

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

Network Rail Infrastructure Limited (Interested Party Ref: 20022825)

Deadline 9 Submission

1. Response to Examining Authority's Rule 17 request dated 19 March 2020

No	Question to	Reference	Question	NR Response
Schedule 9 – Protective Provisions				
1.17.	Network Rail Cadent Gas Limited Severn Trent Water Other relevant statutory undertakers	Schedule 9	<p>a) Do Network Rail, Cadent Gas Limited, Severn Trent Water, or any other relevant statutory undertakers have any outstanding concerns? How should any outstanding concerns be addressed?</p> <p>b) Before the close of the Examination, please could the Applicant and any other relevant party provide a summary of any protective provisions that have not been agreed?</p>	<p>We had hoped to be able to submit agreed protective provisions for Network Rail's benefit for inclusion in the Order but the Applicant's team has not yet responded to our email to them of 20 February which set out the amendments that Network Rail requires to the protective provisions included in the latest draft of the Order. We attach Network Rail's preferred protective provisions and ask that they are included in the Order. We hope to be able to provide protective provisions that have been agreed with the Applicant at Deadline 10.</p>
Transport networks and traffic				
2.7.	Applicant DCC Network Rail Derby Cycling Group	Ford Lane bridge	Please provide an update on the agreement of mitigation measures for Ford Lane bridge. How are the measures secured? Has there been consultation and agreement with	Network Rail has not, as the Applicant confirms in its Deadline 8 submission referred to at paragraph 2 of this Deadline 9 submission below, seen the relevant bridge assessment and verification surveys.

			Network Rail and Derby Cycling Group and, if so, please could evidence of that be provided?	
Statutory Undertakers				
10.9.	Applicant Statutory Undertakers	Progress updates	<p>Please provide an update on progress in:</p> <ul style="list-style-type: none"> • finalising protective provisions and SoCG; and • consideration of 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>In relation to protective provisions, we refer to our response to question 1.17 above.</p> <p>Network Rail is working proactively to agree with the Applicant a Framework Agreement, Bridge Agreement and Deed of Easement.</p> <p>We are waiting for the Applicant's solicitors' response in respect of the draft Framework Agreement and Easement.</p> <p>A draft Bridge Agreement has been provided to the Applicant by Network Rail and comments on the draft are awaited.</p>
10.10.	Applicant Statutory Undertakers	Whether there is serious detriment	Is there evidence of any serious detriment? Have the Planning Act 2008 s127 and s138 tests been satisfied?	<p>Network Rail set out its position in relation to section 127 and the serious detriment test in its response to the ExA's First Written Questions (REP01-025).</p> <p>By way of update, Network Rail notes that the draft protective provisions for its benefit in the Order (Part 4 of Schedule 9) include, at paragraph 32, provision that the Applicant shall not exercise powers under article 23 (compulsory acquisition of land) and article 26 (compulsory acquisition of rights), and a number of other articles, without Network Rail's consent.</p>

				<p>That consent will be provided by way of the Framework Agreement and other documents that it is committed to agreeing with the Applicant.</p> <p>On the basis that paragraph 32 is included in the protective provisions, Network Rail is content that the Order will not result in a serious detriment to its undertaking.</p>
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2. Response to the Applicant's Deadline 8 Submissions (REP8-007)

Source	Comment	Applicant's Response	NR's Deadline 9 Response
REP7-019 (A) Ford Lane Bridge	(i) Network Rail remains concerned that it has not been approached directly by Highways England to discuss its recent proposals for the Ford Lane Bridge and it has not yet been provided with the swept path analysis referred to in its Deadline 5 submission.	As the bridge assessment/verification survey work and the design of the A6/Ford lane junction is ongoing, the details have not yet been shared with Network Rail as they are still subject to confirmation and agreement with the relevant local highway authorities (LHAs).	Having not seen the design of the A6/Ford Lane junction Network Rail cannot comment on whether or not the proposed junction will provide suitable access for Network Rail vehicles that need to access the Midland Mainline for maintenance purposes.
	(ii) Network Rail also remains concerned as to how the proposed measures outlined in the	Both of the LHAs are consultees for the detailed design of the Scheme	We assume that the Applicant's Deadline 8 response refers to draft Requirement 12. That Requirement only provides for the Secretary of State to approve detailed designs that depart

	<p>Applicant's responses to Network Rail's Deadline 5 submissions are to be enforced. Network Rail require further clarification in that regard. For example, the proposal to reposition kerbs – how is this to be an enforceable obligation on the Applicant pursuant to the DCO?</p>	<p>(Derby City Council for the A6/Ford Lane junction and Derbyshire County Council for the river bridge assessment) and they both have an interest in the design being appropriate for the local affected stakeholders. The detailed design needs to be 'signed off' by the Secretary of State and LHA consultation will be one of the key items to inform the sign-off process.</p>	<p>from the preliminary scheme design and the local highway authority is only required to be consulted in those circumstances.</p> <p>Network Rail submits that the Requirements should be amended to provide for DCiC to approve the detailed design (of both the Ford Bridge works and the Ford Lane/A6 Junction works), in consultation with Network Rail, before works commence.</p>
	<p>(iii) It is noted that the ability to accommodate 40T vehicles is subject to a "verification survey". When is that survey to be made available? How would the Applicant address matters should the verification survey not confirm the bridge as suitable for a 40T vehicle, thereby preventing Network Rail from accessing the Midland Mainline for maintenance purposes?</p>	<p>The verification survey is scheduled to take place in April. Should the survey fail to confirm the key assessment assumptions then an alternative way forward will need to be developed (e.g. a bridge strengthening scheme). The OEMP [REP6-007] secures this by stating the following with regard to the Ford Lane bridge: <i>"Undertake verification of the Ford Lane Bridge structural assessment in order to determine any future access</i></p>	<p>The Applicant relies on the Outline Environment Management Plan (OEMP) to provide reassurance that the Ford Lane Bridge will have a suitable load-bearing capacity. Network Rail notes that the draft Order provides (at Requirement 3; Schedule 2 Part 1) that no part of the authorised development is to commence until a CEMP has been prepared in consultation with the relevant local highway authority. It adds that "the CEMP must be substantially in accordance with the OEMP". Accordingly, the OEMP does not have "direct effect" but sets the framework for the CEMP. This appears to Network Rail to provide a rather weak level of control and Network Rail asks that a clearer Requirement is included in the Order that requires the suitability of the Ford Lane Bridge for the carrying of 40T vehicles to have been approved by DCiC before</p>

		<p><i>restrictions. Following receipt of verification results, Highways England will consult with DCC in order to define access continued solutions to be progressed during the detailed design stage. If necessary this will include discussions regarding the need for commuted sum payments to DCC or other means of future management of the structure (as needed) to ensure the long-term management and maintenance of the bridge in the interests of highway safety". DCC has agreed to this process as detailed in the signed SoCG [REP6-010].</i></p>	<p>the relevant part of the authorised development is allowed to be used.</p>
	<p>Network Rail maintain their objection to the closure of the access to Ford Lane from the A38 until it has received satisfactory assurances that its vehicles (of the size and weight previously described) will be able to access the Midland Mainline for maintenance purposes.</p>	<p>The design of the A6 Duffield Road and Ford Lane junction will be carried out during the detailed design stage of the Scheme. Discussions are ongoing with DCiC, as the highway authority for this junction, to determine the details of the layout of the junction. Notwithstanding this,</p>	<p>Network Rail notes the Applicant's response but asks that a Requirement is included in the Order that provides:</p> <ol style="list-style-type: none"> 1. That the existing junction from the A38 onto Ford Lane remains open until the new junction from the A6 has been completed and is available for use. This is to avoid any period arising during which Network Rail cannot gain appropriate access to the Midland Mainline for maintenance purposes.

		<p>it is recognised that the Ford Lane junction must be altered to accommodate the HGVs accessing the Talbot Turf business, the Severn Trent Water pump station and Network Rail. Highways England has consulted with all affected businesses to determine what vehicles they require to continue to access Ford Lane following the stopping up of the A38 access. All of the responses given have been logged for inclusion within the detailed design criteria of the junction.</p> <p>At this time swept path analyses have been carried out to determine the minimum requirements for the alterations of the junction. These will be shared with affected parties, including Network Rail, once as the final layout of the junction has been agreed with DCiC.</p>	<p>2. For DCiC to have approved the design of the new junction and to have confirmed in writing that it is suitable for use by 40T vehicles.</p>
<p>REP7-019 (B) Protective Provisions,</p>	<p>Network Rail are not yet content with the</p>	<p>Highways England is still considering NR's comments on the draft PPs</p>	<p>Network Rail has not received the Applicant's comments on the draft PPs and Deed of Easement.</p>

<p>Framework Agreement and other agreements</p>	<p>proposed Protective Provisions in the dDCO and have made a number of comments on those Protective Provisions throughout the Examination process to the Applicant's lawyers. The latest amendments and comments were sent to the Applicant's lawyers on 20 February 2020. Negotiations are ongoing and it is hoped that agreement can be reached by the close of the Examination. A precedent Deed of Easement has been provided to HE's solicitors for review.</p>	<p>and the Deed of Easement.</p>	<p>Network Rail had hoped to be able to submit agreed protective provisions for Network Rail's benefit for inclusion in the Order but, in the absence of a response from the Applicant, we attach Network Rail's preferred protective provisions, showing the modifications sought to those included in the draft Order, and Network Rail asks that the attached protective provisions are included in the Order.</p>
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Addleshaw Goddard LLP
26 March 2020