

A38 Derby Junctions

TR010022

Volume 3

3.3(a) Consents and Agreements Position Statement

Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

February 2020

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms
and Procedure) Regulations 2009**

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

Consents and Agreements Position Statement

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1. Introduction

1.1 Purpose of this document

1.1.1 This Consents and Agreements Position Statement (this “Statement”) sets out Highways England’s intended strategy for obtaining the consents and associated agreements needed to deliver the proposed A38 Derby Junctions scheme (the “Scheme”).

1.1.2 The purpose and objective of this Statement is to identify what consents and agreements are expected to be needed for the Scheme, and how these would be obtained (subject to gaining the Development Consent Order (DCO)).

1.2 The Scheme

1.2.1 A detailed description of the Scheme is provided in Chapter 2: The Scheme of the Environmental Statement [TR010022/APP 6.1].

2. Strategy

2.1 Highways England's Consents Strategy

2.1.1 The basis of Highways England's consents strategy is that:

- A DCO must be sought as the principal consent for the works (under the Planning Act 2008 (the "2008 Act")) including to provide the necessary land acquisition and temporary possession powers.
- Where possible and practicable, additional consents should be included in the DCO.
- The Scheme has and will be developed based on strong collaboration with key stakeholders and agreements will be secured at the appropriate stages of project development as necessary, documented where relevant in Statements of Common Ground (SoCG).

The proposed approach

2.1.2 The intent of the 2008 Act and Government policy is to enable development and construction related consents to be included within the DCO. The Scheme benefits from this intent, as the majority of consents required for the construction of the Scheme will be sought through the powers of the DCO. This approach minimises the need for any further approvals before the works covered by the DCO can commence.

2.1.3 The Scheme has and will continue to be developed based on strong collaboration with key stakeholders. In this respect, any additional consents and agreements outside the DCO will be secured at key stages of project development as necessary. The progress on securing these will be actively reported to the Examining Authority during the post-submission stage. A summary of the current position is presented in Section 3 of this report and the associated Appendices.

3. Consents and agreements

3.1 Consents

3.1.1 The principal consent for the Scheme will be a DCO. The DCO process provides development consent for the works and enables land acquisition and temporary possession, along with other consents and powers, to be dealt with at the same time.

3.1.2 However, the DCO application may need to be supplemented by other applications because:

- a) A specific consent cannot be contained in the DCO.
- b) A consenting authority declines to allow a consent to be contained within the DCO.
- c) It is not desirable, or it is inappropriate, to include a consent within a DCO due to the stage of design development and the detail available.

3.1.3 At this point (the submission of the DCO application) most of the consents and all the powers required have been included, or addressed, within the DCO as permitted by various provisions of the 2008 Act. These fall into the following categories:

- Authorisation of all permanent and temporary works (the equivalent of planning permission). Compulsory acquisition of land or rights over land such as easements, restrictive covenants and the temporary possession of land.
- Powers to compulsorily acquire open space and replacement land.
- Consent to carry out demolition of buildings and other structures.
- Powers and consent to carry out street works and to stop up highways permanently or temporarily.
- Highways matters (such as designating highway as trunk road).
- Traffic regulation matters (such as speed limits, clearways and restrictions on use).
- Consent to stop and divert public and private rights of way.
- Consent to carry out tree works (including works to trees subject to a Tree Preservation Order).
- Consent or approval for the carrying out of the works required under any relevant byelaw made under the Water Resources Act 1991 and the Land Drainage Act 1991.
- Disapplication of any relevant local legislation or byelaws under paragraphs 5, 6 and 6a of schedule 25 of the Water Resources Act 1991.
- Powers to carry out utility diversions (subject to protective provisions).
- Consent to carry out any required utility diversion (subject to protective provisions).

- Ordinary Watercourse Consent: Land Drainage Act 1991 Flood Water Management Act 2010.
- 3.1.4 In relation to the necessary applications under the Land Drainage act, the powers for this are included within the DCO and agreement is being sought from the relevant consenting authorities. This issue is also highlighted in the Explanatory Memorandum [TR010022/APP/3.2].
- 3.1.5 The permits, consents and agreements that may need to be sought separately from the DCO are identified in **Appendix A**, which also includes a summary of the need for consent and the current status.

3.2 Agreements

- 3.2.1 Other agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.
- 3.2.2 A fundamental part of the DCO process is the preparation and agreement of SoCG with a variety of relevant stakeholders to identify the matters on which parties agree and disagree, to narrow the focus for examining the application and to make the examination process more efficient. These will be progressed by Highways England where appropriate.
- 3.2.3 Progress on finalising any SoCG or other forms of agreement, along with updated or final documents, will be reported to the Examining Authority during the examination.

APPENDIX A: CONSENTS TABLE (as at February 2020)

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
Protected species licensing	<i>A licence under section 10 of the Protection of Badgers Act 1992</i>	<i>Natural England</i>	<i>Permanent closure and destruction of confirmed badger sets.</i>	<i>Extensive discussions have been undertaken with Natural England. A draft licence application has been submitted to Natural England and they have confirmed acceptance in principal to the proposed works. A letter of no impediment has been issued by Natural England confirming that they would be minded to grant a formal licence for the works. Update – Highways England have been in touch with Natural England and are currently in the process of arranging further discussions on the progression of a formal license application,</i>
	<i>Bats - European Protected Species Licence under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations); Wildlife and Countryside Act 1981</i>	<i>Natural England</i>	<i>Destruction of confirmed bat roosts.</i>	<i>Extensive discussions have been undertaken with Natural England. A draft licence application has been submitted to Natural England and they have confirmed acceptance in principal to the proposed works. A letter of no impediment has been issued by Natural England confirming that they would be minded to grant a formal licence for the works. Update – Highways England have been in touch with Natural England and are currently in the process of arranging further discussions on the progression of a formal license application,</i>
	<i>Permit to 'catch the fish' (FR2): an application for authorisation to use fishing instruments other than rod and line</i>	<i>Environment Agency</i>	<i>For use of electrofishing equipment in Dam Brook.</i>	<i>A permit application would be made prior to the commencement of development. The permit application is determined within a statutory period of 28 days by the Environment Agency. The Environment Agency has advised that the permit</i>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
	<i>in England. Salmon and Freshwater Fisheries Act 1975 (as amended)</i>			<p><i>applications can be made following a decision being made on the DCO application.</i></p> <p><i>Update – Highways England are currently arranging a site visit to view the previously identified receptor sites to reaffirm their suitability prior to undertaking further discussions with the EA on the proposed permit application.</i></p>
<i>Protected species licensing</i>	<i>Permit to 'move the fish' (SP1) Keeping and Introduction of Fish Regulation 2015</i>	<i>Environment Agency</i>	<i>To move fish from Dam Brook to a suitable receptor site.</i>	<p><i>A permit application would be made prior to the commencement of development. The permit application is determined within a statutory period of 28 days by the Environment Agency. The Environment Agency has advised that the permit applications can be made following a decision being made on the DCO application.</i></p> <p><i>Update – Highways England are currently arranging a site visit to view the previously identified receptor sites to reaffirm their suitability prior to undertaking further discussions with the EA on the proposed permit application.</i></p>
<i>Environmental/water/waste/ drainage</i>	<i>Water Abstraction: Licence under sections 24 and 25 of the Water Resources Act 1991 (restrictions on abstraction and impounding; restrictions on impounding)</i>	<i>Environment Agency</i>	<i>Consent may be required, typically if more than 20m³ of water per day is being taken or if the abstraction is to be longer than 28 days. The Environment Agency has a regulatory position statement on temporary dewatering within the stated exemptions of part 2 regulation 5 of the</i>	<i>Dewatering is likely to be required during the construction of the cutting at Markeaton and in addition for any other cutting within the scheme that intersects with groundwater including perched groundwater. The extent of dewatering and need for consent will be discussed with the Environment Agency during the preliminary works phase and any necessary consent secured at that time.</i>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
	<p>An Environmental Permit for the disposal of waste materials under the Environmental Permitting Regulations as amended (2016).</p>	<p>Environment Agency</p>	<p>Water and Abstraction and Impounding (Exemptions) 2017. Disposal of waste materials.</p>	<p>It is considered that the majority of the earthworks materials excavated during the works would be re-used within the works following the guidance in CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice (v.2) (DoWCoP). Agreement will be sought from the Environment Agency that they are satisfied that the DoWCoP route is acceptable for the earthworks proposed at the site and that the correct procedures have been followed. Update: EA to be contacted to agree in principle the use of DoWCoP. Supporting documentation to be prepared for agreement with the EA.</p>
<p>Environmental/water/waste/ drainage</p>	<p>Discharge to controlled water and/or groundwater under Environmental Permitting (England and Wales) Regulations 2016</p>	<p>Environment Agency</p>	<p>Discharge of water from excavation dewatering activities</p>	<p>Where dewatering of excavations is required the collected water will require discharge to surface water (alternatively to foul sewer). A permit is required from the Environment Agency setting out agreed volumes and allowable determinand¹ concentrations. This will be sought by the contractor prior to works taking place. Update: Supplementary GI to be undertaken in March 2020 to estimate volumes of groundwater requiring discharge.</p>
	<p>Control of Asbestos Regulations 2012</p>	<p>HSE</p>	<p>Work with asbestos</p>	<p>The former landfill at Kingsway accepted asbestos waste, confirmed during the ground investigation.</p>

¹ Determinand

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
				<p><i>Work (removal work) with asbestos is likely to require a licence from HSE for the earthworks to create the cutting at the former Kingsway landfill. A licence will be sought by the contractor prior to removal work taking place.</i></p> <p><i>Update: Supplementary GI to be undertaken to allow greater resolution of the distribution of asbestos containing materials within the landfill.</i></p>
	<p><i>Trade Effluent Discharge Consent. Water Industry Act 1991 (as amended)</i></p>	<p><i>Severn Trent Water</i></p>	<p><i>Possible discharge to public foul sewers.</i></p>	<p><i>For discharges over six months duration full consent would be required. At this stage it is considered unlikely to be needed, but may be required for the temporary discharge of construction site runoff, should the Contractor decide to drain to a public sewer. As applicable consent would be sought from Severn Trent Water by the contractor.</i></p>
	<p><i>Environmental Permit for Flood Risk Activity. Environmental Permitting (England and Wales) Regulations 2016</i></p>	<p><i>Environment Agency</i></p>	<p><i>Works to be undertaken on or near a Main River, on or near a flood defence structure, or in a flood plain.</i></p>	<p><i>This consent is likely to be sought once detailed design work is undertaken. The Environment Agency has been consulted extensively on the Scheme proposals from a flood risk perspective and therefore they are aware of the works to be undertaken within the floodplain. The Environment Agency has confirmed that the floodplain compensation provisions at Little Junction would be appropriate. Discussions will continue prior to a permit application being made.</i></p>
<p><i>Environmental/water/waste/ drainage</i></p>	<p><i>Section 61 (Part III of The Control of Pollution Act 1974</i></p>	<p><i>Derby City Council and Derbyshire County Council</i></p>	<p><i>Consent offers the applicant protection from any subsequent action by the local authority under Section 60 or</i></p>	<p><i>This consent is not mandatory, but allows the main contractor to obtain consent from the local authority regarding noise requirements. This will be considered for the Scheme and discussions will take place with</i></p>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
			<i>Section 66 of the Control of Pollution Act 1974 or under the Environmental Protection Act 1990 to impose further controls on noise from the site.</i>	<i>Derby City Council and Erewash Borough Council as to whether this consent will be sought.</i>