A38 Derby Junctions

TR010022

8.108 Written Summary of Oral Submissions to ISH8 10 June 2020

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A38 Derby Junctions

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Written Summary of Oral Submissions to ISH8
10 June 2020

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1 INTRODUCTION

1.1 Purpose of this Document

1.1.1 This document sets out a written summary of the oral submissions made by Highways England at the eighth Issue Specific Hearing (ISH) for the A38 Derby Junctions Scheme. The ISH took place on 10 June 2020. It was conducted using 'Microsoft Teams' online because of the Covid-19 pandemic.

1.1.2 The Item no. referred to in the first column of the Table below is a reference to the items in the ExA's agenda relating to this ISH. The ExA's questions and responses provided are reproduced in the second and third column of the table respectively.

Issue Specific Hearing 8

Date: 10 June 2020

Speakers:
Highways England (the **Applicant** / **Highways England**)
Derby City Council (**DCC**)
Derby Climate Coalition (**Derby Climate Coalition**)
Derbyshire County Council (**Derbyshire CC**)

Item	Agenda	Response
1	**Welcome, opening remarks, introductions and housekeeping**	
2	**The purpose of the Hearing and how it will be conducted**	
3	**Specific issues by topic**	
	Air Quality	
	Footpaths adjacent to the A38 south of Markeaton Junction The Applicant has advised [REP12-007, item 4.3] that "*some footpaths adjacent to the A38 south of Markeaton junction are predicted to exceed the NO_2 limit value without Scheme construction and with Scheme construction*". Increases in NO_2 concentrations are predicted [REP12-007, item 4.3] during Construction Scenario 0.	(a) Guidance LA105 (paras 2.104 and 2.106) states that the air quality effects on human health, designated sites and the outcomes of the compliance risk assessment should be assessed to determine whether a project triggers a significant air quality effect during its construction or operation. Highways England noted that effects on air quality during Scheme operation and construction were predicted as follows: • All receptors assessed for human health impacts were predicted to have concentrations within the air quality objectives and EU limit values with Stafford Street traffic management measures in operation during construction. • Nationally designated sites are not predicted to be affected. • A38 Kingsway - Markeaton junction – there is a risk of non-compliance for adjacent footpaths to this section of the A38 in 2021 both with and without Scheme construction. Highways

	The OEMP [REP12-002, page 61, item MW-AIR4] includes a provision that "*During the Scheme detailed design stage, Highways England will investigate air quality at footpaths adjacent to the Scheme during the various construction phases. If air quality is expected to be poor during the Scheme construction phase and made worse by construction of the Scheme, alternative routes for those footpaths will be identified where appropriate.*" a) Please could the **Applicant** confirm whether the predicted exceedances are considered significant? b) Please could the **Applicant** improve the precision of the OEMP text to clarify the trigger level for an alternative route to be identified and the criteria for an alternative route to be considered acceptable? c) Please could the **Applicant** demonstrate that acceptable alternative path alignments are likely to be available for the footpaths adjacent to the A38 south of Markeaton Junction? If they are, why are they not adopted now? d) Please could the **Applicant** advise how the SoS can rely on a "*judgement on the risk as to whether the project would affect the UK's ability to comply with the Air Quality Directive"* when	England noted that the Scheme will move these paths away from the A38, so this will be beneficial for footpath users in the long term. Highways England stated that no significant effects are predicted during construction because the footpaths are non-compliant both with and without the Scheme so construction of the Scheme will not delay zonal compliance in a non-compliant zone. The footpaths would be complaint during Scheme operation. In response to the ExA's question regarding increases in NO_2 concentrations, Highways England noted a predicted increase in NO_2 due to construction traffic on the A38 during 8 months of construction scenario 0. Construction scenarios 2 and 4 will result in a reduction in NO_2 concentrations compared with a no-construction scenario, due to realignment of the footpaths. DCiC agreed with Highways England, noting that one of the difficulties here is who will be able to say whether compliance is achieved or not. Only Defra can report on that. If there is non-compliance in 2021, increased concentrations will not make any difference. The fact that footpaths are being moved means there will be no receptors at the existing footpath location against which to measure compliance. DCiC noted the potential benefit from moving footpaths and confirmed that without that section of the Scheme, those footpaths would continue to be non-compliant. (b) Highways England will include text in the OEMP MW-AIR4 setting out when it would need to identify alternative routes. These will be identified where construction of the Scheme is expected to delay zonal compliance. This wording will be included in the next version of OEMP to be submitted at D14. DCiC confirmed this wording, which had been discussed in advance, is acceptable. (c) – (d) Highways England provided details of a potential alternative route for the footpath adjacent to the western side of the A38, near the Esso service station, which will use existing footpaths along Enfield Road from the A38 to join Harringay Gardens and then onto the A52 Ashbourne Road. This alternative route will be about 90m longer. It is expected that the existing footpath will be closed during the works in order to protect the safety of users. If the footpath adjacent to the A38 between Brentford Drive and Enfield Road requires an alternative route, this will use the existing footpath along Greenwich Drive North. The alternative alignment from Brentford Drive to Markeaton junction would close all existing footpaths adjacent to the western side of the A38 (Kingsway – Markeaton junctions) on PCM link 57767. With regard to the closure of the footpath past the TA centre, a potential alternative would be along Windmill Hill Lane. This would close all existing footpaths to the eastern side of the A38 (Kingsway – Markeaton junctions) on PCM Link 57767.

	the alternative routes have not yet been identified or assessed?	Highways England confirmed that the above footpath diversions would be temporary and that they would make use of existing footpaths. In most cases these are likely to be diverted for health and safety reasons in any event to keep pedestrians away from Scheme construction work. Highways England is confident that there are suitable temporary diversions. The ExA asked which lengths of footpath will be affected. Highways England agreed to mark up a plan to show potential exceedances and alternative routes for D14. DCiC requested prior sight of this so they can be agreed before submission to the ExA, noting that they appear to make absolute sense. Highways England noted that MW-COM5 and MW-AIR5 in the OEMP sets out their intention to discuss alternative footpath routes with DCiC during the detailed design stage. Highways England stated that the operation of the Scheme will reduce exposure to pollution in Derby City and that the overall operation of the Scheme will result in permanent change to pollution levels.
	Any other matters e) Any other matters on the topic?	Highways England agreed to provide a written response to the points raised by Derby Climate Coalition whose comments were specifically directed to the construction phase and $PM_{2.5}$, and risks posed by COVID-19.
	Climate Change	
	Net zero carbon by 2050 a) The ExA is seeking to understand the Applicant's assessment methodology with respect to the account taken of the updated target and how the assessment allows for revised carbon budgets not being available until 2020. Following this clarification, please could the **Applicant** review its previous response [REP12-007, item 3.3] and update accordingly? b) In its response to Further Written Question 3.2(a) [REP12-007], the	(a) Highways England noted that revised targets are not yet in place yet and explained that the ES Chapter 14 [APP-052] was written prior to publication of new Government targets coming into effect. Highways England confirmed that they are working to current published carbon budgets and that it is not possible to undertake an assessment of the impact of the Scheme against future carbon budgets until they are published. With reference to the existing assessment submitted to the Examination, Highways England noted that the emissions arising as a result of the Scheme represent less than 0.005% of the total UK emissions in any five-year UK carbon budget during which they would arise (post-hearing correction – at the hearing this figure was given as 0.004%. It is also noted that in ES Chapter 14: Climate [APP-052] at para. 14.10.16 this figure was rounded up to two decimal places i.e. 0.01%). Consequently, the climate assessment has concluded that the GHG emissions impact of the Scheme would not have a material impact on the UK Government meeting its carbon reduction targets. Highways England made the point that even if carbon budgets become more stringent with net zero, this would not change the magnitude of impact or result in any risk of the Scheme

	Applicant stated that the Department for Transport has confirmed that the programme of schemes described in the RIS1 have been cumulatively assessed and included in the UK Government's carbon budgets. In response to Question 3.3 (a and b) the Applicant states that RIS2 has been subject to impact assessments and complies with the Paris agreement obligations. Please would the **Applicant** provide details of Department for Transport's confirmation and the impact assessments?	having a material impact on the ability of the Government to meet its carbon reduction targets. The conclusion of the assessment would therefore not change if the revised targets were to be applied. The ExA clarified their understanding that before the new target, the Scheme represented a very low proportion of total carbon emissions. With the Scheme in place, this will remain the case and this forms the basis of Highways England's approach. DCiC confirmed that they have seen nothing to suggest otherwise. The ExA requested a summary of the above in written submissions. (b) Highways England stated that the basis on which the A38 has been assessed against the NPSNN is in the context of evidence from the M4 Junction 3-12 smart motorway inquiry where RIS1 was considered and where the ExA sought clarification on this issue from DfT directly. Highways England confirmed that their previous response to this Examination with regard to RIS2 (Question 3.2(a) [REP12-007]) relies on statements made by DfT and the Rail Transport Minister. If ExA needs further confirmation or evidence, this will be a matter of contacting DfT directly. The ExA confirmed the need to see the evidence and stated that it is incumbent on Highways England to provide evidence to support their case. Highways England confirmed that they will consider this point and provide a written response as it does not have access to any detailed assessments from DfT, Highways England being a separate body.
	<u>Updated National Policy</u> c) Please would the **Applicant** comment on any implications for the proposed development of the Government's increased emphasis on, and funding for, cycling and walking in response to COVID 19?	(c) Highways England confirmed that there are no implications for this Scheme in respect of increased funding for cycling/walking. The Scheme concerns removal of traffic from the local road network onto the national network thus improving the situation on the local network. Highways England noted that DCiC is adopting active travel measures, but that these make no change to the A38. Highways England pointed out that the statement given by Grant Shapps on 9 May 2020 is about local delivery of active travel schemes. The 'Decarbonising Transport' plan announced by the Transport Minister in March confirmed that money will be available at local level. Highways England noted that the result of Government consultation is expected in Autumn 2020 and that there is nothing in the consultation document to indicate that the Government is moving away from RIS1 or RIS2; rather the focus is on a move from petrol-diesel vehicles to electric vehicles. Highways England does not consider that the current situation, or current focus on walking/ cycling, makes any difference to the need for this Scheme which is in fact creating space for active travel schemes.

		DCiC confirmed that cycling/walking schemes are a matter for local networks and that the A38 Scheme will facilitate these. Highways England stated that the aim of the Scheme is to improve traffic flow on the A38 and remove interactions with local traffic at roundabouts. Through traffic will be removed from Derby City centre. In support of this view, DCiC noted by way of example the fact that the Scheme off Kingsway junction is being withheld for that very reason. Highways England referred Derby Climate Coalition to the Scheme's Transport Assessment and Environmental Statement. The ExA requested that Highways England's response to Mrs Lee at D15 (on the assumption that Mrs Lee will provide a written response at D14), signposting the relevant parts of these documents to review.
	Carbon footprint targets The Applicant has stated [REP12-007, item 3.5] that "*For such carbon targets to be robust and meaningful they need to be based on appropriate evidence of best practice for road schemes and on achieving an identified outcome. As such this would need to be set at a network wide level, not agreed arbitrarily for an individual scheme.*" Derby City Council has stated [REP12-019, item 3.5] that "*It would be useful to set carbon footprint targets in the OEMP to guide the detailed design and construction phase which needs to be challenging to ensure that best practice is followed to drive down the GHG burden.*" The ExA is considering the merits of the proposed development and the measures proposed for it. As such it is not clear to	DCiC noted that it is useful to consider carbon targets and that there are online calculation tools (Environment Agency and BRE) for embodied carbon targets which Highways England could use to establish targets for this particular Scheme. Highways England emphasised the view that it is unnecessary and unreasonable to require a target to be set for this project that is not applied to other national projects, noting that DCiC does not have local targets in place either. Highways England stated that drawing on targets from different sources would be arbitrary and not provide a robust/meaningful target against which the Scheme could be measured. The A38 assessment has been done in relation to DMRB guidance (para 3.22 – minimisation of carbon emissions). There is a commitment to minimise greenhouse gas emissions. Without national or local targets to peg the Scheme against, it would be unreasonable to expect Highways England to do so. DCiC confirmed that there are no local targets in place, but that this is a huge Scheme by comparison. The City Council thought it sensible to make a stand on carbon impacts now and to seek to make those as small as possible. The ExA referred to paragraph 5.19 of NPS – evidence of appropriate mitigation measures - and noted that the carbon footprint should not be unnecessarily high. This is a material factor in the decision-making process. The ExA noted that Highways England has clarified in previous submissions that the main consideration for this Scheme is embodied carbon. There is a suspicion that there could be suitable target for this scale/type of project.

	the ExA that carbon targets should only be applied to the proposed development as part of a network wide initiative. d) Is the **Applicant** or **Derby City Council** aware of a suitable method for setting and implementing carbon footprint targets for road schemes that could be used for the proposed development? If such a method exists, how should its adoption and the setting of appropriate target levels be secured?	Highways England responded that it is important to also look at paragraphs 5.17 and 5.18 of the NPS, which conclude that an increase in carbon emissions should not be a reason to refuse consent. There is mitigation in the ES, secured through the OEMP, which seeks to minimise emissions in accordance with DMRB guidance. Highways England do not consider a target appropriate because there is no evidence that such a target exists. Highways England confirmed that they are working to a carbon emissions target that is 'not unnecessarily high' and that they will be using a reporting tool in accordance with the NPS. Arbitrary targets are not being introduced at national or local level. The ExA confirmed that they need to be satisfied that the carbon footprint is 'not unnecessarily high'. The ExA questioned whether it is sufficient to demonstrate that mitigation measures are adequate, or whether this Scheme should be measured against other similar projects in terms of best practice. The ExA expressed the view that 'when compared with good practice' is an important element of 'not unnecessarily high'. Highways England stated that these sorts of targets have never been applied to a Highways England project before. If they were, these would be expected across all projects nationally. Highways England would be very concerned at having to draw targets from other examples of best practice which may/may not be relevant. In the absence of anything firm, Highways England considers it is difficult to speculate. Highways England's position is that the measures in the OEMP are entirely appropriate to ensure the NPS is adhered to and this has been the basis on which that conclusion has been reached on other projects. Highways England confirmed that they are adhering to the obligations in the DMRB guidance. DCiC was invited to make submission on this for D14 to establish whether there are suitable comparator schemes. The ExA requested further clarification of the 'not unnecessarily high' point and the suggestion that no comparison with other projects should be made, and asked if a commitment to benchmarking could be secured in the OEMP.

	Other requests to speak accepted by the Examining Authority Brief oral submissions, which we anticipate will take no more than 5 minutes each and are not to repeat matters previously set out in written submissions. e) **Derby Climate Coalition**: climate change.	In response to the Derby Climate Coalition, Highways England noted that it is important to understand what Highways England is/does/can do. The role of Highways England should not be conflated with that of DfT. Highways England is a Government company charged with maintaining/improving strategic roads. They are a delivery company for DfT. Highways England does not determine projects to be delivered. Highways England emphasised that a number of Ms Lee's points are outside Highways England's control. Highways England acknowledged that the Scheme assessment has been carried out against pre-net zero targets, but in the absence of revised budgets or policy it is not possible to say how net-zero should be taken into account. Highways England will respond to comments made by Derby Climate Coalition to be submitted at D14 at D15.
	Other matters f) Any other matters on the topic?	No matters raised.
	Other policy and factual issues	
	The ExA does not intend to raise any matters on the following topics: • dust, odour, artificial light, smoke and steam emissions; • common law nuisance and statutory nuisance; • utility infrastructure; • waste management; • civil and military aviation and defence; • safety, security and major accidents and disasters; • decommissioning; • combined effects; or • other important and relevant	No matters raised.

	considerations. Other matters a) Any other matters on these topics?	
4	**The recording of the Hearing and the next steps in the Examination**	
5	**Any other business and close of Hearing**	No further CA hearings. ISH 10 cancelled. ISH hearings 12-17 cancelled.