2), and 14(1)?	Highways England confirmed the view that this would be achieved through local planning authorities, so the provision has not been included and is not needed.
59d	Add a provision for consultation with the sewerage undertaker to Requirement 13?	<p>Highways England stated that it has not received a request from the sewerage undertaker to be included. Highways England confirmed that it is in discussion with Severn Trent Water regarding protective provisions, but that no SoCG with them is envisaged.</p> <p>Highways England agreed to check whether this point has been raised by Severn Trent Water.</p>
59e	Add provisions for consultation with local authorities with respect to potential impacts on local authority assets?	DCiC: no concerns as long as there is provision for consultation over assets.
59f	Add provisions for consultation with local authorities regarding any improvements, diversions, stopping up or	Derbyshire CC: no concerns.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	future maintenance liabilities for the Public Rights of Way network?	
59g	Any further requests for consultation by local authorities or others?	No other requests for consultation.
60	Have all relevant parties that should be consulted been identified?	Question not addressed at the hearing.
61a	What the Handover Environmental Management Plan should be drafted in accordance with and how that is secured.	In response to the ExA's comment that there is a clear process for the CEMP, but that the process for the HEMP is less clear, Highways England confirmed that this point would be picked up in the OEMP and may also be picked up in the Requirement.
61b	The necessity for provisions regarding consultation and approval of the Handover Environmental Management Plan.	Highways England stated that a consultation and approval mechanism will be set out in both the DCO and the OEMP.
62a	Should timescales be identified for consultation?	Question not addressed at the hearing.
62b	Should provisions be included to cater for matters that are not agreed between consultees and the undertaker?	Question not addressed at the hearing.
63	Should the provision for consultation with Natural England be extended to all protected species and not just to those not previously identified in the ES?	Question not addressed at the hearing.
64	Has enough detail been provided in the TMP?	Question not addressed at the hearing.
The draft Development Consent Order: Schedules 3 to 10		

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
65	Schedule 3 (Classification of roads): Update on discussions between the Applicant and LHA regarding agreement of the provisions.	Question not addressed at the hearing.
66	Schedule 3: Update on discussions between the Applicant and LHA regarding de-trunking and Traffic Regulation Order engagement.	See response to question 74a below.
67	Schedule 6: The specific reasons for amending each element of existing legislation that the Applicant considers need to be amended.	Question not addressed at the hearing.
68a	Responses to the ExA's Rule 17 Requests for Further Information: <ul style="list-style-type: none"> • whether the Applicant considers that it should audit dDCO Schedules 5 and 7; and • whether the Applicant considers that it should audit dDCO Schedules 3 and 4? 	The ExA noted that Highways England has addressed a number of issues in the document appended to the Rule 17 letter. However, the two bullet points in the letter itself have not been considered. Highways England confirmed that it will continue to audit Schedules 5 and 7 and 3 and 4 of the dDCO and confirm any updates at the relevant deadlines.
68b	LHA reviews of dDCO Schedules 3 and 4.	Highways England welcomed the LHAs review of the schedules.
69	Schedule 9 (protective provisions): Update on discussions between the Applicant and relevant statutory undertakers, Network Rail and the EA regarding agreement of the provisions.	Question not addressed at the hearing.
Other consents, permits, licenses and agreements		

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
70c	Update on discussions between the Applicant and relevance authorities regarding the position on required consents, permits, licenses and agreements.	Question not addressed at the hearing.
70d	Whether the approach being adopted by the Applicant for permits and consents are acceptable to the relevant granting authorities.	Question not addressed at the hearing.
70e	Whether there is there any reason to believe that any relevant necessary consents, permits, licenses and agreements would not subsequently be granted.	Question not addressed at the hearing.
71	With reference to paragraphs 4.48 and 4.55-6 of the NPSNN, do the relevant pollution control authorities have any reason to believe that that potential releases from the Proposed Development would not be adequately regulated under the pollution control framework?	Question not addressed at the hearing.
72	What information, if any, do consenting authorities require from the Applicant to be able to assist the ExA in identifying any consenting impediments to the Proposed Development?	From Highways England's point of view there is nothing unusual in what is being sought. Highways England noted that its focus has not been on consents and licences, since those that are required are all standard. Highways England stated that it had received a 'no impediment' confirmation from Natural England in relation to EPS licencing.
Other general matters		
73	Use of Rochdale Envelope, cumulative impact assessment, length of construction programme etc: Do the local authorities have any comments on the Applicant's	Question not addressed at the hearing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	responses, including any implications for the identification of significant impacts, or on the need for mitigation measures?	
74a	Impact and assessment methodology: further to the Applicant's responses and comments, do the local authorities or the EA have any outstanding concerns, including with respect to: the traffic model;	In relation to the issue of de-trunking, Highways England noted that there has been discussion with DCiC. Highways England had thought no de-trunking was needed. Derbyshire CC thought it might be. Highways England confirmed that proposals have been shared with Derbyshire CC. Highways England also confirmed that the dDCO will include an update relating to de-trunking as soon as possible. If de-trunking is dealt with within DCO, no further consent will be necessary. The ExA noted their request for updates on a number of discussions (see 74 b-k below). Highways England confirmed that these discussions are ongoing.
74b	Public Rights of Way;	LAs and EA to respond in writing.
74c	flood risk;	LAs and EA to respond in writing.
74d	the closure of Ford Lane;	LAs and EA to respond in writing.
74e	groundwater;	LAs and EA to respond in writing.
74f	contaminated land;	LAs and EA to respond in writing.
74g	the Derwent Valley Mills WHS;	LAs and EA to respond in writing.
74h	the management and control of construction-related impacts under the Construction Environmental Management Plan;	LAs and EA to respond in writing.
74i	events in Markeaton Park;	LAs and EA to respond in writing.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
74j	after care, monitoring and maintenance of the environmental mitigation measures and replacement public open space; and	LAs and EA to respond in writing.
74k	evidencing net gains, including enhancing the natural environment and reducing pollution?	LAs and EA to respond in writing.
75a	Updates to the draft SoCG and identification of any matters not currently agreed between the Applicant and: <ul style="list-style-type: none"> • DCC [REP1-007] • DCiC [REP2-013] • EA [REP1-011] • Euro Garages [RE1-041] • McDonald's [REP1-046] • Network Rail [REP2-014] • Virgin Media [REP2-015] 	With reference to the draft SoCGs, Highways England will confirm what has been agreed/not agreed in writing. Highways England also expressed disappointment at requests during this hearing for new information not previously asked for. Highways England stressed that it will produce what is necessary and ensure appropriate controls are in place, but that it is not in a position to produce 'nice to have' information that is not required for the purpose of understanding the likely effects of the scheme and the appropriate mitigation.
75b	Other SoCGs anticipated to be submitted during the Examination.	Question not addressed at the hearing.
Land use, social and economic impact		
12a-h	Various issues relating to Euro Garages and McDonald's	Highways England emphasised that discussions are still ongoing in relation to the issues raised by EuroGarages and McDonald's. Highways England confirmed that since Deadline 1, Highways England has provided further information to both parties.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
		<p>Highways England noted that its assessment uses different software to that used by McDonald's and that Highways England is willing to discuss this with Mr Green (traffic engineer acting on behalf of McDonald's) in order agree a way forward. Highways England proposed a meeting with Mr Green before the end of December 2019.</p> <p>The ExA noted that items (c) – (g) are all included in the SoCG.</p> <p>With regard to 'roadside facilities' signage (item (h)), Highways England stated that the site does not qualify as a trunk road service area and therefore to provide the requested signage requires HE approval</p> <p>Highways England confirmed that the findings of its Stage 1 safety audit will be provided to the parties. Highways England requested that the parties provide details of the current car park surface/strengthening.</p> <p>With regard to rights of access across the site, Highways England referred to the existence of a 1982 conveyance. In addition, Highways England stated that had been given to understand there might be a private agreement as well. Highways England agreed to check whether the conveyance is available through the Land Registry.</p> <p>Highways England confirmed that a detailed site survey is not needed since electronic data from LR can be overlaid onto the topographical plan.</p>

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
		In response to McDonald's main concern – closure of the entrance from the A38 and pressure on the proposed single access point – Highways England confirmed that this would require a departure from standards and raises concerns from a safety perspective
13	The effect of the proposal on the trading patterns of retail businesses in the area during the construction phase.	Response provided by INTU representative.
13a	Update on the TMP with particular regard to balancing the flow of traffic on the A38 with access to the city centre.	Highways England recommended that INTU review the TMP in its current form and provide comments. Regarding the suggestion that Highways England should lead the Behaviour Change Group, Highways England indicated that, as owner of the TMP, this would not be appropriate.
13b	How would the construction programme be co-ordinated with other road schemes in the region and the local area in order to minimise disruption?	Highways England noted that the contractor will have a contractual obligation to liaise with other road schemes and to identify which schemes will run in parallel. Highways England is aware that the co-ordination element of this will be very important. At the ExA's request, Highways England agreed, subject to contractual arrangements with its contractors, to provide reassurance regarding co-ordination and communication obligations within the TMP.
13c, d	Is there any evidence to suggest that travel disruption during the construction of highways schemes would have a lasting effect on retail trading patterns?	Highways England noted that its case for the scheme does not rely on delivering benefit to retailers in the area.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
	Would the anticipated improvement to travel patterns arising from the completed scheme benefit retailers in the area in the long term?	
14a	Update on discussions regarding the proposed public right of way diversions at Little Eaton	Highways England noted that discussions with Rights of Way officers at Derbyshire CC are ongoing. Temporary and permanent diversions have been considered. No further significant objections to current proposals have been received. Highways England will submit the document discussed with DCC to the Examination.
14b	Does the route of the proposed diversion of Breadsall FP3 appropriately balance considerations of safety and convenience? Does the existing route from Breadsall to Little Eaton via Breadsall FP8 provide a convenient alternative? Would the alternative route proposed by Breadsall Parish Council be safe and viable?	Highways England stated that diversion of FP3 to form a circular recreational route was under discussion prior to submission of the scheme. Highways England noted that FP3 was also diverted by others prior to the scheme. In terms of accessing Little Eaton, residents of Breadsall can use footpath 18 with a safe underpass connecting to FP39. Highways England stated its intention to loop FP3 safely around the works, linking it to FP1 to cross the A61 at the existing crossing point. This diversion is no more than 200-300m. Highways England noted that if residents wish to cross further up, they can use the Croft Lane footway/cycleway.
14c	Does the proposal make satisfactory provision for the Derwent Valley Cycleway?	ExA requested a written response.
14d	Update on discussions regarding the provision of a Toucan crossing on the A61 at the Croft Lane footpath and the reduction of the speed limit at this location. Are these measures necessary to ensure that the proposed scheme would provide safe and convenient access for pedestrians?	Highways England confirmed that diversion of FP3 has been discussed with DCC and that the current proposed route was suggested by the Council as a satisfactory solution.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
		<p>Highways England stated that the Toucan crossing is outside the red line area/order limit and is not necessary for the scheme. An underpass is also not part of the scheme.</p> <p>Highways England confirmed that it had looked at the A61 accident records and is of the view that the existing crossing used by pedestrians is safe.</p>
15	Whether the proposal makes adequate provision for non-motorised users during the construction and operational phases.	<p>Derby Cycling noted that it has specific concerns in relation to the operational phase and asked what would happen if an impasse were to be reached on any of these?</p> <p>Highways England responded that provisions in the DCO for disagreement in relation to the schemes to be approved by the SoS relate to named consultees. If Derby Cycling were to raise an issue through the Council (which is a named consultee), it could be considered this way.</p>
15c	Does the proposal take the opportunities available to encourage non-car travel with regard to the scheme itself and linkages to other initiatives in the surrounding area?	Highways England stated that where it has been able to accommodate cycle routes, it has done so within the limits of the scheme. Wider connectivity, however, is a matter for DCiC and DCC.
16	Whether the proposed route at the Little Eaton junction adequately balances environmental and socio-economic impacts.	Highway's England's view is that it does do this.
a	Would the proposed route have unacceptable impacts on the living conditions of the residents of Breadsall by reason of outlook, noise disturbance or air quality?	In relation to additional mitigation requested by Breadsall PC (i.e. a wider belt of screening trees), Highways England noted the relevant tests for CA of land: it must be land required for scheme or required to facilitate it. The SoS will (for example) need to be satisfied that the landscaping is completed to a satisfactory standard. Highways England made the point that if it were to deliver to a higher standard, this is likely to be beyond satisfactory.

ExA's question/issue no.	ExA's question/issue	Summary of oral responses by Highways England
		<p>Highways England stated that it is making use of redundant space to the north-west of the new A38, and that the wider belt to the north-east ties planting into an existing tree area (which is why planting is wider). In the area closest to Breadsall, Highways England is proposing a number of mitigation measures including noise/screening barriers. Highways England stated that the planting proposed was appropriate given the level of impact, the planting already proposed and the provision of the noise/ screening barriers.</p> <p>In response to the suggestion that the ecological ponds could be a different size or in a different location in order to accommodate additional screen planting, Highways England noted that in making a diversion of Dam Brook, emphasis had been placed on making the brook into an attractive feature. Highways England stated that it might be possible to move or reduce the size of the proposed ecological ponds slightly during the detailed design stage and thus include additional planting, however the ponds are sized to accommodate their function, so HE may not be able to reduce their size. Highways England pointed out that the landscape design is indicative at the moment, but that it will be reviewed with Derbyshire CC during the detailed design stage – as part of this review Highways England will review the screen planting proposals.</p> <p>Highways England stated that the location and size of the highway drainage ponds is not flexible.</p> <p>With regard to planting, Highways England confirmed that this must comply with Derbyshire CC guidelines. At this location planting is not just for screening, but also serves an ecological function.</p>