

A38 Derby Junctions Development Consent Order

Scheme Number TR010022

8.54 Actions Arising out of Compulsory Acquisition Hearing 1 on 10 December 2019 for Deadline 3

Planning Act 2008

Rule 8 (1)(k)

The Infrastructure Planning (Examination Procedure) Rules 2010

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A38 Derby Junctions
Development Consent Order 202[]

**Actions Arising out of Compulsory Acquisition Hearing 1 on 10 December 2019 for
Deadline 3**

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This document has been prepared in respect of the proposed A38 Derby Junctions Development Consent Order Examination. (“the Application”) made by Highways England Company Limited (“Highways England”) to the Secretary of State for Transport (“Secretary of State”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“PA 2008”).
- 1.1.2 The purpose of this document is to provide responses to action points assigned to the Applicant by the Examining Authority (ExA) during the Compulsory Acquisition Hearing 1 (CAH1) that took place on the 10 December 2019. This CAH1 was to examine the applicant’s case for Compulsory Acquisition and Temporary Possession of the proposed development to A38 Derby Junctions.
- 1.1.3 This document sets out each individual action point with the Applicant’s response in tabular format.

2 The Applicant's Responses to Actions Arising from CAH1

Ref	Action Requested of	Action Requested	Applicant's Response
The Applicant's case for Compulsory Acquisition (CA) and Temporary Possession (TP)			
The Applicant's overall approach to CA and TP in the context of the relevant tests under the Planning Act 2008 and DCLG Guidance			
1.	Applicant	<p>Set out in writing the approach to minimising CA or TP.</p> <p>Explain how specific legal provisions commit it to do so.</p>	<p>The dDCO contains provisions which allow Highways England to take less land if this is required as part of the Scheme and to temporarily possess land instead of compulsorily acquiring it, again, if this is required as part of the Scheme. Both of these measures ensure that the compulsory acquisition of land is kept to a minimum.</p> <p>Article 23 of the dDCO (Compulsory acquisition of land) allows Highways England to acquire so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development or is required as replacement land. The provision provides that Highways England "may" acquire so much of the Order land as is required etc. This means that the statutory tests set out in the Planning Act 2008 (s.122) continue to apply to Highways England's exercise of any compulsory acquisition or temporary possession powers (and equally apply to the SoS when deciding to make the DCO). In addition, as Highways England seeks to take possession of land (either through the 'Notice To Treat' process or a General Vesting Declaration), if Highways England seeks to acquire more land than it requires for the Scheme then this can be challenged by the landowner as the obligations to minimise land take are ongoing.</p>

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			<p>Article 33(1)(a)(ii) of the dDCO provides that Highways England can enter on and take temporary possession of the land listed in Schedule 7 of the dDCO and any of the other Order land. If Highways England is to enter onto any other Order land it must serve the landowner with no less than 14 days' notice of the intended occupation and set out the reasons for such occupation (see Article 33(2)). Occupation of the temporarily possessed land can only last for one year from the date of the completion of the works for which the land was temporarily taken (unless otherwise agreed with the landowner or subject to the service of a notice of entry or made a declaration under compulsory purchase legislation). Article 33(10) also provides that Highways England is not required to acquire the land it temporarily possesses, or to take any interest in it.</p> <p>These powers ensure that Highways England can only take the land it requires at the point at which it takes the land as part of the proposed development. This ensures that the minimal amount of third-party land will be impacted as part of the development. Highways England considers that it has included the minimum amount of land necessary in the Scheme in order to ensure its successful delivery. It envisages using all of the land outlined in the BoR, SoR and dDCO for the purposes for which the explanations have been given.</p> <p>In terms of other statutory provisions which require land take to be minimised, this is dealt with predominantly through Government guidance and case law. Both require it to be demonstrated on a continuing basis that the</p>

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			minimum amount of land required to deliver the Scheme is demonstrated.
The purpose, structure and content of the Book of Reference, the Statement of Reasons and the Funding Statement			
2.	Applicant	Part 1 and Section 10 claims for injurious affection. Record in writing cases where pre-scheme technical information and/or valuations are undertaken.	<p>Section 10 of the Compulsory Purchase Act 1965 (Section 10) and Part 1 of the Land Compensation Act 1973 (Part 1) claims for injurious affection permit homeowners who have had no land acquired to claim for diminution in value of their property as a result of physical interference (noise, vibration, smell, fumes, smoke and artificial lighting) as a result of the construction (Section 10), or operation (Part 1) of the scheme.</p> <p>As detailed in the application document 4.1 <i>Statement of Reasons for the A38 Derby Junctions Scheme</i>, paragraph 4.7.4 [App-020] Highways England used relevant information from environmental specialists who were undertaking assessments for the Scheme, to establish if any properties were likely to suffer physical impacts from the scheme, and therefore able to claim for injurious affection. Any property that Highways England felt, as a result of the data may have a claim (in this case, noise contours), was listed in Part 2 of Document 4.3 <i>Book of Reference for the Derby Junctions Scheme</i> [APP-022].</p> <p>The omission of any addresses does not prevent a relevant claim being made by a person who considers that the construction or operation of the authorised development has resulted in a diminution of value of their property.</p>

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			<p>Should a claim be made, Highways England will appoint an independent valuer to assess the value of the property prior to the Scheme commencing, and at the claim date, establish if there has been any diminution in value as a result of physical factors of the scheme. It should be noted that there are numerous factors that will affect property value, and therefore analysis of market conditions, sales of comparable properties and discussions with local agents will help form the valuers' opinion, as well as the data around the physical factors pre and post the scheme. Any future monitoring will be done if and when claims are submitted to assist the valuer with their assessment so that the data used accords with the valuation date of the relevant property.</p> <p>As part of the Funding Statement an assessment of the likely cost of any Section 10 and Part 1 claims have been included in the Property Cost Estimate.</p> <p>If owner-occupiers of any property think they may have a valid claim, they should submit their claim to Highways England for their consideration. To be valid, a Section 10 claim must meet the four legal tests known as the 'McCarthy Rules' including making the case that if the work was done without an Act of Parliament or statutory instrument (i.e. a DCO) the courts would be able to stop the work due to unreasonable interference with the enjoyment and use of the property.</p> <p>A Part 1 Claim can be made up to one year and one day after the scheme has become fully operational and any claims must be made and settled within 6 years from that date.</p>

Ref	Action Requested of	Action Requested	Applicant's Response
3.	Applicant	Submit updated Book of Reference (BoR) and Statement of Reasons (SoR) at Deadline 6.	Noted.
The need for CA and TP and the minimisation of need			
4.	Applicant	Review draft Development Consent Order (dDCO) Article 8 to clarify limits of deviation, including the lateral deviation of the carriageways and consistency with the 1m limit considered in the Environmental Assessment.	The dDCO has been updated to reflect this change.
5.	Applicant	Clarify how the land in Markeaton Park and Mackworth Park which is to be the subject of TP will be used in practice, its effect on the availability of open space and events in the parks. What mitigation would be provided and how would it be secured through the dDCO?	<p>Please refer to the extract from the Vegetation Retention figures from the ES contained in the Appendix below. The extracted figures show the areas affected by TP and describe the work activities associated with each area.</p> <p>The areas where public access is to be restricted during construction (excluded by temporary fencing for example) are shown on these figures. The timing of these works and the duration will be developed, and finalised once Highways England develops the construction programme in detail through the detailed design process.</p>
6.	Applicant Derby City Council (DCiC)	Consult and update on the effects of CA and TP on Statutory Undertakers' equipment.	Discussions with the SUs are ongoing and the manner in which SU rights and equipment will be impacted by the Scheme are set out in the dDCO, the BoR and the SoR. Protective Provisions are being negotiated with the SUs and negotiations are ongoing with them. Highways

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			England will provide the ExA with an update as the PPs and negotiations with the SUs progress.
The consideration of alternatives			
7.	Applicant	Alignment options for Markeaton junction. Written explanation of reasons for the chosen alignment, constraints on moving the A38 carriageway further north in order to avoid/minimise CA of Queensway properties. Illustrate with drawings showing the more northerly alignment.	A technical paper has been prepared to further explain the chosen alignment and the constraints on route choices. An explanation is provided covering the reasons and constraints associated with moving the alignment further to the west into Markeaton Park in order to avoid CA of Queensway properties. Refer to document Ref: [TR010022/APP/8.42]
8.	Applicant	<p>Consideration of the potential to reduce the extent of CA at 253 and 255 Ashbourne Road and 1, 14 Sutton Close and Sutton Turner Houses by amending the proposed access arrangements to left in/left out to each property or moving the connection of the proposed access road to Ashbourne Road towards the Markeaton junction.</p> <p>Should the options be discussed with relevant Affected Persons?</p>	<p>A technical paper has been prepared to further explain the reasoning for the required CA at 253 and 255 Ashbourne Rd and Sutton Close.</p> <p>Refer to document Ref: [TR010022/APP/8.52]</p>

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Statutory Undertakers and any other parties benefiting from statutory protections that may be affected			
9.	Applicant	Confirm whether or not E.On needs to be identified as a Statutory Undertaker and provided with Protective Provisions.	E.On's distribution network was acquired by Western Power Distribution (WPD) in 2011, and as such all interests on the title which were held by E.On are now held by WPD. WPD have been consulted with regards to the scheme and aware of the potential impact on its assets. Highways England and WPD are discussing Protective Provisions.
10.	Applicant	Update the position reached with telecoms providers - given their lack of engagement.	<p>In terms of the telecom's providers, to date, the following have been contacted by Highways England:</p> <ol style="list-style-type: none"> 1. City Fibre 2. Cornerstone Telecommunications Infrastructure Limited (CTiL) 3. Mobile Broadband Network Limited (MBNL) 4. Openreach 5. Virgin Media <p>City Fibre, CTiL, MBNL and Openreach were sent a draft Statement of Common Ground (SoCG) on 14th October but have not responded.</p> <p>Virgin Media have engaged and agreed a SoCG submitted at Deadline 2. It should be noted that the other telecoms providers have not engaged with Highways England despite being asked to and sent draft SoCG.</p>

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11.	Applicant	Set out the case for Planning Act 2008 (PA2008) s127 and s136 tests being met, either through Statement of Common Ground (SoCG) or separately.	Highways England is not currently in a position to confirm that the case for the Planning Act 2008 ss.127 and 138 tests have been met either through Statement of Common Ground (SoCG) or separately.
12.	Applicant	Provide confirmation from Statutory Undertakers that they are content with the Protective Provisions and that a127 and s136 tests have been met.	Highways England is not currently in a position to confirm that the statutory undertakers affected by the Scheme are content with the Protective Provisions and that the ss.127 and 138 tests have been met. Highways England is still negotiating these provisions with the relevant undertakers and updates will be provided to the ExA as they become available. All statutory undertakers (Severn Trent Water, Environment Agency, Network Rail and Cadent Gas) are engaged and the provisions being discussed with them.
13.	Applicant	Update on progress of SoCG with Statutory Undertakers.	In terms of progress of the Statement of Common Ground (SoCG) with the statutory undertakers, draft SoCG's are only currently being progressed between Highways England, the Environment Agency (EA) and Network Rail (NR) respectively. A draft with the EA was submitted at Deadline 1 and with NR with a draft was submitted at Deadline 2. The other statutory undertakers, namely Severn Trent Water, and Cadent Gas were sent a draft SoCG on 14 th October and are content to progress negotiations through the Protective Provisions and the dDCO.
Special Category Land, including open space & replacement land			

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14.	Applicant	Submit the schedule referred to the Applicant's response to First Written Question (FWQ) 13.6(b).	This information is all contained in the table prepared in response to CAH1 Q16.
15.	Applicant	Clarify the position regarding the future ownership of land acquired as Replacement Land.	<p>Highways England would need to retain ownership of the Queensway Replacement Land in order to guarantee access to infrastructure associated with the maintenance and operation of the highway network. The Queensway Replacement Land includes facilities that form part of the drainage infrastructure associated with the A38 (pumping station) and as such, Highways England must secure full and unhindered access to this land as necessary, which it considers can only be guaranteed through retaining ultimate ownership of the land.</p> <p>Notwithstanding the above, Highways England would draw attention to the powers set out in the Draft Development Consent Order, specifically Article 38(4) which vests the replacement land in the same rights, trust and incidents as the special category land (in this case open space land) that forms part of the order land. As such, this provision ensures that the replacement land will be provided and permanently maintained in perpetuity for that purpose.</p>
16.	Applicant	Clarify each existing right in respect to Open Space that is proposed to be acquired and that is to be vested in land acquired as Replacement Land. Has this been discussed or agreed with those holding the rights? How is the re-granting	A table titled 'Treatment of Rights over Open Space /Replacement Land' is annexed to this document which sets out the treatment of rights over land that is included in Part 5 (Special Parliamentary Procedure, Special Category or Replacement Land) of Document 4.3 Book of Reference

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		of rights to the relevant parties to specific Replacement Land secured?	for the Derby Junctions Scheme [APP-022] that is relevant to Public Open Space.
17.	Applicant	Respond in writing to Issue 13(b) 'The Applicant has stated that " <i>There is no intention to grant rights over the land to be acquired as replacement land that would make the land less advantageous as public open space than the open space land that is going to be acquired.</i> " How can that be ensured and secured rather than intended?'	Highways England asks the ExA to disregard the use of the word 'intention' from the previous written response to question 13(b) at deadline one. This commitment will be ensured and secured through the draft Development Consent Order, specifically Article 38(4) which vests the replacement land in the same rights, trust and incidents as the special category land (in this case open space land) that forms part of the order land.
18.	DCiC	Written response on whether there is an oversupply of public open space in the City as a whole and the areas affected by the Kingsway and Markeaton junctions.	Local Highway Authorities to respond.
19.	Applicant DCiC	Update SoCG with particular regard to the Replacement Land at Queensway Way, including the form of the proposed surface water drainage attenuation features.	Firstly, Highways England wish to reaffirm that the loss of open space land and its replacement with the land as detailed in the Special Category Land Plans [REP2-003] has been agreed in principle with Derby City Council in its capacity as local planning authority and as the principal landowner of the existing open space land to be acquired and one of the main landowners of the replacement land. This agreement is evidenced by the response provided by Derby City Council to the ExA's first written questions at deadline one (question 13.61) and the draft Statement of Common Ground between Highways England and Derby City Council submitted at deadline two.

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			<p>As such, Highways England does not consider there is sufficient time available to substantially update the existing draft of the Statement of Common Ground in time to submit an updated version for deadline 3.</p> <p>Notwithstanding this, Highways England will endeavour to discuss and reach agreement with Derby City Council on all outstanding matters (which will include a focussed discussion on the surface water attenuation features on the replacement land at Queensway) with a view to a more substantially updated version of the Statement of Common Ground being provided at a subsequent deadline.</p>
The availability and adequacy of funds			
20.	Applicant	Update on the availability of funding, land cost estimates, Road Investment Strategy support for the proposed development, and any other relevant changes to the Funding Statement by Deadline 6.	Noted.
Individual objections and issues			
Residential land and property			
21.	Applicant	Update Annex B of the SoR prior to Deadline 6.	Noted.
22.	Applicant	Written summary of the measures being undertaken to identify, engage with, and	As part of their diligent enquiries, Highways England have sought to find details of tenants/occupiers of all the residential properties affected by the scheme. Residential

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		<p>address the rights of tenants of properties proposed to be acquired.</p>	<p>tenants are not listed on land registry documents as there is no requirement to advise the Land Registry of any tenancy under 7 years of duration. The standard residential tenancy in the UK is an Assured Shorthold Tenancy which is for a minimum of 6 months and allows the landlord to take back possession with two months' notice. As such, the details of the tenants of residential properties will not be on the registered title. All freeholders were sent Land Information Questionnaires which included a request for details of tenants, this information was not always provided.</p> <p>The potential for frequent changes of tenants also makes it difficult for information which is obtained to be relied upon for a period of beyond 6 to twelve months. After the initial fixed term (6 to twelve months) a tenant will only have security of tenure of 2 months, which itself is shorter than the period of notice that would be given if a property were to be compulsorily acquired by GVD in which case 3 months is required.</p> <p>Many of the properties are thought to be occupied by students of Derby University, it is generally accepted that student tenants are unlikely to provide information on their occupation in response to any questionnaires sent to them. As such, the only way of obtaining the information on their details is likely to come from the landlord if they provide such information in an LIQ. Where details were provided in an LIQ the information has been used; but the information was not always given. All those listed Document 4.3 Book of Reference for the Derby Junctions Scheme [App- 022] with qualifying interests in the relevant</p>

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			<p>land will have received the consultation material and s.56 notice as a result of their s.42(d) interest.</p> <p>Highways England owned properties at 4, 6, 14, 20, 22 and 24 Queensway are managed by external surveyors appointed by Highways England property management team in Exeter with whom the tenants are able to correspond regarding individual property issues or details of the Scheme. Ms Wood of 24 Queensway received a bespoke email from the managing surveyor with an update on the Scheme's timings on 4 March 2019. 22 Queensway is currently occupied on a 6-month AST and will be vacant again on 27 February after which Highways England have no intention of reletting. The tenant has not been included in Document 4.3 Book of Reference for the Derby Junctions Scheme [App- 022] as his occupation commenced after application, and we have no intention adding him as he will no longer have an interest before the examination ends. He is however aware of the Scheme proposals. 20 Queensway is currently let to a tenant who is listed in Document 4.3 Book of Reference for the Derby Junctions Scheme [App- 022] and therefore would have received all the necessary consultation material and notices sent by HE as a result of his qualifying s.42(d) interest. The remaining properties owned by HE are vacant and there is no intention of reletting them.</p>
Others, including public and commercial, land and property			
23.	DCiC	Provide details of the Mundy 'covenant' for Markeaton Park. Is it a covenant on the	The land at Markeaton Park was sold by the Mundy Family to The Mayor Alderman and Burgess of the Borough of

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		land or an agreement between the Mundy family and DCiC?	<p>Derby and restrictions were placed on the use of the land in the future. The land was <i>'not to be used for any purpose other than a Park or opens space and place of recreation for the benefit of the Public...'</i></p> <p>Highways England is checking the enforceability of the covenant.</p>
24.	Applicant	Initiate discussions and provide an update to the Examination once details of the 'covenant' are known.	<p>Highways England have carried out some due diligence to seek to understand the contents of the covenant that is referred to. The whole Conveyance, dated 8 December 1982, is not publicly available and therefore Highways England would rely on receiving a copy of the document from Derby City Council and Esso Petroleum Company Limited. A summary of the Conveyance is detailed on the freehold title owned by McDonald's Real Estate Limited Liability Partnership (DY220642) which gives Esso full rights to use 3/8a and 3/8b to pass and repass for 'the purposes connected with the use and enjoyment of the property hereby conveyed'.</p>
25.	Applicant	Confirm position regarding access to maintain the environmental features proposed in Mackworth and Markeaton Parks and the maintenance of noise barriers, including the 4m high noise barrier adjacent to the Royal School for the Deaf Derby.	<p>Maintenance of the environmental features is as outlined below:</p> <p>Mackworth Park: as illustrated on the ES Environmental Masterplan (ES Figure 2.12A), the Scheme will install 20 bird boxes within Mackworth Park, plus 10 bat boxes. Ad hoc access will be needed following the installation of these features for monitoring and maintenance purposes, which will make use of the existing park access arrangements/ facilities. Thus no special access arrangements or restrictions will be needed as associated</p>

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			<p>with these environmental mitigation features. ES Figure 2.12A also indicates that the area over the proposed buried highway runoff tank will be restored as amenity grassland - this area will be handed back to DCiC for their ongoing landscape maintenance (e.g. periodic grass cutting) (noting that the area is currently amenity grassland subject to routine grass cutting).</p> <p>Markeaton Park: as illustrated on the ES Environmental Masterplan (ES Figure 2.12C & D), the Scheme will install a range of environmental mitigation features within Markeaton Park – namely: creation of bat roost features in 10 trees, three totem poles made from felled trees with bat roost features, a new species rich grassland, log piles for amphibians, plus landscape restoration planting in areas affected by construction activities. For the majority of these features ad hoc access will be needed for monitoring and maintenance purposes which will make use of the existing park access arrangements/ facilities. Thus no special access arrangements or restrictions will be needed. It is proposed that following establishment, the species rich grassland will be maintained (e.g. periodic grass cutting) as part of ongoing park management, noting that the area is currently amenity grassland subject to routine grass cutting. The Scheme landscaping would be maintained in accordance with the dDCO using existing park access arrangements/ facilities.</p> <p>Maintenance of the noise barriers is as outlined below:</p> <p>Kingsway Northbound</p>

Ref	Action Requested of	Action Requested	Applicant's Response
			<p>Highways England will be responsible for the noise barrier located on Highways England land boundary alongside Greenwich Drive North. This barrier will be accessed via Greenwich Drive North which will allow for inspections and minor maintenance. For all other maintenance activities, lane closures would be required on the main carriageway. No additional access needs are envisaged in this location.</p> <p>Kingsway Southbound</p> <p>Highways England will be responsible for the noise barrier sited on Highways England land boundary alongside Kingsway and Thurcroft Close. This barrier will be accessed via Kingsway and Thurcroft close which will allow for inspections and minor maintenance. For all other maintenance activities, lane closures would be required on the main carriageway. No additional access needs are envisaged in this location.</p> <p>Kingsway Park Close</p> <p>Derby City Council Highways England will be responsible for the noise barrier sited on Derby City Council Land to the rear of the properties on Cheviot Street which back onto Kingsway Park Close. The barrier will be accessed from Kingsway Park Close for inspections and minor maintenance. For all other maintenance activities, signal controlled closures are considered on Kingsway Park Close.</p> <p>Markeaton Southbound</p>

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			<p>Highways England will be responsible for the noise barrier sited on Highways England land boundary with the Royal School for the Deaf Derby and will also form the new boundary fence for the school. Land rights to be acquired in a strip immediately behind the noise barrier on the land owned by the school to allow for maintenance and inspection access. Maintenance and inspection activities are being discussed with the school and documented in the Statement of Common Grounds (SoCG) as access has been requested to be limited to school holidays only to ensure disruption is kept to a minimum.</p> <p>Little Eaton Northbound</p> <p>Highways England will be responsible for the noise barrier sited on the retaining wall on the northbound carriageway on Highways England land adjacent to the Ford Farm mobile home park. The barrier will be accessed via lane closures on the A38 for both maintenance and inspection. No additional access needs are envisaged in this location.</p> <p>Little Eaton Southbound</p> <p>Highways England will be responsible for the noise barrier is located on the southbound slip road as well as parts of the southbound mainline carriageway. The barrier will be accessed via lane closures on the A38 for both maintenance and inspection. No additional access needs are envisaged in this location.</p>

Ref	Action Requested of	Action Requested	Applicant's Response
26.	Applicant	<p>Update OEMP to include retention of Royal School for the Deaf Derby boundary wall and gates.</p> <p>Clarify how Royal School for the Deaf Derby concerns with respect to the sensory garden location and the mill pond will be addressed.</p>	<p>Refer to document [TR010022/APP/8.13] Statement of Common Ground with Royal School for the Deaf Derby submitted at Deadline 3.</p>
27.	Applicant	<p>255 Ashbourne Road – consider the potential to refine access design with a view to minimising the need to acquire the parking area at the front of the property.</p>	<p>Refer to the technical paper [TR010022/APP/8.52] prepared for Action 8.</p> <p>The CA is required for the provision of a turning head should it be required by the LHA to meet the standards for roads for adoption.</p>
28.	Applicant	<p>Update OEMP to include measures to secure the provision of temporary replacement parking where existing provision would be affected by construction works. Clarification of the impacts.</p>	<p>It is recognised that is some locations (such as Greenwich Drive North and Ashbourne Road), works to construct elements such as retaining walls may result in some temporary loss of street parking outside residential properties.</p> <p>Until the Scheme progresses to detailed design the extent and durations of such impacts cannot be determined.</p> <p>Highways England would be required to identify in advance any such circumstances as part of its traffic management planning and would liaise with the residents about how their needs could be accommodated. This could be provision of alternative areas as part of the revised site layout or temporary changes when parking is not in use. The important point is that it would be discussed and agreed in advance and would be done with</p>

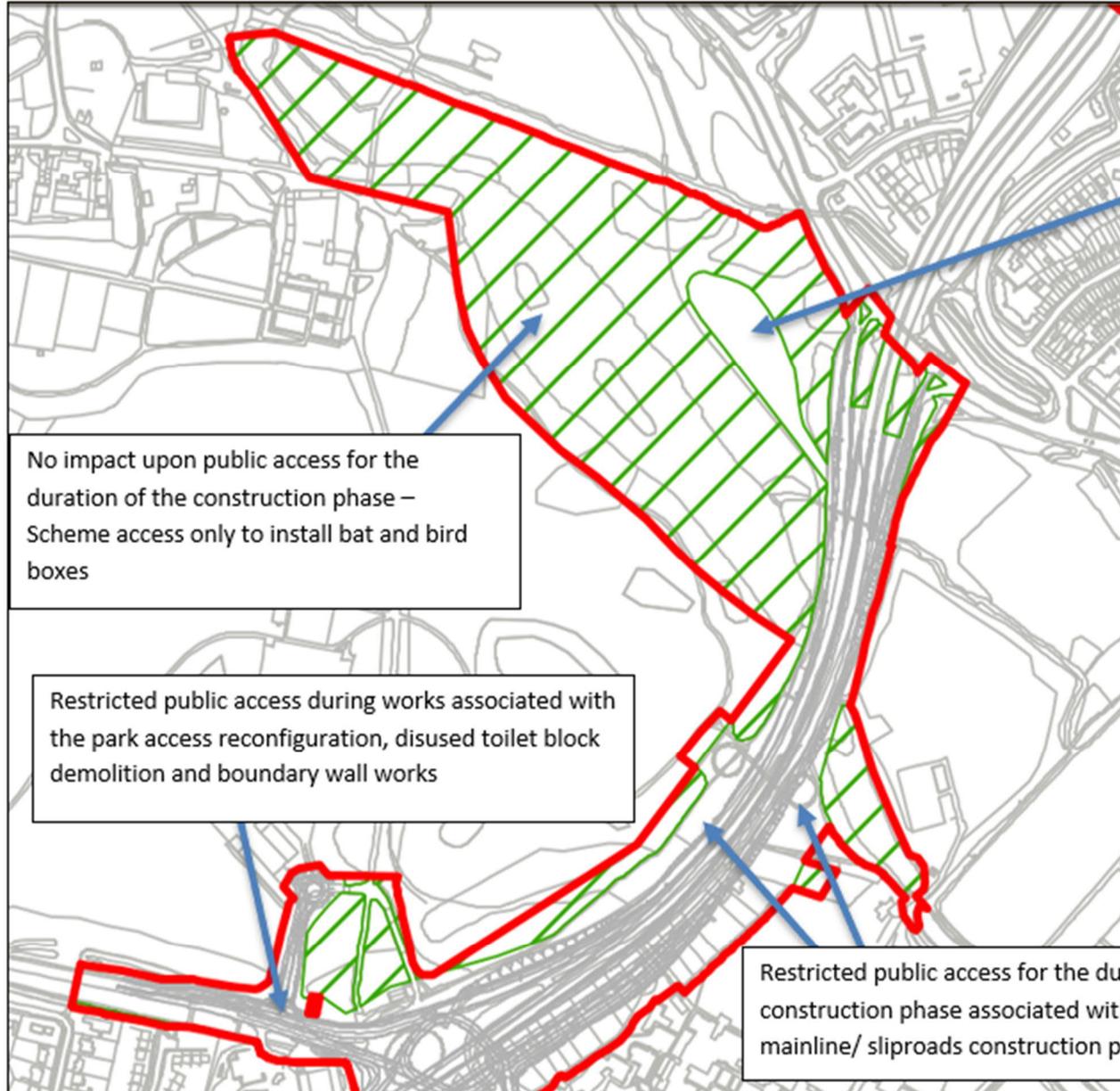
Ref	Action Requested of	Action Requested	Applicant's Response
			the residents having a full appreciation as to why the changes are required and for how long the changes would be in place.
29.	Applicant	Written justification for permanent acquisition of rights from Network Rail.	<p>Highways England is currently negotiating the Protective Provisions with Network Rail.</p> <p>In terms of the Network Rail land, the reason for the acquisition of the plots being acquired is included in the SoR, though briefly and with reference to Volume 2.2, 2.10 Engineering Drawings and Sections, Structures Engineering Drawings & Sections Regulations 5(2)(o) and 6(2) Sheet 8 of 10, the Network Rail land is required for the new bridge abutments for the proposed extension of the existing British Railways 11B Bridge over the East Midlands Rail Line.</p>
Any other Compulsory Acquisition or Temporary Possession matters			
30.	Applicant DCiC	Should trigger mechanisms should be introduced to ensure suitable notice would be allowed to prepare for vacant possession, for example if proposed acquisitions or consents might involve third parties?	<p>In the majority of instances Highways England will seek to serve a General Vesting Declaration which will allow Highways England to take possession and legal ownership at the same time. Once the CPO powers have been confirmed (when the DCO is made) Highways England will have 5 years to use its powers.</p> <p>Under the Housing and Planning Act 2016 ("HPA 2016") Highways England, as the acquiring authority will be required to serve the GVD at least 3 months prior to taking possession and accessing the land.</p>

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			<p>In addition to the statutory timescales, Highways England will endeavour to maintain an open dialogue with all parties to ensure that they are given as much notice as possible about when their land will be acquired, including the owners of the student-let properties at Queensway.</p>
31.	Applicant DCiC	<p>Selection of potential plots for open space Replacement Land. Qualitative assessment of Replacement Land which have not been included in order to justify their exclusion. Comments on the suitability of the proposed Replacement Land and whether it is "no less advantageous".</p>	<p>In respect of potential land for open space, Highways England would draw attention to section 5.1.11-5.1.14 and table 5.1 of the Planning Statement [APP-252] which details the main 'candidate' sites that were previously considered as potential replacement land but were dismissed for the reasons stated.</p> <p>Beyond this, Derby City Council have not previously suggested any other areas of land for consideration as potential replacement public open space. Highways England would also add that the two junctions where a loss of open space occur (Kingsway and Markeaton) lie within a densely populated urban corridor, whereby there is limited opportunity available to secure land that is suitable, available and isn't already used for informal recreational purposes, which would rule out its use as replacement land. Within the confines of these constraints and the context of securing land that is equally as advantageous (as defined by the Planning Act 2008) the replacement land is considered to be entirely suitable.</p> <p>Further detail of the suitability of the replacement land in comparison to the existing open space land to be acquired is detailed in the Planning Statement [APP-252] within sections 5.1.16 onwards and also within the response to</p>

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			question 10.1 submitted at deadline one to the ExA's first written questions.

Appendix 1 - Extract from the Vegetation Retention figures from the ES (Action no. 5 refers)





No public access for a few weeks during the works to create species rich grassland

No impact upon public access for the duration of the construction phase – Scheme access only to install bat and bird boxes

Restricted public access during works associated with the park access reconfiguration, disused toilet block demolition and boundary wall works

Restricted public access for the duration of the Scheme construction phase associated with utilities, A38 mainline/ sliproads construction plus footbridge