

A38 Derby Junctions
TR010022

8.73 Applicant's Responses to Actions
Arising from CAH2 18 February 2020

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Rule 8 (1)(i)

Infrastructure Planning (Examination Procedure) Rules 2010

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**The Infrastructure Planning
(Examination Procedure) Rules 2010**

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

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18 February 2020**

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INTRODUCTION

Purpose of this Document

This document sets out Highways England's responses to action points raised at the second Compulsory Acquisition Hearing (CAH) for the A38 Derby Junctions Scheme. The CAH took place at 16:00 on 18 February 2020 at The Best Western - Stuart Hotel.

Actions arising from CAH2		Applicant's Comments
1	<p>Item 4 The need for CA and Temporary Possession (TP) and the minimisation of need</p> <p>(b)The case for CA of unknown rights and whether the risks and potential consequences of the Applicant being “held to ransom”, would justify the acquisition of the unknown rights of unknown third parties. How unknown human rights could be considered.</p> <p>Highways England were asked to provide a note to the ExA on the consideration of human rights.</p>	<p>Highways England has prepared a separate Technical Note on this issue. Refer to Document Reference 8.80 included within the Deadline 6 submission.</p>
2	<p>Item 6 - Individual Objections and Issues</p> <p>(a) Progress in finalising voluntary agreements and SoCG:</p> <ul style="list-style-type: none"> • CA schedule - HE to provide an Updated Statement of Reasons and Schedule (for end of Examination) which includes updated compulsory acquisition schedule. 	<p>Highways England confirm this will be provided at Deadline 8, in time for CAH3 which will take place on the 19 March 2020.</p>
3	<p>253 and 255 Ashbourne Road</p>	<ul style="list-style-type: none"> • The Safety Technical Note has been appended to Ashbourne Rd Access Technical note which is submitted as an update for Deadline 6.

Actions arising from CAH2	Applicant's Comments
<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>HE to provide and/or clarify the following items:</p> <ul style="list-style-type: none"> • Provide a technical note (independent audit) on safety for access; • Review access arrangements and clarify whether land take can be reduced); • Provide clarification as to why turning head could not be relocated outside no. 255; • Respond to the point on the adoption of the access road • Provide detail on impacts on car parking. The ExA would like as much clarity as can be provided by the end of Examination; • Provide update on progress of blight notices if possible (because of impact on other properties). 	<p><i>(Bullet Points 2 to 4)</i> DCiC has provided that it does not want to adopt the access road (or be compelled to under the DCO) because it would not serve the public. They have provided that given that it is a highway maintainable by private expense that it should remain a private road. On this basis Highways England considers that the design of this work item can be amended to reflect this position. By not having the access adopted, the requirement to design the access to adoptable standards is not necessary. The width of the access can be narrowed and the turning head omitted from a revised layout. As the access will now be provided as a private means of access the land acquisition will change from CA to TP with Rights on the Sutton Turner Houses land and 253 Ashbourne Rd. 255 Ashbourne Rd can be changed to TP only, and this redesign will require amendments to the dDCO and BoR. Meetings have been arranged with the owner of 255 Ashbourne Road and Sutton Turner Houses on 5th March to discuss the current proposals with respect to the access arrangements. To clarify; the requirements over each plot of land associated with these properties is as follows:</p>

Actions arising from CAH2	Applicant's Comments
	<p>255 Ashbourne Road</p> <ul style="list-style-type: none"> – Plot 3/15b still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. – Plot 3/15a can now be changed from CA to TP, this would facilitate the construction of the new means of access to the property and the area returned to the owner for car parking. <p>253 Ashbourne Road</p> <ul style="list-style-type: none"> – Plot 3/16b is still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. – Plot 3/16a can now be changed to TP with permanent rights over it. This would facilitate the construction of the new means of access, the rights required would be for No 255 Ashbourne Rd to pass and re-pass across the amended frontage of no. 253 Ashbourne Road. <p>Sutton Turner Houses</p> <ul style="list-style-type: none"> – Plot 3/18 is still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. – Plot 3/17 can be changed to TP with rights over it. This would facilitate the construction of the new means of access, the rights required would be for nos. 255 and 253

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	<p>Ashbourne Rd to pass and re-pass across the amended frontage of Sutton Turner Houses land.</p> <ul style="list-style-type: none"> - Plot 3/20 is still required as CA to facilitate the new Markeaton Junction and associated widening of the A52. - Plot 3/19 can be changed to TP with rights over it. This would facilitate the construction of the new means of access, the rights required would be for No 255 and No 253 Ashbourne Rd to pass and re-pass across the amended frontage of Sutton Turner Houses land. <p>Areas of land required with permanent rights to pass and re-pass would be reduced to that required to provide an appropriate width of access. TP land will be returned to the individual land owners on completion of the works.</p> <ul style="list-style-type: none"> • No. 253 will not lose any parking spaces. The current parking arrangements at no. 255 means that vehicles block one another in to allow up to 7 cars to park. As the current tenants are serving blight and leaving, the building use changes and parking should not be a key issue. However, the available frontage left after the required CA of Plot 3/15b to build the new junction, this means that the loss of parking for only 1 or

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		<p>2 cars would result if you apply the current way of parking that blocks vehicles in.</p> <ul style="list-style-type: none"> To date 8 blight notices have been served of which all have been deemed valid claims and are due to be paid. The cost of meeting these claims has been met by Highways England. 3 claims have been completed and 5 are in progress
4	<p>Item 7 - Crown Interests and Consent</p> <ul style="list-style-type: none"> Update on securing written agreement and s135 consent. 	<p>Please see attached an email from DIO to Burges Salmon (Highways England's appointed legal advisor) dated 3 February 2020 which confirms that the S135 agreement can be dealt with locally by the Head of at Estates East Midlands Reserve Forces and Cadets Association (and their appointed legal advisor).</p>
5	<p>Item 9 - Special Category Land, including open space and replacement land</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</p>	<p>(a) A separate Technical Note has been provided in response to the issue of POS loss and replacement land and is provided at deadline 6 as document 8.79.</p> <p>(b) Through the assistance of DCiC HE has been able to identify and has written to the beneficiary of the covenant who have stated that they have no issues with regard to the works and are not proposing to object or attend the scheduled CAH 3 on 19 March. The beneficiary is currently seeking legal advice on the</p>

Actions arising from CAH2		Applicant's Comments
	<p>removing the covenant from the land that would be acquired by the Applicant.</p>	<p>provision of formal evidence in order to demonstrate succession in title.</p> <p>In terms of clarifying the position over the suspension of private rights whilst Highways England is in temporary possession of land, please see article 26(4) which provides that all private rights over land of which Highways England takes temporary possession are suspended and unenforceable for as long as Highways England remains in lawful possession of the land. As such, the Mundy covenant (and any other rights affected which exist over the land being used temporarily) will be suspended for the period that Highways England is in temporary possession of the land.</p> <p>In respect of the issue raised by the ExA over possible human rights issues of the public relating to the temporary closure or exclusion from parts of the park, Highways England has not been able to find any guidance or case law supporting the proposition that the public has any human rights in respect of public open space. This is on the basis that none of the relevant articles in the ECHR applies to public space. Article 1 relates to an individual's possessions and the right to peaceful enjoyment of these possessions and article 8 protects the right of the</p>

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	<p>individual to respect for his private and family life, his home and his correspondence.</p> <p>As Highways England mentioned during the CAH2 hearing, any impact on the public in respect of temporary loss of public open space is likely to be a public amenity issue and something which the ExA and SoS will have to weigh in the balance of considerations as part of the Scheme. Clearly, the park at Markeaton privately owned by DCiC and DCiC will often have to close certain parts of the park over the course of a year - for example, to allow functions/events to take, to ensure that areas can recover where they have been excessively used, to undertake wild flower initiatives etc. All of these can take place through DCiC's ongoing maintenance of the park area and they are all temporary incidents. DCiC do not (as far as Highways England is concerned) have to undertake any human rights assessment when it makes temporary closures within the park. However, it is likely that DCiC will provide notification to the public to inform it of restrictions on access within the park (although Highways England assumes that DCiC is not under any statutory obligation to do this – it does it in its capacity as the freehold landowner of the park who is limiting the extent of the permissive right it grants to the public to use the park).</p>

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6	<p>Article 33(2) temporary use of land and notice period of 14 days</p> <ul style="list-style-type: none">• HE to set out supporting provisions in writing to give DCiC comfort as to how these provisions work with Article 33(2).	<p>Highways England has met with DCiC to discuss this matter further and understand that with the further explanation provided, including the level of engagement that would take place alongside the formal notifications, they are now content.</p>