

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 12 Submission

1. Response to Examining Authority's Further Written Questions – Rules 13 and 14 dated 5 May 2020

No	Question to	Reference	Question	NR Response
Schedule 9 – Protective Provisions				
1.11.	Applicant Network Rail	Schedule 9	<p>Please could Network Rail consider the Applicant's response [REP10-009] to its proposed wording [REP9-037] and please could the Applicant consider Network Rail's further amendments [REP10-013]? It would be helpful if the parties could please discuss the few remaining points that have yet to be agreed.</p>	<p>Network Rail's Preferred Protective Provisions are the same as submitted at Deadline 10 [REP10-013]. We understand that Network Rail's Preferred Protective Provisions are agreed other than paragraph 42 which we understand the Applicant is not yet willing to agree.</p> <p>Network Rail note that the equivalent of paragraph 42 is included in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order (which has been made by the Secretary of State) and in the draft A1 Birtley to Coal House Order. The Applicant is the undertaker or proposed undertaker in respect of both orders.</p> <p>Network Rail is unclear why the Applicant is adopting a different position in relation to this Order particularly as this is not a paragraph that has proved in any way controversial in relation to other development consent orders. Its purpose is to ensure that if Network Rail incurs extra expense in carrying out works for which it already has powers at the date grant of the DCO, and that expense is incurred a result of the undertaker's works, then those additional expenses must be</p>

				<p>reimbursed by the undertaker. Network Rail considers that to be an essential and uncontroversial provision.</p> <p>We hope to provide protective provisions that have been agreed with the Applicant at Deadline 13.</p>
Transport networks and traffic				
2.6.	Applicant DCC Network Rail Derby Cycling Group	Ford Lane bridge	<p>a) Do DCC, Network Rail or Derby Cycling Group have any comments on the measures secured in the OEMP [REP10-002], reference MW-TRA12? How should any outstanding concerns be addressed?</p>	<p>As stated in Network Rail's Deadline 9 submission [REP9-036], Network Rail has not yet seen the relevant bridge assessment and verification surveys.</p> <p>We also repeat the submission made at Deadline 9 about the suitability of relying on the OEMP to safeguard Network Rail's position as follows.</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 the relevant part of the authorised development is allowed to be used.</p>

Statutory Undertakers				
9.9.	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 framework agreement, a deed of easement, a bridge 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 1.11 above.</p> <p>To reiterate its submission at Deadline 9, Network Rail is working proactively to agree with the Applicant a Framework Agreement, Bridge Agreement and Deed of Easement.</p> <p>We received the Applicant's comments on the draft Framework Agreement at the end of last week consider that good progress is being made. However, we have not received the Applicant's comments on the draft Bridge Agreement, Deed of Easement or Basic Asset Protection Agreement.</p>
10.10.	Applicant Statutory Undertakers	Whether there is serious detriment	<p>Please provide an update on whether there is evidence of any serious detriment. Have the Planning Act 2008 s127 and s138 tests been satisfied?</p>	<p>To reiterate its submission at Deadline 9, 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</p>

				Order will not result in a serious detriment to its undertaking.
--	--	--	--	------------------------------------------------------------------

Addleshaw Goddard LLP
12 May 2020