



# Department for Transport

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To all Interested Parties

2 August 2021

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Dear Sir/Madam

## **PLANNING ACT 2008 AND THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

### **RE-DETERMINATION OF THE APPLICATION BY HIGHWAYS ENGLAND (“THE APPLICANT”) FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE A38 DERBY JUNCTIONS**

#### **STATEMENT OF MATTERS**

1. The High Court’s order dated 8 July 2021 quashed the decision of the Secretary of State for Transport dated 8 January 2021 to grant the application by Highways England (“the Applicant”) for development consent for the proposed grade separation of three junctions and road widening on the A38 in Derby (“the Development”). Following that judgment, the Secretary of State must now re-determine that application.
2. I am therefore writing in accordance with Rule 20(2) of the Infrastructure Planning (Examination Procedure) Rules 2010 to set out to you, as an Interested Party to the above application, the following matters which the Secretary of State invites further representations for the purposes of his re-determination of the application. These matters are:
  - the carbon impact of the development; the implications, if any, of the development in relation to the Paris Agreement and the UK’s nationally-determined contribution under the Paris Agreement, the 2050 net zero target in the Climate Change Act 2008, and carbon budgets set under the 2008 Act (including the sixth carbon budget as set out in the Carbon Budget Order 2021); and, whether the increase in carbon emissions resulting from the development is so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets;

- the direct, indirect and cumulative likely significant effects of the development on climate, including greenhouse gas emissions and climate change adaptation, in light of the requirements set out in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regulations') and in light of paragraphs 5.17 and 5.18 of the National Policy Statement for National Networks ('NNNPS');
  - whether, taking account of any more recent data than that which was available during the examination, the Development's construction and/or operation would lead to a significant air quality impact or a deterioration in air quality in a zone/agglomeration, cause delays in areas not compliant with the Air Quality Directive becoming compliant, or cause any compliant areas to become non-compliant, both generally (if necessary), and in particular for Stafford Street within the Derby ring road Air Quality Management Area;
  - any change in whether the Development would be consistent with the requirements and provisions of relevant local or national policies, given the length of time since the examination closed. This will include those policies included in the Applicant's [Planning Statement and National Policy Statement Accordance table](#) and any updated versions thereof (including the updated Derwent Valley Mills World Heritage Site Management Plan 2020-25), as well as any wholly new policy that may be applicable;
  - other than the matters set out above, the adequacy of the environmental information produced in support of the application for the Development<sup>1</sup> and whether further or updated environmental information is now necessary given the length of time since the examination closed; and
  - any other matters arising since 8 January 2021 which Interested Parties consider are material for the Secretary of State to take into account in his re-determination of the application.
3. In addition to the above matters set out in paragraph 2, the Secretary of State requests information from the Interested Party specified below.
4. **The Secretary of State requests that the Applicant provides him with any updates he should be made aware of in relation to the scheme since the end of its examination.** This should include an update on the potential loss of the veteran oak tree<sup>2</sup> in Markeaton following the survey work undertaken by the Applicant on 18 May 2021, and confirmation of whether the Framework Agreement between the Applicant and Network Rail has been fully agreed upon.
5. The process for consultation and consideration of the application will be as follows:
- **The Secretary of State would like to give the Applicant the first opportunity to make representations on the matters set out in paragraph 2. The deadline for the Applicant to respond is 31 August 2021.**
  - A copy of the Applicant's representations will be published on the Planning Inspectorate's website as soon as possible after the deadline for the Applicant to respond.

<sup>1</sup> The Applicant's Environmental Statement (APP-039 to APP-250) are available at Appendix B of the Examining Authority's Report: [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010022/TR010022-001426-TR010022\\_A38%20Derby%20Junctions\\_Recommendation%20Report\\_FINAL%20and%20appendices.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010022/TR010022-001426-TR010022_A38%20Derby%20Junctions_Recommendation%20Report_FINAL%20and%20appendices.pdf)

<sup>2</sup> This matter is discussed in the Examining Authority's Report, sections 4.11.71-4.11.75, available at: [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010022/TR010022-001426-TR010022\\_A38%20Derby%20Junctions\\_Recommendation%20Report\\_FINAL%20and%20appendices.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010022/TR010022-001426-TR010022_A38%20Derby%20Junctions_Recommendation%20Report_FINAL%20and%20appendices.pdf)

- **The Secretary of State will then invite all interested parties to provide written comments on the Applicant’s response and on all other matters stated above. The final deadline for all interested parties to respond will be 26 October 2021.**
  - A copy of these representations will be published on the Planning Inspectorate’s website as soon as possible after the final deadline for responding.
  - If the Secretary of State decides that any of the information which the Applicant provides falls within the definition of ‘further information’ as set out in rule 3 of the EIA Regulations, the Applicant will be required to follow the procedure for publicising this information as set out in rule 20 of the EIA Regulations.
6. The Secretary of State will take into account in re-determining the application:
- any responses received to this round of consultation;
  - all correspondence received by the Secretary of State between 8 January 2021 and the publication of this letter;
  - all previous material sent to the Planning Inspectorate and the Secretary of State prior to 8 January 2021 and published on the National Infrastructure Planning website, including the Examining Authority’s Report.
7. With the above timetable in mind, responses to the matters outlined in this statement of matters should where possible be provided by email to [A38DerbyJunctions@planninginspectorate.gov.uk](mailto:A38DerbyJunctions@planninginspectorate.gov.uk), marked “For the attention of the A38 Derby Junctions Case Team”. Postal responses should be sent to The A38 Derby Junctions Case Team, National Infrastructure, The Planning Inspectorate, Eagle Wing 3/18, Temple Quay House, Temple Quay, Bristol, BS1 6PN, however, please note that as a result of the ongoing Government guidance relating to Coronavirus (COVID-19) there are limited number of staff at Temple Quay House and therefore any submissions sent by post may be subject to delay. If you will have difficulty in submitting a response by the consultation deadline, or difficulty in submitting a response by email, please inform the A38 Derby Junctions Case Team.
8. All previous representations and information relating to the application received before 8 January 2021 have been published on the National Infrastructure Planning website. To assist the Secretary of State, any reliance on information containing in previous representations made either during or since the examination should also include the relevant document reference number(s) and preferably also include hyperlinks to where the documents can be viewed on the National Infrastructure Planning website.
9. This letter is without prejudice to the Secretary of State’s redetermination of the application for the A38 Derby Junctions application and his decision whether or not to grant development consent for the Development, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

**Natasha Kopala**  
**Head of Transport Infrastructure Planning Unit**