

## The Planning Act 2008 – Sections 91 and 92

## The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 14

### Application by Highways England for an Order Granting Development Consent for the A38 Derby Junctions project

### Agendas for Hearings on 18 and 19 February 2020

In its letter dated 7 January 2020 the Examining Authority (ExA) notified Interested Parties of the decision to hold the following hearings:

Hearing	Date	Time	Location
<b>Issue Specific Hearing 3</b> <ul style="list-style-type: none"> <li>Draft Development Consent Order</li> </ul>	<b>Tuesday 18 February 2020</b>	<b>10.00am</b> (seating from 9.30am)	Best Western The Stuart Hotel, 119 London Road, Derby, Derbyshire, DE1 2QR
<b>Compulsory Acquisition Hearing 2</b>	<b>Tuesday 18 February 2020</b>	<b>4.00pm</b> (seating from 3.30pm)	
<b>Issue Specific Hearing 4</b> <ul style="list-style-type: none"> <li>Transport networks and traffic</li> <li>Air quality</li> <li>Noise and vibration</li> <li>The water environment</li> <li>Biodiversity and ecological conservation</li> <li>Landscape and visual impact</li> <li>Land use, social and economic impact</li> <li>The historic environment</li> <li>Other policy and factual issues</li> </ul>	<b>Wednesday 19 February 2020</b>	<b>10.00am</b> (seating from 9.30am)	

These hearings provide the last programmed opportunity for oral representations to be made during the Examination on the respective topic areas. The agendas are now provided below. They take account of the information received at Deadlines 4 and 5 of the Examination Timetable. They provide a framework for the hearings and are not exclusive or exhaustive. The ExA reserves the right to rearrange an agenda on the day; may omit or add other issues; may alter the order in which issues are considered; or may ask for some matters to be addressed in post-hearing submissions.

A member of the Planning Inspectorate's case team will be at the venue for half an hour before the hearings commence. They will be available to answer any questions about procedural matters or the running of the hearing.

## **Conduct and management of the hearings**

Guidance under the Planning Act 2008 and the Examination Procedure Rules provide that at hearings it is the ExA that will probe, test and assess the evidence through direct questioning of persons making oral representations. Questioning at the hearing will therefore be led by the ExA. Interested Parties wishing to make a representation will be invited to do so at the ExA's discretion.

Cross-examination of a person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested. For most, if not all, matters the ExA will question persons directly.

Breaks may be taken during a hearing when convenient and as directed by the ExA.

Audio recordings will be made of the hearings.

## **After the hearings**

The audio recordings and, as the ExA considers necessary, any summaries of actions will be made available on the Planning Inspectorate's project website as soon as is practicable after the hearings. The project website can be found at:

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/>

During the hearings the ExA is likely to ask for some issues and questions to be addressed in writing in post-hearing submissions, which are to be received by Deadline 6 of the Examination, on **Tuesday 25 February 2020**.

### **Agenda for Issue Specific Hearing 3 (ISH3)**

ISH3 is being held because the ExA has decided that it is necessary for the examination of the application to include the consideration of oral representations about issues made at hearings in order to ensure:

- (a) adequate examination of the issue; or
- (b) that an Interested Party has a fair chance to put their case.

The purpose of ISH3 is for the ExA to examine the draft Development Consent Order (dDCO). The Development Consent Order is the Order which the Secretary of State would make if they decided to grant consent for the application. The hearing will principally be informed by the latest versions of the dDCO, Outline Environmental Management Plan and Traffic Management Plan submitted by the Applicant.

Irrespective of its recommendation, the ExA is required to present a dDCO to the Secretary of State. Discussion about the specifics of the dDCO does not indicate that the ExA has made up its mind about the application.

The hearing into the dDCO is likely to be of a technical nature and will be based on the specific wording of the Order.

During the hearing the ExA will, as it considers necessary:

- raise the ExA's issues and questions;
- invite the Applicant and any other parties to respond;
- take contributions from other parties;
- ask any further questions; and
- provide the Applicant with an opportunity to reply.

<b>Agenda for ISH3</b>	
10.00am on Tuesday 18 February 2020. Seating from 9.30am.	
<b>Item 1</b>	<b>Welcome, opening remarks and introductions</b>
<b>Item 2</b>	<b>The purpose of ISH3 and how it will be conducted</b>
<b>Item 3</b>	<p><b>Specific issues and questions</b></p> <p>The ExA will take the hearing through the dDCO and the ExA's issues and questions that have been published on the project website at <a href="http://infrastructure.planninginspectorate.gov.uk/document/TR010022-001009">http://infrastructure.planninginspectorate.gov.uk/document/TR010022-001009</a> :</p> <ul style="list-style-type: none"><li>a) General matters and preamble</li><li>b) Part 1 - Preliminary</li><li>c) Part 2 – Principal Powers</li><li>d) Part 3 - Streets</li><li>e) Part 4 – Supplemental Powers</li><li>f) Part 5 – Powers of Acquisition</li><li>g) Part 6 - Operations</li><li>h) Part 7 – Miscellaneous and General</li><li>i) Schedule 1 – Authorised Development</li></ul>

	j) Schedule 2 – Requirements k) Schedule 3 – Classification of Roads, etc. l) Schedule 4 – Permanent Stopping Up of Highways, etc. m) Schedule 5 – Land in Which New Rights, etc. May be Acquired n) Schedule 6 – Modification of Compensation and Compulsory Purchase Enactments, etc. o) Schedule 7 – Land for Which Temporary Possession Might be Taken p) Schedule 8 – Trees Subject to Tree Preservation Orders q) Schedule 9 – Protective Provisions r) Schedule 10 – Documents to be Certified
<b>Item 4</b>	<b>Any other dDCO matters</b>  Time permitting, and at its discretion, the ExA may invite any parties present to raise any other matters related to the dDCO.
<b>Item 5</b>	<b>Issues and actions arising, the audio record of the hearing and the next steps in the Examination</b>
<b>Item 6</b>	<b>Any other business and close of ISH3</b>

### Participation in ISH3

All Interested Parties and the Applicant are invited to attend ISH3.

It will assist the ExA if the following parties, or their representatives, could please participate in this hearing:

- The Applicant
- Derby City Council (DCiC)
- Derbyshire County Council
- Environment Agency
- Cadent Gas Limited
- Other Statutory Undertakers with interests in the affected area
- Interested Parties with interests in specific issues

These parties are invited because they are public bodies and others who are named in the draft provisions within the draft Development Consent Order; because they have raised specific issues that the ExA would like to consider in the hearing and/or because they are local authorities or statutory undertakers for the affected area.

## Agenda for Compulsory Acquisition Hearing 2 (CAH2)

CAH2 is being held because the application includes a request for an order granting development consent to authorise compulsory acquisition (CA) of land or CA of an interest in or right over land.

The following are entitled, subject to the ExA's powers of control over the conduct of the hearing, to make oral representations about the CA request:

- (a) the Applicant; and
- (b) each Affected Person.

During the hearing the ExA will, as it considers necessary:

- ask questions of the Applicant and other parties;
- invite Affected Persons to raise any objections or issues;
- invite the Applicant and any other parties to respond;
- take other contributions and ask any further questions; and
- provide Affected Persons and the Applicant with an opportunity to reply.

<b>Agenda for CAH2</b>	
4.00pm on Tuesday 18 February 2020. Seating from 3.30pm.	
<b>Item 1</b>	<b>Welcome, opening remarks and introductions</b>
<b>Item 2</b>	<b>The purpose of CAH2 and how it will be conducted</b>
<b>Item 3</b>	<b>Book of Reference and Land Plan updates</b>  Latest updates and further updates to be provided during the Examination
<b>Item 4</b>	<b>The need for CA and Temporary Possession (TP) and the minimisation of need</b>  a) The case for CA of land and rights due to agreements signed by the Applicant potentially becoming unenforceable. Consistency with DCLG guidance that <i>"As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail."</i>  b) The case for CA of unknown rights and whether the risks and potential consequences of the Applicant being <i>"held to ransom"</i> , would justify the acquisition of the unknown rights of unknown third parties. How unknown human rights could be considered.  c) The Applicant [REP3-014] has <i>"maintained that the main line and highways edge would not deviate by more than ONE metre"</i> . Clarification of the deviation assumed in the ES. The area of land over the length of the proposed development required for the deviation and how that would be justified.

	<p>d) The potential for CA to be reduced during detailed design and whether CA would be justified based on a "<i>reasonable worst-case scenario</i>" preliminary design. How human rights would be considered during detailed design in relation to opportunities to reduce CA identified at that stage.</p>
<b>Item 5</b>	<p><b>Alternatives to CA or TP</b></p> <p>a) Whether it is likely that there is a reasonable alternative A38 alignment that would avoid the need for CA of the Queensway properties. The balance of Human Rights with other factors. Implications for the granting of CA powers.</p> <p>b) The case for CA of Ashbourne Road and Sutton Close gardens:</p> <ul style="list-style-type: none"> <li>• clarification of safety and convenience considerations for a left-in left-out access alternative for 253 and 255 Ashbourne Road and the related consideration of CA at 14 Sutton Close (plot 3/17);</li> <li>• the need for a turning head at 255 Ashbourne Road (plot 3/15a) and whether the proposed access road needs to be designed to an adoptable standard; and</li> <li>• the need for CA at 1 Sutton Close (plot 3/19).</li> </ul> <p>c) The potential acquisition of 253 and 255 Ashbourne Road due to blight.</p>
<b>Item 6</b>	<p><b>Individual objections and issues</b></p> <p>a) Progress in finalising voluntary agreements and SoCG:</p> <ul style="list-style-type: none"> <li>• CA schedule</li> <li>• Residents of 12 Queensway</li> <li>• Millennium Isle of Man Limited</li> <li>• Royal School for the Deaf Derby</li> </ul> <p>b) Potential permanent loss of car parking at 253 and 255 Ashbourne Road. Potential temporary loss of car parking elsewhere. Impacts and mitigation for loss of car parking.</p> <p>c) Matters raised by any Affected Persons present.</p>
<b>Item 7</b>	<p><b>Crown interests and consent</b></p> <p>Update on securing written agreement and s135 consent</p>
<b>Item 8</b>	<p><b>Statutory Undertakers and any other parties benefiting from statutory protections that may be affected</b></p> <p>a) Progress in finalising protective provisions and SoCG</p>

	<p>b) Concerns raised by Cadent Gas [REP4-032] [REP5-012]. Whether their standard protective provisions should be adopted. Provisions for the diversion of Cadent Gas' apparatus.</p> <p>c) Evidence of any serious detriment, PA2008 s127 and s138 tests.</p> <p>d) Justification for permanent acquisition of rights from Network Rail. Whether the Applicant's need for rights should take precedence over that of Network Rail. The alternative of a deed of easement, a bridge agreement, a framework agreement and Relevant Asset Protection Agreement(s) suggested by Network Rail Limited.</p> <p>e) Matters raised by any Statutory Undertakers present.</p>
<b>Item 9</b>	<p><b>Special Category Land, including open space and replacement land</b></p> <p>a) The potential oversupply of Public Open Space. Whether there is enough certainty that CA of replacement land is necessary to justify the CA powers being granted. Whether CA of Replacement Land to avoid Special Parliamentary Procedure would be justified.</p> <p>b) The Markeaton Park 'Mundy covenant'. Any successor in title and consideration of their rights. The case for removing the covenant from the land that would be acquired by the Applicant.</p>
<b>Item 10</b>	<p><b>The availability and adequacy of funds</b></p> <p>a) Government priorities and Road Investment Strategy updates.</p> <p>b) Funding statement, land cost estimate and other updates.</p>
<b>Item 11</b>	<p><b>Potential impediments to the Proposed Development</b></p> <p>The updated Consents and Agreements Position Statement. Progress in obtaining other consents, whether there are any known impediments.</p>
<b>Item 12</b>	<p><b>Human rights and the compelling case in the public interest</b></p>
<b>Item 13</b>	<p><b>Any other CA or TP matters</b></p> <p>a) DCiC concerns [REP4-029] regarding Part 1 and Section 10 claims for injurious affection and the Applicant's response [REP5-010].</p> <p>b) DCiC concerns [REP4-029] regarding the need for a trigger mechanism for 28 days or 44 days and the Applicant's response [REP5-010].</p>

	c) Time permitting, and at its discretion, the ExA may invite any parties present to raise any other CA or TP matters.
<b>Item 14</b>	<b>Issues and actions arising, the audio record of the hearing and the next steps in the Examination</b>
<b>Item 15</b>	<b>Any other business and close of CAH2</b>

### **Participation in CAH2**

All Affected Persons, their representatives and the Applicant are invited to attend CAH2.

It will assist the ExA if the following parties, or their representatives, could please participate in this hearing:

- Affected Persons at residential properties in Queensway, Ashbourne Road, Sutton Close and Sutton Turner House(s)
- Affected Persons at 18 Queensway
- Affected Persons at other residential properties
- Haven Care Group Ltd / Cherry Lodge children's residential care home
- Derby City Council
- Derbyshire County Council
- Statutory Undertakers with interests in the affected area
- any other parties benefiting from statutory protections that may be affected
- any other Affected Persons
- any other Interested Parties who consider that their rights may be affected by CA or TP

These parties have been specifically invited because they have raised objections to the Applicant's request for CA or TP, because their rights may be affected by CA or TP and/or because they are local authorities for the affected area.



## Agenda for Issue Specific Hearing 4 (ISH4)

ISH4 is being held because the ExA has decided that it is necessary for the examination of the application to include the consideration of oral representations about issues made at hearings in order to ensure:

- (a) adequate examination of the issue; or
- (b) that an Interested Party has a fair chance to put their case.

During the hearing the ExA will, as it considers necessary:

- ask questions of the Applicant and other parties;
- invite the Applicant and any other parties to respond;
- take contributions from other parties;
- ask any further questions; and
- provide the Applicant with an opportunity to reply.

<b>Agenda for ISH4</b> 10.00am on Wednesday 19 February 2020. Seating from 9.30am.	
<b>Item 1</b>	<b>Welcome, opening remarks and introductions</b>
<b>Item 2</b>	<b>The purpose of ISH4 and how it will be conducted</b>
<b>Item 3</b>	<b>Transport networks and traffic</b> <ul style="list-style-type: none"><li>a) The openness and robustness of the qualitative assessment of congestion, route uncertainty, journey reliability, journey times and fear of accidents during construction. Explanations of where the assessment is uncertain. The potential for "<i>sustained periods of severe congestion as a result of construction</i>" suggested by DCiC.</li><li>b) The consideration given to the range of likely impacts on the population arising from changes to congestion, route uncertainty, journey reliability and journey times on the local road network during construction. Consideration given to the inner ring road and major routes identified by DCiC.</li><li>c) The modelling of queuing and junctions, the adequacy of the Saturn model and the need for LINSIG modelling for the assessment of impacts arising from disruptions to the local road network during construction.</li><li>d) The updated Traffic Management Plan. The balance of prioritisation given to the A38 and to the local road network. Comments from the Local Highways Authorities, the A38 Behavioural Change Group and other stakeholders. Construction uncertainties, stakeholder engagement and resources. The Community Relations Manager and their liaison with DCiC and DCC. The ongoing role of the A38 Behavioural Change Group and how that should be secured.</li></ul>

	<p>e) Impacts resulting from the proposed development on the local road network (including junctions, the inner ring road and major routes identified by DCiC) during operation. Responsibility for their mitigation. Proposed mitigation measures and how they are secured. The need to monitor local roads and for a separate agreement.</p> <p>f) DCiC's concerns regarding the process for Stopping Up and Traffic Regulation Orders.</p> <p>g) Agreement of mitigation measures for Ford Lane bridge (DCC and Network Rail concerns) and the Ford Lane / A6 junction (DCiC concerns) and how they are secured.</p> <p>h) Impacts on car parking during construction and operation, including at Cherry Lodge children's residential care home. Mitigation measures and how they are secured.</p> <p>i) Access to Derby Royal Hospital.</p>
<b>Item 4</b>	<p><b>Land use, social and economic impact</b></p> <p>a) Footpath diversions at the Little Eaton junction including the linkages between existing and proposed footpaths and the proposed diversion of FP3.</p> <p>b) The effect of the proposed development on the McDonald's and Euro Garages sites, including the capacity and geometry of the proposed access arrangements, existing access rights and the case for providing advance signage.</p> <p>c) Potential effects on open space and events in Mackworth Park and Markeaton Park due to temporary possession, their mitigation and how that would be secured.</p> <p>d) Whether the recent Supreme Court judgement [R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3 e] on the approach to Green Belt openness has implications for consideration of the proposed development.</p>
<b>Item 5</b>	<p><b>Air quality</b></p> <p>a) Consideration of LA 105 for the potential for significant air quality effects for an increase in NO<sub>2</sub> due to the proposed development of &gt;0.4 µg/m<sup>3</sup>. Reference to Table 5.6 of the Environmental Statement (ES) Chapter 5 [APP-043] and Table 1.13 of ES Appendix 5.3 [APP-172].</p> <p>b) Local Authority comments on the Applicant's consideration of LA 105. Whether its' application would be likely to give rise to any additional significant impacts or materially new or materially</p>

	<p>worse adverse impacts. Whether OEMP mitigation measures for dust should be amended.</p> <p>c) DCiC's outstanding air quality concerns, including:</p> <ul style="list-style-type: none"> <li>• <i>"method for reconciling infrastructure scheme contributions with national PCM compliance modelling outputs";</i></li> <li>• <i>"modelling against EU Directive for some receptors";</i> and</li> <li>• <i>"outstanding detail in CEMP".</i></li> </ul> <p>d) Whether DCiC considers that the Applicant's assessment represents a reasonable worst-case scenario and whether on balance it agrees there are likely to be no significant effects during construction or operation.</p> <p>e) Compliance with European Union Directives, the potential for a zone compliant with the Air Quality Directive to become non-compliant and the potential for delays for a non-compliant zone to achieve compliance. Balance of probability.</p>
<b>Item 6</b>	<p><b>Noise and vibration</b></p> <p>a) The likelihood of other receptors in addition to those identified in the ES experiencing noise levels above Significant Observed Adverse Effect Level (SOAEL) during construction. The likelihood of the durations of the significant adverse construction noise effects identified in the ES being exceeded. Whether the assessment represents a reasonable worst-case scenario.</p> <p>b) The relevance of BS5228 duration provisions for:</p> <ul style="list-style-type: none"> <li>• eligibility for noise insulation and temporary rehousing (<i>"a period of 10 or more days of working in any 15 consecutive days or for a total number of days exceeding 40 in any 6 consecutive months"</i>); or</li> <li>• the 5dB(A) change method for residential buildings, hotels and hostels, buildings in religious, education, health or community use (<i>"one month or more, unless works of a shorter duration are likely to result in significant effect"</i>).</li> </ul> <p>c) The averaging time, T, used for daytime, evening and night-time construction noise SOAEL. Comparison of averaging times used with Table E.2 of BS5228-Part 1.</p> <p>d) Whether a later assessment of exceedances of SOAEL of up to 10 days in 15 or 40 days in 6 consecutive months would be a materially new or materially worse adverse noise effect in comparison with no exceedance of SOAEL. Whether, in this case, <i>"materially new or materially worse"</i> requires clarification.</p>

	<p>e) Whether there should be a dDCO or OEMP requirement for the construction contractor to explicitly demonstrate that its' detailed design and construction proposals would be unlikely to give rise to any materially new or materially worse adverse noise or vibration effects in comparison with those reported in the ES. Whether this should be subject to review by the Local Authorities and the Applicant and approval by the Secretary of State.</p> <p>Whether this is justified in order to preserve the validity of the impact assessment and the basis of any decision regarding development consent given detailed design and construction uncertainties and the flexibility sought through a Best Practicable Means approach. Whether such considerations should require the OEMP to specify a different approach to minimising noise and vibration based on the duration of the works or if a significant effect is identified.</p> <p>If this would be unlikely to result in unreasonable restrictions given that the Applicant "<i>considers it has enough flexibility in its design</i>" and "<i>the robust approach taken in the ES</i>".</p> <p>f) Whether all construction work outside core hours should be agreed in advance with the Local Authorities. Whether "<i>any other emergency work</i>" shouldn't need to be agreed in advance. Whether any further s61 provisions should be included in the OEMP.</p> <p>g) Noise levels and durations from the demolition of the Queensway buildings. Temporary noise barrier and permanent noise barrier options to mitigate impacts on the Royal School for the Deaf Derby.</p>
<b>Item 7</b>	<p><b>Landscape and visual impact</b></p> <p>a) Landscape screen planting at Little Eaton junction.</p> <p>b) Whether the proposal would retain an adequate level of tree cover at the Markeaton junction. Whether adequate measures are in place to ensure retention of felled timber on the site as biodiversity mitigation.</p> <p>c) Whether enough information has been provided to adequately assess the effect of the proposed development on existing hedgerows.</p> <p>d) The effect of the proposed development on protected trees including T358, the correct identification of such trees and the appropriate Root Protection Areas. Updates required to the OEMP.</p>
<b>Item 8</b>	<b>Biodiversity and ecological conservation</b>

	<ul style="list-style-type: none"> <li>a) The effect of the proposal on the Alfreton Road Rough Grassland Local Wildlife Site.</li> <li>b) The approach to biodiversity enhancement and the use of Biodiversity Metric Assessment.</li> </ul>
<b>Item 9</b>	<p><b>Other policy and factual issues</b></p> <ul style="list-style-type: none"> <li>a) Whether it is likely that potential discharges or emissions (which would affect air quality, water quality, land quality or which include noise and vibration) would be adequately regulated under the pollution control framework.</li> <li>b) Whether the approach to carbon emissions adequately considers the Government's updated target for net zero carbon by 2050.</li> <li>c) Mitigation required to ensure that the carbon footprint would not be unnecessarily high. Benchmarking of construction emissions and embodied energy. The relative weight to be given to reduction in carbon and £ spent. Consideration of loss of mature trees and planting of new trees.</li> <li>d) The potential for impacts on civil aviation assets. Civil Aviation Authority response.</li> <li>e) Cyclist and pedestrian safety mitigation measures and how they are secured. Consultation provisions.</li> <li>f) Whether enough information has been provided to establish future maintenance responsibilities for each element of the proposal. Is the Maintenance and Repair Strategy Statement available to the Examination?</li> </ul>
<b>Item 10</b>	<p><b>The water environment</b></p> <ul style="list-style-type: none"> <li>a) Hydraulic modelling at the Markeaton junction.</li> <li>b) Flood compensation storage at the Little Eaton, Markeaton and Kingsway junctions.</li> <li>c) Pollution control requirements at Markeaton junction. Whether petrol interceptors should be provided at all discharge points which do not have significant sustainable urban drainage provision.</li> <li>d) Need for further information on discharge rates and volumes.</li> <li>e) Scope of the hydraulic calculations for the Dam Brook diversion.</li> <li>f) Whether the maintenance responsibilities for the surface water drainage facilities at each of the junctions has been adequately defined at this stage.</li> </ul>

	<p>g) The need for water quality monitoring during the operation of the proposed development. Whether the undertaker or the Local Authorities undertake regular monitoring of water quality adjoining the strategic or local highway network in any event.</p> <p>h) The use of sustainable urban drainage at the Markeaton and Kingsway junctions.</p> <p>i) Little Eaton construction compound in relation to Source Protection Zones 2 and 1. Whether the Preliminary Works CEMP should include details of the drainage solution for the construction compound and relevant pollution prevention measures to mitigate the risks of pollution to controlled waters from activities in this location.</p>
<b>Item 12</b>	<b>Issues and actions arising, the audio record of the hearing and the next steps in the Examination</b>
<b>Item 13</b>	<b>Any other business and close of ISH4</b>

### **Participation in ISH4**

All Interested Parties and the Applicant are invited to attend ISH4.

It will assist the ExA if the following parties, or their representatives, could please participate in this hearing:

- The Applicant
- Derby City Council
- Derbyshire County Council
- Erewash Borough Council
- Environment Agency
- Royal Derby Hospital
- Euro Garages Limited
- McDonald's Restaurants Limited
- Derby Cycling Group
- Intu Derby
- Statutory Undertakers with interests in the affected area
- Other Interested Parties with interests in specific issues

These parties are invited because they have raised specific issues that the ExA would like to consider in the hearing and/or because they are local authorities or statutory undertakers for the affected area.