

A38 Derby Junctions
TR010022

8.109 Written Summary of Oral
Submissions to ISH9 10 June 2020

Planning Act 2008

Rule 8 (1)(i)

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 8

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Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure) Rules 2010**

**A38 Derby Junctions
Development Consent Order 202[]**

**Written Summary of Oral Submissions to ISH9
10 June 2020**

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Author	A38 Derby Junctions Project Team Highways England

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Version 1	18 June 2020	Deadline 14 submission

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 ninth 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 9		
Date: 10 June 2020		
<p>Speakers: Highways England (the Applicant / HE) Derby City Council (DCC) Derbyshire County Council (Derbyshire CC)</p>		
Item	Agenda	Response
1	Welcome, opening remarks, introductions and housekeeping	
2	The purpose of the Hearing and how it will be conducted	
3	Draft Development Consent Order	
	<p>Part 2 – Principal Powers</p> <p><u>Article 6 – Maintenance of authorised development</u></p> <p>a) Is Derby City Council content with the addition of the text “<i>Highways England will ensure that the flood storage areas at Kingsway junction (including those installed within the Kingsway hospital site) are appropriately maintained and fulfil their flood risk mitigation function</i>” to the OEMP [REP12-002, page 112, item D-RD3].</p>	<p>Derby City Council confirmed that they are content with this. They added that the OEMP has clear responsibility on Highways England, especially with regard to Kingsway junction.</p>

	<p>b) Are Derby City Council and Derbyshire County Council content with item D-M1 to the OEMP [REP12-002, page 113] which provides that <i>“During the detailed design stage Highways England will prepare a Maintenance and Repair Strategy Statement (MRSS) in consultation with the applicable local authorities regarding maintenance and repair responsibilities as associated with the Scheme”</i>?</p>	<p>Derby City Council confirmed that they are content with this. They added that there is clear responsibility on Highways England to talk to Derby City Council about maintenance.</p> <p>Derbyshire County Council confirmed that they are content with this. They added that they had sought clarification over this with Highways England and are now happy with the maintenance strategy.</p>
	<p>c) Have Derby City Council's concerns [REP9-030, item 1.4c] [REP12- 019, item 1.2] and Derbyshire County Council's concerns [REP12- 008, item 1.2] now been addressed?</p>	<p>Derby City Council confirmed that their concerns have been adequately addressed with regards to these.</p> <p>Derbyshire County Council confirmed that their concerns have been adequately addressed with regards to these. They added that the maintenance and repair strategy covers these and everything has been addressed.</p>

	<p>Part 6 - Operations</p> <p><u>Article 40 – Trees subject to tree preservation orders</u></p> <p>a) Is Derby City Council content with the addition of the text <i>“noting that the tree canopy may need to be reduced. DCiC will be consulted during the detailed design stage regarding options to retain the veteran tree, minimise Scheme impacts upon the tree’s RPA and tree canopy reduction treatments”</i> to the OEMP [REP12-002, page 25, item PW-LAN4]?</p>	<p>Derby City Council confirmed they are content with this.</p>
	<p>b) Have Derby City Council’s concerns [REP9-030, items 1.6 and 1.9] now been addressed?</p>	<p>Derby City Council confirmed they are content with this.</p>
	<p>Schedule 9 – Protective Provisions</p> <p><u>Cadent Gas Limited</u></p> <p>a) Please could the Applicant provide an update on discussions regarding the protective provisions and any implications of the Secretary of State’s decision on the M42 Junction 6 Improvement project that was taken on 21 May 2020?</p>	<p>Highways England confirmed there were four areas of disagreement with Cadent Gas Limited regarding the protective provisions. First, there is disagreement on the extent of the indemnity: Cadent Gas Limited want Highways England to be responsible for unforeseeable consequential loss including that caused by third parties. Second, there was disagreement about the use of arbitration (as a means of dispute resolution) as Cadent Gas Limited have requested that certain apparatus be excluded from this process. Third, Cadent would like the definition of Acceptable Insurance, which is currently in a side agreement, to be included in the DCO. Fourth, there has been disagreement on the extent to which Cadent Gas Limited must help Highways England with the relocation of their apparatus.</p>

		<p>In the Secretary of State's decision on the M42 Junction 6 DCO, all points were determined in favour of Highways England. In light of this outcome, Highways England's position is not changing. Highways England has requested an update from Cadent Gas Limited on their position but no further information has been provided. Cadent Gas Limited's position is therefore currently unknown and Highways England is not aware of whether Cadent Gas Limited will submit representations at the next deadline.</p> <p>In a linked point, there is a dispute over Schedule 5 of the DCO and the extent of the rights being acquired on behalf of Cadent Gas Limited. Cadent Gas Limited do not feel the provisions are adequate and Highways England disagree. Highways England consider that Cadent Gas Limited may have misunderstood the way in which Schedule 5a is linked to Article 26 which gives Highways England the powers necessary to fulfil the purpose stated in Schedule 5. Schedule 5 is drafted broadly and does not specify the rights to be acquired in order to allow scope for all the necessary rights that may be identified at a later stage. Highways England noted that they want to ensure that Cadent Gas Limited can continue to operate without serious detriment to their undertaking. The rights to be acquired through Article 26 and Schedule 5 will be finalised at the detailed design stage and secured through the compulsory acquisition process.</p> <p>This issue was also in dispute on the M42 Junction 6 where the Secretary of State determined in Highways England's favour. In the M42 DCO, the additional wording requested by Cadent Gas Limited was not considered necessary by the Secretary of State. Regarding this point and the points around the protective provisions, the Secretary of State considered having protective provisions for Cadent Gas Limited's benefit gives them protection such that there was not serious detriment to their undertaking and there was adequate protection to allow operations to continue.</p> <p>This view supports Highways England's position so this will not change in respect of the A38. Cadent Gas Limited have not provided further information on whether their position has changed regarding the Schedule 5 point.</p> <p>The ExA thanked Highways England for providing information as to the link with the M42 decision. The ExA requested that Highways England provide a summary of the links in writing (as above). The ExA also requested that Highways England pass on a request to Cadent Gas Limited that Cadent Gas Limited provide the ExA with information on their position.</p>
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	<p><u>Network Rail Limited</u></p> <p>b) Please could the Applicant provide an update on discussions regarding the additional paragraph 42 [REP10-013], which provides that <i>“Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or protective work must, provided that 56 Days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail”</i>?</p>	<p>Highways England confirmed that they are very close to an agreement with Network Rail regarding paragraph 42 and expect to have a response on the final points soon. Highways England are also seeking to agree appropriate wording to be added to the Framework Agreement to qualify paragraph 42. Clarification is required to limit the scope of works to be included in this provision.</p> <p>The ExA noted it would be helpful to have direct confirmation from Network Rail as to their position.</p>
	<p><u>Matters not agreed before the close of the Examination</u></p> <p>c) Before the close of the Examination, please could the Applicant and any relevant Statutory Undertaker please provide a summary of any protective provisions that have not been agreed together with a summary of the differences between the parties?</p>	<p>Highways England confirm that agreements with Seven Trent Water and Western Power Distribution are very close to completion. They are both being signed and Highways England anticipate to agree and complete these before close of the Examination. This leaves issues with Cadent Gas Limited and Highways England will request that they give the ExA an update. Regarding the issues with Network Rail, Highways England are working towards a point where Network Rail will withdraw their objection. Highways England will request that Network Rail also give the ExA an update. Highways England will provide an update before close of the Examination but hope there won't be much to update the ExA on.</p> <p>The ExA note it would be helpful to have a summary of which agreements have been made with statutory undertakers and where they are in the examination.</p>

	<p>Schedule 10 – Documents to be Certified</p> <p><u>Material embedded in responses to the ExA's questions</u></p> <p>a) Please could the Applicant confirm that clarifications provided during the Examination to Environmental Statement paragraphs, tables, figures or plans that have been embedded in its responses to the ExA's questions and in its comments on submissions made by others will be included in Schedule 10? How will that be done?</p> <p>b) Please could the Applicant confirm that all items previously identified by the ExA [PD-015, item 33a] will be included in Schedule 10?</p>	<p>The ExA noted that there were areas of concern regarding the Environmental Statement. A number of clarifications which have been made to the Environmental Statement have been embedded in Highways England's responses to questions. The ExA noted that some of those are important as the Environmental Statement is referred to a number of times in the DCO. Therefore, it is also important that the clarifications to the Environmental Statement provided during Examination are properly certified and available after Examination.</p> <p>Highways England's approach to Schedule 10 documents is that they are the documents that will be certified and form part of the consent. They must therefore be the most up to date versions.</p> <p>During the hearing Highways England took the ExA to Rep 13-004, table 3, where Highways England have shown the updated documents in Schedule 10. Taking the example of the Environmental Statement, the table shows the original document and the places where changes have been needed to the text. These changes have been implemented by providing replacement chapters.</p> <p>Any further updates to the Environmental Statement will be captured by Highways England in an Environmental Statement Addendum which will include additional technical information such as plans and data produced during the Examination. Essential further and additional environmental information (as defined in the EIA Regulations) that forms part of Environmental Statement will be included in the addendum. Highways England confirmed that they will not be including further discursive or clarificatory material as this is not additional environmental information.</p> <p>The ExA confirmed that this was a suitable approach and agreed that any discussion points are separate from the documents that require certification.</p> <p>Highways England confirmed it was checking all of the documents to be submitted at Deadline 14 to make sure they are up to date and will be the final documents to be certified.</p> <p>Highways England also confirmed that information going into the Environmental Statement addendum is not new information and has already been submitted during the Examination.</p>
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	c) Please could the Applicant ensure that every Schedule 10 document has a unique date and reference number and that updated documents are clearly differentiated from those provided with the application?	Highways England confirmed it has a referencing system in place and that this would include the document's reference in the main body of the document.
4	The recording of the Hearing and the next steps in the Examination	
5	Any other business and close of Hearing	