

A38 Derby Junctions

TR010022

Volume 3

3.3(b) Consents and Agreements Position Statement

Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

February 2020

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms
and Procedure) Regulations 2009**

A38 Derby Junctions
Development Consent Order 202[]

Consents and Agreements Position Statement

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1. Introduction

1.1 Purpose of this document

- 1.1.1 This Consents and Agreements Position Statement (this “Statement”) sets out Highways England’s intended strategy for obtaining the consents and associated agreements needed to deliver the proposed A38 Derby Junctions scheme (the “Scheme”).
- 1.1.2 The purpose and objective of this Statement is to identify what consents and agreements are expected to be needed for the Scheme, and how these would be obtained (subject to gaining the Development Consent Order (DCO)). This version (Version 3) of the statement is the final one submitted to the examination in June 2020, prior to the close of the examination.

1.2 The Scheme

- 1.2.1 A detailed description of the Scheme is provided in Chapter 2: The Scheme of the Environmental Statement [**TR010022/APP 6.1**].

2. Strategy

2.1 Highways England's Consents Strategy

2.1.1 The basis of Highways England's consents strategy is that:

- A DCO must be sought as the principal consent for the works (under the Planning Act 2008 (the "2008 Act")) including to provide the necessary land acquisition and temporary possession powers.
- Where possible and practicable, additional consents should be included in the DCO.
- The Scheme has and will be developed based on strong collaboration with key stakeholders and agreements will be secured at the appropriate stages of project development as necessary, documented where relevant in Statements of Common Ground (SoCG).

The proposed approach

2.1.2 The intent of the 2008 Act and Government policy is to enable development and construction related consents to be included within the DCO. The Scheme benefits from this intent, as the majority of consents required for the construction of the Scheme will be sought through the powers of the DCO. This approach minimises the need for any further approvals before the works covered by the DCO can commence.

2.1.3 The Scheme has and will continue to be developed based on strong collaboration with key stakeholders. In this respect, any additional consents and agreements outside the DCO will be secured at key stages of project development as necessary. The progress on securing these will be actively reported to the Examining Authority during the post-submission stage. A summary of the current position is presented in Section 3 of this report and the associated Appendices.

3. Consents and agreements

3.1 Consents

3.1.1 The principal consent for the Scheme will be a DCO. The DCO process provides development consent for the works and enables land acquisition and temporary possession, along with other consents and powers, to be dealt with at the same time.

3.1.2 However, the DCO application may need to be supplemented by other applications because:

- a) A specific consent cannot be contained in the DCO.
- b) A consenting authority declines to allow a consent to be contained within the DCO.
- c) It is not desirable, or it is inappropriate, to include a consent within a DCO due to the stage of design development and the detail available.

3.1.3 At this point (the submission of the DCO application) most of the consents and all the powers required have been included, or addressed, within the DCO as permitted by various provisions of the 2008 Act. These fall into the following categories:

- Authorisation of all permanent and temporary works (the equivalent of planning permission). Compulsory acquisition of land or rights over land such as easements, restrictive covenants and the temporary possession of land.
- Powers to compulsorily acquire open space and replacement land.
- Consent to carry out demolition of buildings and other structures.
- Powers and consent to carry out street works and to stop up highways permanently or temporarily.
- Highways matters (such as designating highway as trunk road).
- Traffic regulation matters (such as speed limits, clearways and restrictions on use).
- Consent to stop and divert public and private rights of way.
- Consent to carry out tree works (including works to trees subject to a Tree Preservation Order).
- Consent or approval for the carrying out of the works required under any relevant byelaw made under the Water Resources Act 1991 and the Land Drainage Act 1991.
- Disapplication of any relevant local legislation or byelaws under paragraphs 5, 6 and 6a of schedule 25 of the Water Resources Act 1991.
- Powers to carry out utility diversions (subject to protective provisions).
- Consent to carry out any required utility diversion (subject to protective provisions).

- Ordinary Watercourse Consent: Land Drainage Act 1991 Flood Water Management Act 2010.

3.1.4 In relation to the necessary applications under the Land Drainage act, the powers for this are included within the DCO and agreement is being sought from the relevant consenting authorities. This issue is also highlighted in the Explanatory Memorandum [TR010022/APP/3.2].

3.1.5 The permits, consents and agreements that may need to be sought separately from the DCO are identified in **Appendix A**, which also includes a summary of the need for consent and the current status.

3.2 Agreements

3.2.1 Other agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.

3.2.2 A fundamental part of the DCO process is the preparation and agreement of SoCG with a variety of relevant stakeholders to identify the matters on which parties agree and disagree, to narrow the focus for examining the application and to make the examination process more efficient. These will be progressed by Highways England where appropriate.

3.2.3 Progress on finalising any SoCG or other forms of agreement, along with updated or final documents, will be reported to the Examining Authority during the examination.

APPENDIX A: CONSENTS TABLE (as at June 2020)

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
Protected species licensing	A licence under section 10 of the Protection of Badgers Act 1992	Natural England	Permanent closure and destruction of confirmed badger sets.	<p>Extensive discussions have been undertaken with Natural England. A draft licence application has been submitted to Natural England and they have confirmed acceptance in principal to the proposed works. A letter of no impediment has been issued by Natural England confirming that they would be minded to grant a formal licence for the works.</p> <p><i>Update (February 2020): Highways England has been in touch with Natural England and are currently in the process of arranging further discussions on the progression of a formal license application,</i></p> <p><i>Update (June 2020): Highways England has agreed all consultation requirements and associated fees with Natural England. An initial meeting took place with Natural England on 10th June 2020.</i></p>
	Bats - European Protected Species Licence under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations); Wildlife and Countryside Act 1981	Natural England	Destruction of confirmed bat roosts.	<p>Extensive discussions have been undertaken with Natural England. A draft licence application has been submitted to Natural England and they have confirmed acceptance in principal to the proposed works. A letter of no impediment has been issued by Natural England confirming that they would be minded to grant a formal licence for the works.</p> <p><i>Update (February 2020): Highways England has been in touch with Natural England and is currently in the process of arranging further discussions on the progression of a formal license application,</i></p> <p><i>Update (June 2020): Highways England has agreed all consultation requirements and associated fees with</i></p>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
				<i>Natural England. An initial meeting took place with Natural England on 10th June 2020.</i>
	Permit to 'catch the fish' (FR2): an application for authorisation to use fishing instruments other than rod and line in England. Salmon and Freshwater Fisheries Act 1975 (as amended)	Environment Agency	For use of electrofishing equipment in Dam Brook.	<p>A permit application would be made prior to the commencement of development. The permit application is determined within a statutory period of 28 days by the Environment Agency. The Environment Agency has advised that the permit applications can be made following a decision being made on the DCO application.</p> <p><i>Update (February 2020): Highways England is currently arranging a site visit to view the previously identified receptor sites to reaffirm their suitability prior to undertaking further discussions with the Environment Agency on the proposed permit application.</i></p> <p><i>Update (June 2020): The need for updated fish surveys in Summer 2020 is currently being reviewed.</i></p>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
Protected species licensing	Permit to 'move the fish' (SP1) Keeping and Introduction of Fish Regulation 2015	Environment Agency	To move fish from Dam Brook to a suitable receptor site.	<p>A permit application would be made prior to the commencement of development. The permit application is determined within a statutory period of 28 days by the Environment Agency. The Environment Agency has advised that the permit applications can be made following a decision being made on the DCO application.</p> <p><i>Update (February 2020): Highways England is currently arranging a site visit to view the previously identified receptor sites to reaffirm their suitability prior to undertaking further discussions with the Environment Agency on the proposed permit application.</i></p> <p><i>Update (June 2020): The need for updated fish surveys in Summer 2020 is currently being reviewed.</i></p>
Environmental/water/waste/ drainage	Water Abstraction: Licence under sections 24 and 25 of the Water Resources Act 1991 (restrictions on abstraction and impounding; restrictions on impounding)	Environment Agency	Consent may be required, typically if more than 20m ³ of water per day is being taken or if the abstraction is to be longer than 28 days. The Environment Agency has a regulatory position statement on temporary dewatering within the stated exemptions of part 2 regulation 5 of the Water and Abstraction and Impounding (Exemptions) 2017.	<p>Dewatering is likely to be required during the construction of the cutting at Markeaton and in addition for any other cutting within the scheme that intersects with groundwater including perched groundwater. The extent of dewatering and need for consent will be discussed with the Environment Agency during the preliminary works phase and any necessary consent secured at that time.</p> <p><i>Update (June 2020): Flow rates will be informed by Ground Investigation (GI) works recently undertaken. This will inform where/ when this license will be required. Highways England is expecting to receive the output of the GI work at the end of June 2020.</i></p>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
	<p>An Environmental Permit for the disposal of waste materials under the Environmental Permitting Regulations as amended (2016).</p>	<p>Environment Agency</p>	<p>Disposal of waste materials.</p>	<p>It is considered that the majority of the earthworks materials excavated during the works would be re-used within the works following the guidance in CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice (v.2) (DoWCoP). Agreement will be sought from the Environment Agency that they are satisfied that the DoWCoP route is acceptable for the earthworks proposed at the site and that the correct procedures have been followed.</p> <p><i>Update (February 2020): Environment Agency to be contacted to agree in principle the use of DoWCoP. Supporting documentation to be prepared for agreement with the Environment Agency.</i></p> <p><i>Update (June 2020): The application of this permit relies upon information being supplied during the detailed design process and information from the recent GI works, report due to be provided at the end of June 2020.</i></p> <p><i>GI works will provide information on what materials will be excavated on site. Information from the detailed design will provide waste quantities and the ability to reuse excavated materials on site.</i></p> <p><i>The Environment Agency has been consulted on this and have confirmed the information required to apply for the permit.</i></p>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
Environmental/water/waste/ drainage	Discharge to controlled water and/or groundwater under Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Discharge of water from excavation dewatering activities	<p>Where dewatering of excavations is required the collected water will require discharge to surface water (alternatively to foul sewer). A permit is required from the Environment Agency setting out agreed volumes and allowable determinand¹ concentrations. This will be sought by the contractor prior to works taking place.</p> <p><i>Update (February 2020): Supplementary GI to be undertaken in March 2020 to estimate volumes of groundwater requiring discharge.</i></p> <p><i>Update (June 2020): Flow rates will be informed by GI works recently undertaken. This will inform where/ when this license will be required. Highways England is expecting to receive the output of the GI work at the end of June 2020.</i></p>
	Control of Asbestos Regulations 2012	HSE	Work with asbestos	<p>The former landfill at Kingsway junction accepted asbestos waste, confirmed during the ground investigation. Work (removal work) with asbestos is likely to require a licence from HSE for the earthworks to create the cutting at the former Kingsway landfill. A licence will be sought by the contractor prior to removal work taking place.</p> <p><i>Update (February 2020): Supplementary GI to be undertaken to allow greater resolution of the distribution of asbestos containing materials within the landfill.</i></p>

¹ Determinand

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
				<p><i>Update (June 2020): All known and currently unknown sources of asbestos on site will be dealt with by a licensed contractor. This will be managed through the Asbestos Management Plan and Materials Management Plan.</i></p>
	<p>Trade Effluent Discharge Consent. Water Industry Act 1991 (as amended)</p>	<p>Severn Trent Water</p>	<p>Possible discharge to public foul sewers.</p>	<p>For discharges over six months duration full consent would be required. At this stage it is considered unlikely to be needed, but may be required for the temporary discharge of construction site runoff, should the Contractor decide to drain to a public sewer. As applicable consent would be sought from Severn Trent Water by the contractor.</p> <p><i>Update (June 2020): Flow rates will be informed by GI works recently undertaken. This will inform where/ when this license will be required. Highways England is expecting to receive the output of the GI work at the end of June 2020. Discussion with Severn Trent Water to confirm volume of water allowed to be discharged and water quality requirements can then progress.</i></p>
	<p>Environmental Permit for Flood Risk Activity. Environmental Permitting (England and Wales) Regulations 2016</p>	<p>Environment Agency</p>	<p>Works to be undertaken on or near a Main River, on or near a flood defence structure, or in a flood plain.</p>	<p>This consent is likely to be sought once detailed design work is undertaken. The Environment Agency has been consulted extensively on the Scheme proposals from a flood risk perspective and therefore they are aware of the works to be undertaken within the floodplain. The Environment Agency has confirmed that the floodplain compensation provisions at Little Eaton Junction would be appropriate. Discussions will continue prior to a permit application being made.</p>

Issue:	Consent/ Licence/ Agreement & Legislation:	Consenting Authority:	Requirement:	Current Position::
				<p><i>Update (June 2020): Further discussions with the Environment Agency will progress once the detailed design work is at a more advanced stage.</i></p>
<p>Environmental/water/waste/ drainage</p>	<p>Section 61 (Part III of The Control of Pollution Act 1974</p>	<p>Derby City Council and Erewash Borough Council</p>	<p>Consent offers the applicant protection from any subsequent action by the local authority under Section 60 or Section 66 of the Control of Pollution Act 1974 or under the Environmental Protection Act 1990 to impose further controls on noise from the site.</p>	<p>This consent is not mandatory, but allows the main contractor to obtain consent from the local authority regarding noise requirements. This will be considered for the Scheme and discussions will take place with Derby City Council and Erewash Borough Council as to whether this consent will be sought – refer to PW-NOI2.in Table 3.2a in the Outline Environmental Management Plan (OEMP) for details.</p> <p><i>Update (June 2020): In discussions undertaken so far, Derby City Council has stated a preference not to receive a Section 61 application. Discussions with Erewash Borough Council are ongoing – however, as detailed in the OEMP, for works within Erewash Borough Council's administrative area, before any works (other than emergency works) are undertaken outside of core working hours and which comprise noise generating activities, Highways England will submit an application to Erewash Borough Council (in a format as agreed) for prior consent under Section 61 of the Control of Pollution Act.</i></p> <p><i>Highways England's appointed contractor will make a final decision on whether to progress this consent (in accordance with the OEMP) once they have developed a list of general requirements for the application covering information on construction plant, method statements, working hours, programme, etc.</i></p>

