



Meeting note

Project name	A38 Derby Junctions Improvement
File reference	TR010022
Status	Draft
Author	The Planning Inspectorate
Date	12 February 2019
Meeting with	Highways England
Venue	Teleconference
Meeting objectives	Draft Documents Feedback Meeting
Circulation	All attendees

Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Feedback on Draft Documents

The Inspectorate made general observations on the nature of documents submitted; most applications at this stage would be able to present more complete documents.

Comments on Annex A

Highways England and the Planning Inspectorate reviewed the comments supplied on draft documents and the observations upon them, as set out in Annex A

In respect of the Works Plans, it was confirmed that the reference to sheet 2 at point 1 should be a reference to sheet 3.

Highways England explained that they were going to consult landowners on potential changes to red line boundary.

The Inspectorate agreed to review the comment that appeared to request a track changed DCO against model provisions. They will also consider whether a schedule of hedgerows is required where the hedgerows to be removed are not protected.

Project update

Highways England confirmed that they are targeting an end of April submission date.

Highways England noted the anticipated move towards electronic application submissions. They asked that, if the project were to submit entirely electronically, they could be told by the middle of March, but an earlier notification on this would be welcome

Specific decisions / follow up required?

- Highways England to consider sending Chapter 3 of the Environmental Statement (Scheme history and 'alternatives').
- The Inspectorate to return to Highways England on any request for a tracked copy of the DCO against the model provisions, and the need for a hedgerows schedule.
- Highways England and the Inspectorate to schedule a further teleconference for the middle of March.

A38: Comments on draft documents, February 2019

These queries relate solely to matters raised by the draft documents, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration.

Draft Consultation Report (CR)

Q No.	Section	Extract from Document	Question/Comment
1	Table 2.1	<i>"Email states..."</i>	It is not always clear who has taken the action described; some emails are clearly from the applicant, whilst others appear to be from other parties. This is sometimes made clear in the 'Consultee/Stakeholder' column, but not in all cases.
2	3.8.1	<i>"Highways England wrote to all consultees identified..."</i>	It would be helpful to include here the deadline for responses given in the letter (presumed to be 18 Oct 2018)
3	Table 3.8	<i>"Newspaper Notices Table"</i>	It would be helpful to include here the deadline for responses given in the notice (18 Oct 2018)
4	Chapter 4	<i>"Regard to Responses"</i>	We note that this information has not been supplied.

Book of Reference (BoR)

Q No.	Section	Extract from Document	Question/Comment
1	Part 1, 2/6, 2/8 etc.	<i>"Derby City Council..."</i>	There are minor errors in the addresses of some affected persons. Please review for accuracy and consistency.
2	Part 2 through 5		We note that this information has not been supplied.

Draft Land Plans

Q No.	Section	Extract from Document	Question/Comment
1	All		No comments on the sheets supplied.

Draft Works Plans

Q No.	Section	Extract from Document	Question/Comment
1	Sheet 2 / Sheet 4 inset A		A cutline or inset box here would assist the legibility of the plans.
2	Sheet 2	<i>e.g. Work 19a shown on Works Plan sheet 2 but DCO states Work 19 not used</i>	There are potential inconsistencies between Works Plans and DCO drafting
3	Sheet 2		There appear to be unshaded unnumbered areas, where no work is proposed, but which lie within the order limits
4	Sheet 3	<i>Work No 31</i>	The limits of deviation of this work are not shown.
5	Sheet 3		Works extend outside the order limits to the north.
6	Sheet 3		Is it clear where Work 33 starts and ends and where Work 29 starts and ends?

Draft Statement of Reasons

Q No.	Section	Extract from Document	Question/Comment
1	Annex A and B		The layout of these annexes is helpful, but they will need to be populated.

Draft No Significant Effects Report

Q No.	Section	Extract from Document	Question/Comment
1	Paragraph 1.1.3	<i>'taking into account avoidance measures that are embedded' in relation to consideration of significant effects.</i>	The Sweetman ruling is clear that avoidance and reduction measures may not be taken into account when assessing the potential for likely significant effects. The Applicant is advised to consider whether use of the term 'avoidance' is appropriate for the purposes of this assessment. If actual avoidance measures have been applied then the Applicant should consider whether a report to inform an Appropriate Assessment rather than a NSER might be more appropriate.
2	Paragraph 1.1.6		Implies that we agree with the conclusions with regards to the habitats regulations, whereas our statement is only intended to highlight the need or otherwise for an assessment. This should either be rephrased or deleted.

3	Paragraph 1.4.7		Should this read no likely significant effects rather than no significant effects?
4	Paragraph 2.2.4		Please provide a cross reference to guidance from NE that states SSSI risk zones may be applied for the purposes of screening.
5	Section 3		The stepped consideration of effects as set out is helpful in understanding the approach taken.

Draft Development Consent Order

General Drafting points

1. The Applicant should ensure that when the development consent order (DCO) is finalised all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Notes ('AN') 13 and 15 and any guidance on statutory instrument drafting.
2. The Applicant should ensure that any typos and formatting issues are corrected, including the use of square brackets.
3. The Explanatory Memorandum ('EM') should state whether the article replicates a model provision or precedent article. Where there has been a change from the precedent or model provision this should ideally be shown in a track change DCO. It would also be helpful if the EM clarified whether the change is minor and has been made where in the applicant's view the model provision/precedent is unclear or does not follow standard statutory instrument drafting practice. Where a model provision or precedent article is substantially changed, the EM should clearly explain how that alters the effect. Ideally (and particularly if an article is novel), the power on which each article is based should be identified.
4. Notwithstanding that drafting precedent has been set by previous DCOs, whether a particular provision in this DCO application is appropriate will be for the Examining Authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

Q No.	Section	Extract from draft DCO Scenarios or Description	Question/Comment
1.	Definitions and elsewhere	<p>(3) All distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.</p> <p>(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.</p>	The applicant's attention is drawn to paragraph 3.3 of AN15, regarding the advice that where a paragraph is included in the interpretation article saying the distances, directions, lengths etc are approximate (as is the case at article 2 (3) of the dDCO, then the use of the word 'approximately' in conjunction with any of these dimensions should not appear elsewhere in the dDCO.
2.	General drafting	Use of 'may' 'will' and 'shall'	The applicant should consider 3.3 of AN15 in relation to the use of these words.
3.	Definitions	Definition of 'maintain'.	The applicant may wish to consider the definition used in the M20 junction 10a DCO, which included the wording 'to the extent assessed in the environmental statement'

4.	2.2	(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface [and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land].	The EM states that this article '2(2) expands the definition of rights over land which was included in the model provisions as article 1(2). The applicant should explain in the EM why the broadening on this definition is necessary.
5.	10 (4)	4) The consent of the Secretary of State is required for a transfer or grant under this article except where the transfer or grant is made to— (a) [•] (company number [•], whose registered office is at [•]) for the purposes of undertaking Work No. [•]; or (b) [•] (company number [•], whose registered office is at [•]) for the purposes of undertaking Work No. [•].	The applicant should explain why it would be appropriate for the Secretary of State's consent not to be required in the event of transfer to companies that are to be stated in the order.
6.	23 (1)	Compulsory acquisition of land 23. —(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development, [or is required as replacement land]	Should the words 'and as described in the Book of Reference' be inserted into this paragraph?

7.	39	Entire article (trees and hedgerows)	Where it is known that specific hedgerows need to be removed, they should be listed in a schedule. An additional paragraph will need to be added to this article, so that any other hedgerow which is not included the schedule, can only be removed with the prior consent of the local planning authority. The applicant is directed to AN15 paragraph 22.1 and Good Practice Point 6.
8.	Req.6	(3) Any tree or shrub planted as part of the landscaping scheme that, within a period of [3] years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.	Why is a three years period specified rather than the usual 5 years? (There is no justification for this period in the EM)?

Explanatory Memorandum

Q No.	Section	Extract from draft DCO Scenarios or Description	Question/Comment
1.		General	Where precedents are used, the EM should explain and justify why following these precedents is justified in relation to the current scheme.
2.	4.11	List of consents	The dDCO includes a consent at art. 3.1 (h) relating to the Neighbourhood Planning Act 2017. This is not included on the list of consents at 4.11 of the EM.
14	4.36	4.36 Article 11 is based on article 8 of the model provisions and article 11 of the M4 order. It departs from the model provisions in that it authorises interference with any street within the Order limits, rather than just those specified in a schedule. The application of sections 54 to 106 of the New Roads and Street Works Act 1991 is also expressed to be subject to article 12, which applies and modifies that Act. The definition of 'apparatus' that was included as paragraph (4) in the model provisions is omitted because that term is already defined in article 2.	The applicant should explain why this provision should be included in the present scheme.