

Kevin O'Hanlon  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

Chris Archbold  
Project Manager  
Highways England  
2 Colmore Square  
Birmingham  
B4 6BN

17 November 2020

Letter issued via email to [Kevin.O'Hanlon@dft.gov.uk](mailto:Kevin.O'Hanlon@dft.gov.uk)  
(cc to [A38derbyjunctions@planninginspectorate.gov.uk](mailto:A38derbyjunctions@planninginspectorate.gov.uk))

Dear Mr O'Hanlon.

Application by Highways England ("the Applicant") for an Order granting Development Consent to construct a replacement of three roundabouts on the A38 in Derby known as Kingsway, Markeaton and Little Eaton Junctions, with grade-separated interchanges. ("the proposed development")

I write in response to your letter dated the 3 November 2020 and am pleased to provide the following clarifications as requested within your letter.

#### Crown Land

In respect of Crown Land, Highways England note that this matter is directed to the East Midlands Reserve Forces and Cadets Association (EMRFCA). However, to facilitate the EMRFCA's response to this request, Highways England has been in discussion with the EMRFCA in respect of it providing a further s.135 letter of consent to cover the permanent and temporary acquisition of the Crown Land, in line with the matters raised by the Secretary of State.

Highways England has provided the EMRFCA with a draft s.135 consent letter which we understand is now in an agreed form. All that remains is for the EMRFCA to sign this letter and submit it to the Secretary of State which we anticipate will be done this week.

#### Network Rail Framework Agreement

In respect of the Framework Agreement being negotiated with Network Rail, Highways England has been in discussion with Network Rail and an agreed position statement - contained in an email - is submitted as part of this letter (see **Appendix C**). This provides that Network Rail does not require the Framework Agreement to be completed before the grant of the DCO provided that the Protective Provisions which have been agreed between Highways England and Network Rail are included in the final DCO.

#### Temporary Possession of land in Schedule 7

Schedule 7 lists the land plots for which temporary possession only is required, it does not list the plots for which permanent rights are required; these are listed in Schedule 5 of the draft development consent order (dDCO).

Regarding the plots listed in Schedule 5, all of the identified landowners and land interests were consulted as part of the Section 42 consultation undertaken in September 2018. At that time many of the permanent rights requirements had not been identified, so, prior to submission of the application there were several additional S42 consultations was carried out which included many of the permanent rights requirements (see the annotated copy of Schedule 5 at **Appendix A**). Post application, Section 56 notifications were issued which provided landowners and land interests with information as to how they could access the application documents (including the Land Plans and Book of Reference) which provide details of where Highways England is seeking permanent acquisition, temporary possession or temporary possession with permanent rights. In addition to this information being available to the Examination there has also been direct engagement and discussion by Highways England with a number of affected landowners and those with an interest in the land over which temporary possession and permanent rights are being sought.

The annotated copy of Schedule 5 enclosed at **Appendix A** identifies how and when each of the affected landowners and land interests has been advised that the acquisition of permanent rights is being sought on land which they own or have an interest in. In relation to Derby City Council correspondence is annexed to Appendix A confirming the Council is content in respect of the permanent rights sought over land within their ownership or interest.

#### Article 10(4)(a)

Highways England has confirmed with Western Power Distribution (WPD) that in all instances in the DCO reference should be to Western Power Distribution (East Midlands) plc (company number 02366923) in accordance with the Agreement entered in to between the parties.

An email from WPD's solicitors is enclosed as **Appendix B** confirming this.

#### Special Category Land

In relation to the issue of Special Category Land, Highways England has responded below to each point (copied in italics)

*Plot 2/9 is not included in Part 5 (special category land) of the Book of Reference but is included in the definition of "the special category (rights) land" in article 38(5) of the DCO and is shown as being special category land on the special category land plans. The Applicant is asked to clarify whether plot 2/9 has been correctly defined as special category (rights) land notwithstanding its omission from Part 5 of the Book of Reference.*

**Response:** Plot 2/9 is correctly identified as special category (rights) land as per the special category land plans and as detailed in article 38(5) of the dDCO. This plot was unintentionally omitted from Book of Reference, which has been corrected (refer to the below).

*Plot 3/1aa is included in the definition of "the special category land" in article 38(5) of the DCO. The plot is described in the Book of Reference as "Temporary possession and use of land and acquisition of rights over land..." but is shown on the land plans and the special category land plans as land which is only required temporarily (and is not subject to permanent rights). The Applicant is asked to clarify the correctness of the description of plot 3/1aa in the Book of Reference.*

**Response:** Plot 3/1aa is an area of open space that is to be used for a temporary purpose only as per the land plans (Document reference 2.2 (c)). The plot is also shown on the

Special Category Land Plans (Document reference 2.3(b) as open space to be used for temporary purposes only. As such, the description as shown within the Book of Reference is incorrect, as is the reference within article 38(5) of the dDCO. This has been corrected (refer to the below).

*Plot 1/4b is included in both the definition of the “special category land” and “the special category (rights) land” in article 38(5) of the DCO. In the Book of Reference, it is described as “Temporary possession and use of land and acquisition of rights over land...”it is included in Schedule 5 to the DCO (land in which only new rights etc. may be required) and on the special category land plan it is shown as temporary with rights to be acquired permanently. The Applicant is asked to clarify whether it was intended that plot 1/4b should be included in both definitions.*

**Response:** Plot 1/4b is proposed to be used temporarily, with the permanent acquisition of rights and is presented correctly in both the Special Category Land Plans and the Book of Reference. It is incorrectly listed as “special category land” in article 38(5) of the dDCO. The dDCO has been revised to reflect this (refer to the below).

*Plots 3/1v, 4/1c, 4/1f, 4/1h, part of 4/2m, 4/7d, 5/1, 5/2 and 5/3a are listed as open space land in part 5 of the Book of Reference but unlike all other plots so listed are not included in either definition of “the special category land” or “the special category (rights) land”. Whilst it appears that all these plots are only required temporarily, other plots which are also only required temporarily and are similarly described (e.g. 2/1a) are included in the definition of special category land. The Applicant is asked to clarify the position regarding these plots of land.*

**Response:** Plots 3/1v, 4/1c, 4/1f, 4/1h, 4/7d, 5/1 and 5/2 comprise open space land to be used temporarily only. Plot 4/2m comprises a split between special category land to be acquired permanently and proposed replacement land. Plot 5/3a comprises special category land to be acquired permanently, but where the land is to be retained for open space use. Updates have been made to the Book of Reference and part 38(5) of the dDCO to clarify this (refer to the below), particularly as article 38 in the dDCO does not concern temporary use of open space land.

*Plot 3/2r is listed in the Book of Reference and shown on the special category land plans as being partly open space land to be acquired and partly replacement land. In the DCO the plot is only included in the definition of “replacement land” but not in the definition of “special category land”. In other similar cases (plots 3/1y, 4/1a, 4/2a, 4/2f, 4/14, 4/15) it is included in both. The Applicant is asked to clarify whether plot 3/2r should also be included in both.*

**Response:** Plot 3/2r is correctly identified as being partly land to be acquired and partly replacement land. The dDCO has been updated accordingly (refer to the below). In the Book of Reference this plot was shown as being used for a temporary purpose, whereas (as referred to above) permanent acquisition of the land is sought, albeit the land will be retained for use as open space. The Book of Reference has been updated with these changes.

In addition and to clarify the position in respect of plot 3/2r, Highways England owns the freehold title to plot 3/2r and permanent acquisition is sought over it. In this respect, the plot is to be acquired permanently but it will be used temporarily during construction and, as such, there will be an interruption in its use as public open space and during the post construction phase it will return to continued use as public open space. The same principles also apply to plot 4/2m (part) and 5/3a. Please see the Planning Statement for a description of Highways England’s approach to the acquisition and use of public open space required as part of the Scheme.

*Plots 4/2f, 4/2i,4/2k,4/2l are not listed in the Book of Reference as replacement land and on the plans they do not appear to be shown as replacement land. But they are listed as replacement land (and also as special category land) in the DCO. The Applicant is asked to confirm the status of these plots of land.*

**Response:** These plots only comprise special category land, where permanent land acquisition is sought. The dDCO has been updated to reflect this.

As there are some inconsistencies that have been identified, in addition to the clarifications on Special Category Land provided above, Highways England have prepared updates to both article 38(5) of the dDCO and the Book of Reference. A very minor amendment has also been made to the Special Category Land Plans. In the interests of clarity, the changes to these documents are also summarised below and amended versions of these documents are submitted with this response.

Draft Development Consent Order (document reference 3.1(i))

The following modifications have been made to the three paragraphs under Article 38(5) on page 29 of the dDCO:

For the “Special Category Land” paragraph the following plots have been removed:

1/4a, 1/4b, 2/1a, 2/1d, 2/6, 3/1aa

For the “Special Category Land” paragraph the following plots have been added:

3/2r, 4/2m and 4/2n.

For the “Replacement Land” paragraph the following plots have been removed:

4/2f, 4/2i, 4/2k, 4/2l and 4/2p.

In addition, as the Book of Reference, Land Plans and Statement of Reasons have been amended to reflect these changes, Schedule 10 of the dDCO has been updated to note that these documents are dated 17 November 2020 and a “tbc” has been included in the “Examination Reference” column in respect of these because these documents do not have a reference. Highways England would be grateful if the Secretary of State could please allocate these documents an appropriate reference for the purpose of Schedule 10.

Book of Reference (document reference 4.3(e))

The following revisions have been made to the Book of Reference:

Page 424 – Plot 2/9 added.

Page 426 – Plot 3/1aa - description of land amended.

Page 427 – Plot 3/2r - description of land amended.

Page 433 – Plot 4/2m (part) - description of land amended.

Page 438 – Plot 5/3a (part) - description of land amended.

Special Category Land Plans (document reference 2.3(c))

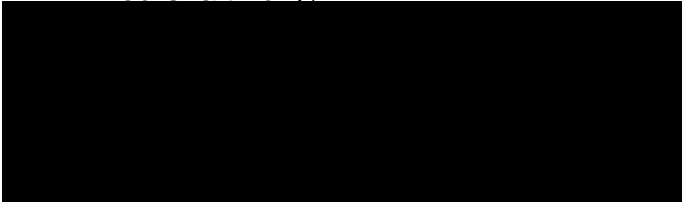
In respect of plot 3/1aa, the Special Category Land Plans have been updated to add a label to this plot, which was previously missing.

This letter is accompanied by the following updated documents:

- An updated Guide to the Application (Document Reference 8.2(o))
- An updated **draft Development Consent Order** (Document Reference 3.1(i))
- **Draft DCO Validation Report** (Validation Report for Document Reference 3.1(i))
- Schedule of changes to the **draft Development Consent Order** (Document Reference 8.31(h))
- Comparison of updated **draft Development Consent Order** (Document Reference 8.34(i))
- Updated **Book of Reference** (Document Reference 4.3(e)) (provided in both clean and tracked versions)
- **Schedule of changes to the Book of Reference** (Document Reference 8.32(f))
- Updated **Statement of Reasons** (Document Reference 4.1(c)) (provided in both clean and tracked versions)
- Schedule of changes to the **Statement of Reasons** (Document Reference 8.33(d))
- An updated set of **Land Plans** with minor revision to sheet 3 (Document Reference 2.2(d))
- An updated set of **Special Category Land Plans** with minor revision to sheet 3 (Document Reference 2.3(c))
- Appendix A – annotated Schedule 5 of the DCO detailing consultation undertaken for permanent rights being sought (including 7 annexes containing supporting evidence)
- Appendix B – email from Western Power Distribution confirming company name and number
- Appendix C – email from Network Rail confirming current position with respect to Agreements between Network Rail and Highways England

I trust that the content of this letter is clear, but please do not hesitate to contact me if you require any further information.

Yours faithfully,



Chris Archbold  
Project Manager  
Email: [christopher.archbold@highwaysengland.co.uk](mailto:christopher.archbold@highwaysengland.co.uk)

Enc:  
Appendices A, B and C  
Updated DCO documents