

To the Examiner Stuart Cowperthwaite

Friends of Markeaton Park Responses to the 5th May 2020 Questions.

Question 1.1a Article 3 Disapplication of permit schemes a) Are DCiC content with the proposed disapplication of their permit scheme and with any other provisions required for them to accept disapplication, including those in Articles 11 and 12, in the Traffic Management Plan (TMP) [REP7-003], and in the Outline Environmental Management Plan (OEMP) [REP10-002]?

**Friends of Markeaton Park object to the closing of the existing entrance to the park from the traffic light controlled roundabout junction of the A38 and the A52.**

This scheme does not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network.

Highways England has required other parties to dis-apply their legislative provisions. Highways England has no problem about ignoring its own rules with regard to TPO'd trees. Why can't HE dis-apply their own standard regulations for entrances to Markeaton Park, Eurogarages and McDonalds, where their alteration gives rise to a multitude of possibilities for accidents?

Statements of Common Ground do not quadruple the actual area of land. Question 8.1

An accident such as a storm gust of wind toppling a high sided lorry manoeuvring a U-turn at the entrance of Esso to refuel, or a maintenance lorry hitting and disabling the Right Turn Lane traffic lights into Markeaton Park would immediately cause long delays in all directions. Vehicles entering Markeaton Park from the existing entrance from the traffic light controlled roundabout do not impede any other flow of traffic. Closing the 3 existing entrances directly from the A38 will exacerbate the congestion that arises in the Easterly bound A52 at the A52/A38 junction. There have been accidents there without adding 3 more flows. To the best of FOMP's knowledge no traffic flow surveys have been done at the current entrance into the Markeaton main car park, which has 700 places, with a probable turnover of two hours instigated by the parking charges. Several times each year cars will enter then not find a vacant spot. Shall we guess? A potential stop rate for Easterly traffic of 350 times an hour? If the detailed design stage does not reverse the closure of the current entrance, and does not relocate the Utilities diversion outside Markeaton Park, Severn Trent Utility maintenance long-vehicles carrying sewage pipes will have to use that entrance.

*Note to Inspector this is not from the Examination Library*

Received **05 August 2019**

From **McDonald's Restaurants Limited Representation**

"McDonald's Real Estate LLP ("McDonald's") .... The basis on which McDonald's opposes the Works are as follows: 1. Access and congestion a) The Works involve closing the entrance to the Property from the A38. This would cause increased queuing at the Ashbourne Road entrance and exit to the Property, posing a health and safety risk to road users, as well as

negatively impacting McDonald's business, brand, sales, operations and the amenity of the local area for residents (in each case during and after the works). Additionally, the increased capacity at the Ashbourne Road junction will go beyond its capability. b) The proposed installation of traffic lights at the Ashbourne Road junction will cause gridlock and queuing inside the McDonald's site, especially around the access and egress to the Drive-Thru lanes. <https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/?ipcsection=relreps&relrep=37025> McDonald's

Cadent is a licensed gas transporter under the Gas Act 1986, with a statutory responsibility to operate and maintain the gas distribution networks ... Cadent wishes to make a relevant representation to the A38 Derby Junctions DCO in order to protect its position in light of infrastructure which is within **in close proximity to the proposed DCO boundary**. ...Cadent has low, and medium pressure gas pipelines and associated below or above ground apparatus located within the order limits which are affected by works proposed and which may require diversions subject to the impact. Highways England require diversions to Cadent's gas distribution network, **but these diversions have not yet reached detailed design stage and so the positioning, land and rights required for gas diversions included within the DCO may not be sufficient for Cadent. At this stage, Cadent is not satisfied that the DCO includes all land and rights required to accommodate such works.** This is a fundamental matter of health and safety.

*STWater* Any works required to be carried out on STW's assets must be planned and implemented to avoid risk of supply interruption or contamination, damage to the integrity of the water or sewerage networks, or environmental damage.

Communication media will need space for cables as well.

REP6 041 Eurogarages

[The Planning Inspectorate 3 March 2020 Page 3 We note the content of HE's Technical Note \(ref: HE514503-ACM-HGN-Z2\\_JN\\_J2\\_J-TNCH-0002\). Within the TN, HE SR-D note that: "...it must be possible to demonstrate that the resultant layout represents the best possible option when weighed up against the alternatives." It would seem that HE's concerns under the CDM regulations 2015 with regard to the designer's duty "to eliminate foreseeable health and safety risks where reasonably practicable" ...do not extend to the risks associated with introducing 100 u-turn movements per hour to the proposed traffic signal junction, which could otherwise be avoided, by maintaining access from the A38. Whilst HE's own team may foresee health and safety risks associated with maintaining access and egress from the A38, they have failed to acknowledge the wider implications and the potential risks associated with introducing a high number of u-turns off of the A52 into the site.](#)

What are drivers who want to enter Markeaton Park supposed to do when they arrive at the Right Turn Lane and discover that it is full? The Works map appears to have a possible queue length of only 2 cars.

[https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010022/TR010022-000466-TR010022\\_A38\\_6.2\\_Environmental\\_Statement\\_Figures\\_Figure\\_2.6.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010022/TR010022-000466-TR010022_A38_6.2_Environmental_Statement_Figures_Figure_2.6.pdf)

**Isn't the first rule of Engineering "If it ain't broke DON'T FIX IT"?**

Question 1.9 Trees Subject to Tree Preservation Orders  
How should any outstanding concerns be addressed?

**Friends of Markeaton Park object to the loss of trees subject to TPOs and of **Veteran tree DWT no. 26**, and others that qualify for that status but previously did not need that protection because they are growing on land owned by DCiC.**

This scheme does not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network.

Highways England should be asked to redesign the A38 scheme. There are 4 miles of road in this scheme. Once utility engineers get involved in the Detailed Design stage far more land will be required for their apparatus. The width and depth of the Utility diversion corridor will have knock on effects on the ten-thousand two-year transplants that were mitigation from the previous activity of the Highways Agency. Now that tree belt has grown enough to provide screening as people use the new paths funded by the Heritage Lottery Fund.

Question 3.5 Carbon footprint a) Should carbon footprint targets be set in the OEMP to ensure that best practice is followed?

Highways England must not ignore its Obligations under the Climate Act 2018 and Natural Environment and Rural Community Act.

Increased rainfall is inflicting costly damage to the UK now. DCiC had paid £1000 for routine clearance of branch-catcher grids a few days before the February 2020 floods. They had to be cleared again immediately after the flood. Food crops have been damaged by drought. The Destruction of the ecosystem must stop at once.

Question 3.5 b) Please could the Applicant advise whether the planting of new trees fully compensates for the loss of mature trees from a climate change and carbon sequestration perspective? If not, why not and should it? Please clarify the age of new planted trees considered in the response.

HE has consistently evaded issuing the number of trees to be removed and evaded promising a ratio of replacements to lost trees. These photos reveals why ... there are too many to count.



## Queensway ahead cars and houses



However Friends Of Markeaton Park can supply the number from the report of the Public Inquiry 1978. Throughout the 1970s Derby City Council fought attempts of the Highways Agency to add trunk road traffic to Derby's Ring Road. In 1978 the Highways Agency got permission to take 8.65 acres and 300 trees. Mitigation then lists 400 standard trees and 10,000 two year transplants.

33.67 The published proposals will encroach on Markeaton Park along the easterly boundary with Queensway by reason of the need to construct a dual carriageway and split level junctions at the Ashbourne Road and Kedleston Road crossings and the area taken will amount to 8.65 acres (paragraphs 3.68, 13.19 and 16.35).

33.68 At both the junctions the elevated sections of road will overshadow the Park and severely affect the present aspect (paragraphs 13.17 and 22.9).

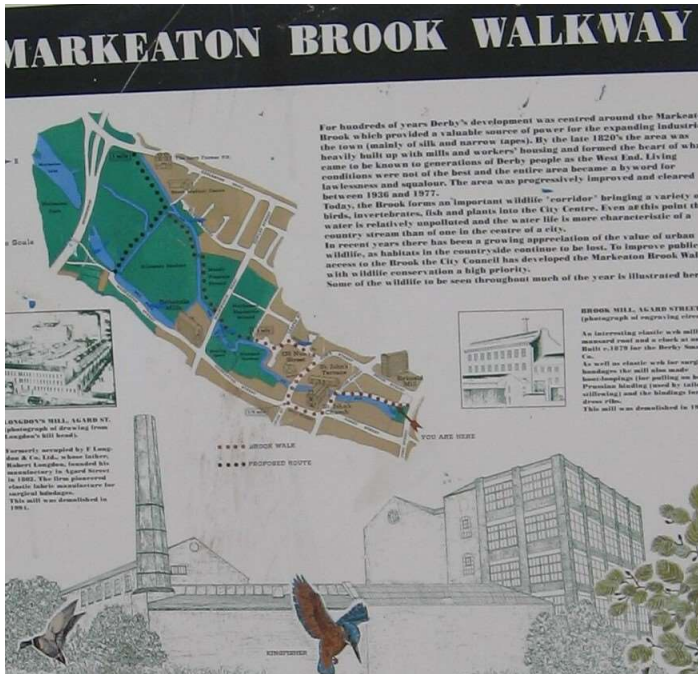
33.69 Markeaton Park is regarded as a priceless heritage by the people of Derby, who use the Park for many recreational and amenity purposes (paragraphs 13.16 and 16.35).

33.70 About 200 trees, some of them past maturity will have to be removed including groups in the parkland area and the existing tree-lined avenue on the westerly side of Queensway (paragraphs 3.68, 13.131 and 16.36).

33.71 The Department are preparing a Landscaping Scheme, now in draft which will involve the planting of some 400 heavy standard trees and about 10,000 two-year transplants along the route of the proposal (paragraph 3.68).

33.72 It will take a number of years for the landscaping scheme if carried out to minimise the effects of the published proposals and the frontage to Markeaton Park will be altered in character by the proposed construction of mounds and other works (paragraph 13.20).

The link between the park and the city was severed by widening the road. The mitigation for that was the establishment of Markeaton Brook Walk with a curly footbridge and signs if footpaths plus notice boards.



Question 3.6 Support to other transport modes The ExA questioned [PD-018] whether enough support has been given to other transport modes and behavioural change.

The Government Policy is the Transport Decarbonisation Plan, 2020. It states "Public transport and active travel will be the natural first choice for our daily activities. We will use our cars less and be able to rely on a convenient, cost-effective and coherent public transport network".

In September 2019, £220 million was announced to transform bus services, to deliver a better deal for bus users. This includes creating Britain's first all-electric bus town, which will see an entire place's bus fleet change over to zero emission electric capable buses. The town, which will be announced later this year, will serve as a model for zero-emission electric bus travel. The announcement also referred to a National Bus Strategy, with accompanying long-term funding, which government expects to be launched in 2020. The government considers that £220 million could fund buses to turn a whole town into zero emission. The proposed A38 project only expects a minor overall decrease in Air Pollution for a few years. Thousand of houses are in the planning system on the outskirts of Derby. It is impossible to increase the capacity of every road. Public Transport must become affordable. Pensioner bus passes take thousands of cars off road. Cross subsidy of fares must return soon; cars will have no room to move.

5.1 Groundwater levels and trees In response to [AS-058], the Applicant has stated [REP9-028] that “It is considered that the removal of trees within Markeaton park will not have a significant effect on groundwater levels or groundwater movements, or result in any ground destabilisation.” Please provide details of the assessment which led to this finding.

### **Highways England should publish the results of the bore-hole tests.**

What if utilities were refused a licence to repair because the wet ground was too dangerous? Highways England is signing contracts that it will pay all future costs and compensation if utilities fail in their statutory obligations. Highways England is knowingly insisting that apparatus essential for the delivery of those services is placed into unsuitable ground, also knowing that more rainfall is predicted and storms occur more frequently. Utility vehicles could arrive with a licence only to discover a fallen, weakened, remnant tree from previous mitigation, obstructing their work and delaying the swift restoration of service. How high the compensation bill to them from Highways England?

Friends Of Markeaton Park notes that some Figures show a path and utilities under the coil of the new footbridge. That too would delay making an immediate repair. Is it a preliminary sketch? Not to scale? The utility corridor not wide enough?

Question 7.1 The effect of the proposed development on veteran tree T358

Why can't the utility corridor, the pumps and drainage be placed in the TA dry land to the South of Markeaton roundabout? The covenanted land in the current design is often unable to absorb extra water. The designers must be able to find other positions for the utility cables and drainage ditch than the roots of TPO 358.

8.1 The effect of the proposed development on the McDonald's and Euro Garages sites.

8.1 b rights access and the strengthening of the McDonald car park, are these matters which should be addressed through the DCO or are they matters for compensation?

How could Highways England compensate these two businesses if they lose so many customers they had to close? Both know of businesses in other locations that have suffered that fate following work by Highways England.

Question 9.4b Alternatives to the CA of the Queensway properties b) It appears that any alternative identified in (a) above would result in the loss of a strip of land to the A38 edge of Markeaton Park and loss of trees. Do DCiC consider that the loss of land and impacts on trees could be mitigated? If so, how?

FOMP notes the statements of the utility companies with regard to their previous experience with Highways England schemes. They report that insufficient land has been allocated to them to carry out their statutory obligations. FOMP expects that the utility corridor will have to be considerably widened during the Detail Design stage, and that the machinery brought into the park to excavate the trench will have to cross the root

protection areas of the trees. FOMP also sees Mitigation maps showing that Felled trees are to be attached to trees next to the Utility corridor to become Bat Totem poles why? (? proposals for mitigation to get round the strict laws about protection of bats?). That work will also involve machinery at the base of the trunks of the trees. FOMP expects most of the trees in the screen belt (mitigation for the last time Highways Agency worked on the park) will die, including the ones that had been growing there for years before the 1985 mitigation was needed, that are labelled “to be retained.” Demolition of the properties on Queensway will not save the trees if the utility corridor is allowed in that area. There is no case for Compulsory Acquisition.

FOMP does not consider the loss of those irreplaceable trees could be mitigated. Money can't buy 450 no. year's worth of growth. Tree **DWT no 26** took four people to measure the girth of its trunk. It must have been growing there for hundreds of years; it has reached the maturity to begin to shed its own branches, typical of recorded Veteran Oaks. DCiC stated more of the trees would have protected but it was not deemed necessary when DCiC owned the land.

Friends Of Markeaton Park is disappointed that a number of mitigation proposals promised around 2015 have not been incorporated in this scheme. FOMP would be interested to compare the recommendations of the ecologists who carried out the Phase 1 Habitat surveys with the unrealistic maps in Environment Statements now.

### **Friends of Markeaton Park object to the Acquisition of permanent rights of access to plots on Markeaton Park.**

Question 9.1 Special Category Land The Markeaton Park 'Mundy covenant

In 2003 the covenant guardian's father was alive. Then he would have supported the principle of grade separation. Trustees who attended the 2015 consultation believed the assurances that mitigation would make-up for losses. The current holder does not live in Derby but acts regularly, upholding the responsibility of the restrictions and covenant. Friends of Markeaton park respect her diligence.

The information that is sent from Derby is unlikely to include the detailed scrutiny the Examining Panel has instigated. Information is dispersed over thousands of pages and dozens of maps; it is extremely difficult to understand the whole impact. People who have a Day job to do with lots of responsibilities can't neglect those. Highways England is the agency that made contact about the covenant.

Will the “net gain” for Markeaton Park be one extra sapling? Swap a tree shield for a line of phone masts? Jog beside Fenced-off sewage pipe repairs? Hardly what Emily Mundy intended.

**Friends of Markeaton Park strongly objects to the building of a Utility corridor across Markeaton Park, plus the Acquisition of permanent rights of access to plots 3.1.w, 4.1b, 4.1d, 3.1x, 3.1a. We object to being informed that a strip of land adjacent to the on slip road from the A52, strips of ground under the replacement footbridge where the previous one used to be, and the embankment adjacent to the off slip road up to Kedleston Road are replacement Open Space.**

**Friends of Markeaton Park object to the loss of trees subject to TPOs and of **Veteran tree DWT no. 26**, and others that qualify for that status but previously did not need that protection because they are growing on land owned by DCiC.**

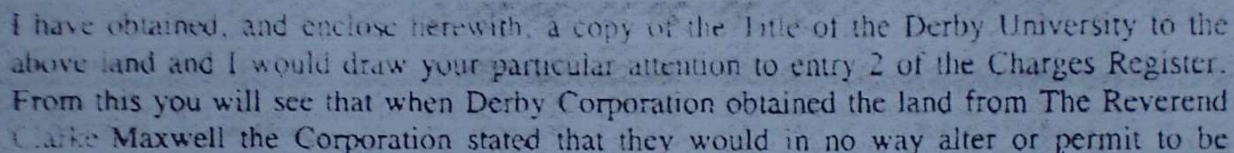
This scheme does not deliver the objectives of providing a safe and serviceable, free-flowing network, an improved environment, and an accessible and integrated network.

Question 9.1 b) Please clarify the consideration given to the rights of wider beneficiaries due to their use of the land as protected by the covenant, e.g. in relation to public amenity, for this specific matter.

Emily Mundy bequeathed the land to the people living in Derby. Those beneficiaries have repeatedly had to defend the bequest from efforts to use the land in a different way from the purpose she stipulated in her Will. During the 1970s nearly two thousand of people wrote objections to the widening of Queensway into a dual carriageway, and Derby City Council, Groups and individuals were prepared to pay Counsel and attend the relevant Public Inquiries to speak in person against the proposal. Several Councillors also spoke for their wards in person. They argued that the M42 was going to be built. The A50 has been added to the strategic network for East-West traffic as well. Scarcely ten years elapsed before the Highways Agency returned for more.

The beneficiaries are prepared to defend the covenant land South of Queensway. In 1997 V.P. was prepared to go Land Registry in Nottingham to purchase documents about the covenant in order to object to a Planning Proposal on land South of Queensway. In 2007 a man who was off work after an operation spent all day in the Local studies Library. He obtained a map that he e-mailed to support objectors to a different planning application.

There was a such good response to surveys conducted for the Heritage Lottery Fund bid that a book was written to preserve their anecdotes about events in Markeaton Park.



I have obtained, and enclose herewith, a copy of the Title of the Derby University to the above land and I would draw your particular attention to entry 2 of the Charges Register. From this you will see that when Derby Corporation obtained the land from The Reverend Clarke Maxwell the Corporation stated that they would in no way alter or permit to be

Friends of Markeaton Park was constituted in 2010 and became a charity in 2015. Now we are opposing the loss of the mitigation awarded in 1980, plus a further loss of Open Space and amenity. The utility companies will be under a statutory requirement to maintain their equipment; on the proposed plan it borders a well-used new path. The beneficiaries will often be barred from that section. Highways England is governed by the human adjustments to words that are written into the national strategic network policy. That does not alter the laws of Physics with regard to the behaviour of water, the laws of Biology with regard to what survives and when it dies, or the laws of Chemistry with regard to the quality of the air, the most basic requirement for successful life.

Utility Companies have to apply for a licence to work in trenches because material falling on workmen from the sides of the trench has resulted in life-changing accidents and deaths. That land has a history of flooding. Can the Highways England guarantee that the ground condition will always be suitable for the granting of a licence to



excavate a trench to carry out emergency repairs to the utilities apparatus?

Highways England is signing contracts that it will pay all future costs and compensation if utilities fail in the statutory obligations. Highways England is knowingly placing apparatus essential for the delivery of those services into unsuitable ground, also knowing that more rainfall is predicted and storms occur more frequently. Utility vehicles could arrive with a licence only to discover a fallen, weakened, remnant tree from previous mitigation, obstructing their work and delaying the swift restoration of service. FOMP notes that some Figures show a path and utilities under the coil of the new footbridge. That too would delay making an immediate repair.

The proposals before the Examiners do not achieve a number of the stated objectives.

They do not improve road safety on Ashbourne Road.

Air quality would be much more improved by the provision of public transport.

Carbon dioxide can never be reduced if the plants that live by doing that are felled.

Biodiversity is vanishing just as humans realise how inter-related the organisms are.

Felling trees and hedges removes food and shelter for insects and animals and birds. Net gain is more assured by using the latest Biometric standards. The details being deferred into the Detailed Design change have a wide practical impact and too much preliminary work is being done before it has been properly considered. Agreements written on paper do not alter the available area on the ground.

Friends of Markeaton Park have demonstrated that there's compelling public interest case to refuse this Development Consent Order, and to reconsider the value and eventual cost of this scheme compared with the uncertain results. The Scheme not only harms to those individuals on Queensway, it deprives the people of Derby of the use of their bequest, and people of the world of action to reduce Climate Change. If the money was spent on public transport the people of Derby would benefit from better air quality.