

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 19 March 2020

In its letter dated 20 February 2020 the Examining Authority (ExA) notified Interested Parties of the decision to hold the following hearings:

Hearing	Date	Time	Location
<p>Issue Specific Hearing 5</p> <ul style="list-style-type: none"> • Transport networks and traffic • Air quality • Noise and vibration • The water environment • Biodiversity and ecological conservation • Landscape and visual impact • Land use, social and economic impact • The historic environment • Other policy and factual issues • Draft Development Consent Order 	<p>Thursday 19 March 2020</p>	<p>10.00am (seating from 9.30am)</p>	<p>Best Western The Stuart Hotel, 119 London Road, Derby, Derbyshire, DE1 2QR</p>
<p>Compulsory Acquisition Hearing 3</p>	<p>Thursday 19 March 2020</p>	<p>3.00pm (seating from 2.30pm)</p>	

Having reviewed the submissions at Deadline 6 and 7 we have decided that noise and vibration will not be covered at Issue Specific Hearing 5.

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 6 and 7 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.

Coronavirus (COVID-19)

To help us reduce the risks of spreading coronavirus, please take careful note of the advice at the following link:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2020/03/Coronavirus-COVID-19-Guidance-for-NSIP-Events.pdf>

The advice will be updated as required, so please review the latest version shortly before you leave for the hearing(s).

If you do attend the hearing, please take note of and observe the specific precautions that will be in place at the venue.

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.

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 9 of the Examination, on **Thursday 26 March 2020**.

Agenda for Issue Specific Hearing 5 (ISH5)

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.

Agenda for ISH5	
10.00am on Thursday 19 March 2020. Seating from 9.30am.	
Item 1	Welcome, opening remarks and introductions
Item 2	The purpose of ISH5 and how it will be conducted
Item 3	Transport networks and traffic <ul style="list-style-type: none">a) Any residual concerns that Derby City Council (DCiC) has about the Applicant's modelling of queuing and junctions during construction. Whether DCiC is content the Applicant has given enough consideration to the potential for queues at one junction to effect other junctions and potentially lead to gridlock.b) Whether DCiC considers that the Applicant's assessment of congestion during construction represents a reasonable worst-case scenario.c) Whether the Customer and Stakeholder Manager should be based in a site office, in DCiC's office, or whether they should split their time between the two.d) Access to Royal Derby Hospital during construction. Anticipated impacts and mitigation. DCiC's views on the potential for significant disruption.e) Traffic Management Plan (TMP) [REP7-003] mitigation measures for non-motorised users.f) Any further comment or outstanding concerns regarding the Applicant's latest TMP [REP7-003].g) Whether DCiC has any outstanding concerns regarding the process for Stopping Up and Traffic Regulation Orders.

	<p>h) Agreement of mitigation measures for Ford Lane bridge (DCC, Network Rail and Derby Cycling Group concerns) and how they are secured. Consultation and agreement with Network Rail.</p> <p>i) Agreement of mitigation measures for the Ford Lane / A6 junction (DCiC concerns) and how they are secured.</p>
Item 4	<p>Air quality</p> <p>a) The Applicant's update on its position following its commission from the Department of Transport.</p> <p>b) Comments on the Applicant's Updated Air Quality Compliance Risk Assessment [REP6-020], Comments on the Applicant's Supplement to Air Quality Compliance Risk Assessment [REP7-009] and the consideration given in that to impacts during construction. Whether DCiC or EBC have any further comments or outstanding concerns.</p> <p>c) Other air quality concerns previously raised by DCiC and whether they remain, including:</p> <ul style="list-style-type: none"> • "method for reconciling infrastructure scheme contributions with national PCM compliance modelling outputs"; • "modelling against EU Directive for some receptors"; and • "outstanding detail in CEMP". <p>d) Whether DCiC and EBC consider that the Applicant's assessment represents a reasonable worst-case scenario and whether on balance they agree that there are likely to be no significant effects during construction or operation.</p> <p>e) Whether EBC is still content that the proposed development would not result in a zone/agglomeration currently compliant becoming non-compliant.</p>
Item 5	<p>Land use, social and economic impact; the economic case for the proposed development</p> <p>a) 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>b) Whether the claimed economic benefits of the scheme are sufficiently supported by evidence from comparable road improvement schemes.</p>
Item 6	Landscape and visual impact

	<p>a) Whether EBC considers that enough information has been provided to assess the effect of the proposed development on existing hedgerows.</p> <p>b) The effect of the proposed development on veteran tree T358. Whether enough consideration has been given to adjustments to the proposed development to increase the possibility of retaining the tree. How would such adjustments, and/or the proposed mitigation measures if the tree is lost, be secured in the dDCO [REP6-002] or Outline Environmental Management Plan (OEMP) [REP6-007]?</p>
Item 7	<p>The water environment</p> <p>a) Updated FRA for at the Markeaton junction. Whether the updated assessment adequately considers the implications of overtopping the high point of the road. Whether the assessment adequately considers the risk of surface water flooding of the area to the west of the road.</p> <p>b) Little Eaton construction compound in relation to Source Protection Zones 2 and 1. Whether EBC considers that the OEMP [REP6-007] provisions regarding the Preliminary Works CEMP are sufficient to ensure a satisfactory 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>
Item 8	<p>Other policy and factual issues</p> <p>a) Consideration given to cumulative CO₂ emissions, rather than for the proposed development in isolation.</p> <p>b) Whether the approach to carbon emissions adequately considers the Government's updated target for net zero carbon by 2050 (Climate Change Act 2008 (2050 Target Amendment) Order 2019).</p> <p>c) Whether there are any updates to the position on climate change and adaptation (as per National Networks National Policy Statement paragraphs 4.38 to 4.47) and in relation to s10(3) of the Planning Act 2008 as per paragraph 4.38.</p> <p>d) Mitigation required to ensure that the carbon footprint would not be unnecessarily high, including support to other transport modes and behavioural change. Consideration of loss of mature trees and planting of new trees.</p>
Item 9	<p>Biodiversity and ecological conservation</p>

	a) Whether EBC considers that the proposed development would have an unacceptable effect on the Alfreton Road Rough Grassland Local Wildlife Site.
Item 10	The historic environment a) Clarification of the naming and terms of the archaeological mitigation documents (e.g. AMS, OWSI, SSWSI, HMP). Consistency in Requirement 9 and the OEMP [REP6-007] regarding who will produce them, when and subject to what consultation.
Item 10	Draft Development Consent Order The ExA will take the hearing through the ExA's schedule of changes to the dDCO that have been published to the project website at The Examining Authority's schedule of changes to the Applicant's draft Development Consent Order
Item 11	Issues and actions arising, the audio record of the hearing and the next steps in the Examination
Item 12	Any other business and close of ISH5

Participation in ISH5

All Interested Parties and the Applicant are invited to attend ISH5.

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
- Statutory Undertakers with interests in the affected area
- Other 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 3 (CAH3)

CAH3 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.

Agenda for CAH3	
3.00pm on Thursday 19 February 2020. Seating from 2.30pm.	
Item 1	Welcome, opening remarks and introductions
Item 2	The purpose of CAH3 and how it will be conducted
Item 3	Book of Reference and Land Plan updates Latest updates and further updates to be provided during the Examination
Item 4	The need for CA and Temporary Possession (TP) and the minimisation of need a) 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. The potential for Article 1 of the First Protocol to be engaged. How unknown human rights could be considered. The likelihood of disruption to the proposed development if powers were not granted for the CA of unknown rights. b) 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. Whether and, if so, how, consideration would be given to human rights during detailed design in relation to any opportunities to reduce CA identified at that stage. How human rights would be balanced against other factors.

<p>Item 5</p>	<p>Alternatives to CA or TP</p> <p>a) Whether the Applicant or Derby City Council consider that there is an alternative A38 alignment, based on the current position of the Markeaton roundabout, that would avoid the need for CA of the Queensway properties.</p> <p>b) How much relative weight should be given to human rights and to loss of land and trees to the A38 edge of Markeaton Park? Could the loss of land and impacts on trees be mitigated?</p> <p>c) The case for CA of Ashbourne Road and Sutton Close gardens:</p> <ul style="list-style-type: none"> • the status of the Independent Safety Review Technical Note [Appendix A of REP6-014]; whether the purpose of that review to “<i>maximise the safety of resident’s movements</i>” is appropriate for the question being asked about the case for CA; and whether DCiC have any comments on the review; • the need for a turning head at 255 Ashbourne Road and whether there is an alternative for this to be provided at 253 Ashbourne Road; • the alternative of a shared left-in left-out access alternative for 253 and 255 Ashbourne Road to the proposed access road and the balance of safety and convenience against the human rights considerations for CA of 14 Sutton Close; and • the safe distance required between the Markeaton junction and a right-in right out junction on the south side of Ashbourne Road; the relative proximity of the existing Sutton Gardens junction and the need for CA at 1 Sutton Close.
<p>Item 6</p>	<p>Individual objections and issues</p> <p>a) Progress in finalising voluntary agreements, potential acquisition due to blight and SoCG since CAH2:</p> <ul style="list-style-type: none"> • CA schedule • Residents of 12 Queensway • 253 and 255 Ashbourne Road • Millennium Isle of Man Limited • Royal School for the Deaf Derby <p>b) Impacts and mitigation for loss of car parking at 253 and 255 Ashbourne Road.</p> <p>c) Matters raised by any Affected Persons present.</p>
<p>Item 7</p>	<p>Crown interests and consent</p> <p>Update on securing written agreement and s135 consent.</p>

<p>Item 8</p>	<p>Statutory Undertakers and any other parties benefiting from statutory protections that may be affected</p> <p>a) Progress in finalising protective provisions and SoCG</p> <p>b) Evidence of any serious detriment, PA2008 s127 and s138 tests.</p> <p>c) The alternative to the acquisition of rights from Network Rail of a deed of easement, a bridge agreement, a framework agreement and Relevant Asset Protection Agreement(s) suggested by Network Rail Limited.</p> <p>d) Whether and how the ExA will be informed of any protective provisions matters not being agreed before the close of the Examination.</p> <p>e) Any other matters raised by any Statutory Undertakers present.</p>
<p>Item 9</p>	<p>Special Category Land, including open space and replacement land</p> <p>a) The Markeaton Park 'Mundy covenant'. Any successor in title, consideration of their rights, and whether alternatives to CA such as private agreement have been explored sufficiently. Consideration of the rights of wider beneficiaries due to their use of the land as protected by the covenant, e.g. in relation to public amenity.</p>
<p>Item 10</p>	<p>The availability and adequacy of funds</p> <p>a) Government priorities and Road Investment Strategy updates.</p> <p>b) Funding statement, land cost estimate and other updates.</p>
<p>Item 11</p>	<p>Potential impediments to the proposed development</p> <p>a) Updates to the Consents and Agreements Position Statement. Progress in obtaining other consents, whether there are any known impediments.</p> <p>b) Whether there are any other changes to policy or priorities in the Applicants programme that could affect the proposed development.</p>
<p>Item 12</p>	<p>Human rights and the compelling case in the public interest</p>
<p>Item 13</p>	<p>Any other CA or TP matters</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> <p>c) Time permitting, and at its discretion, the ExA may invite any parties present to raise any other CA or TP matters.</p>
Item 14	Issues and actions arising, the audio record of the hearing and the next steps in the Examination
Item 15	Any other business and close of CAH3

Participation in CAH3

All Affected Persons, their representatives and the Applicant are invited to attend CAH3.

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 other residential properties
- 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.