

**M42 Junction 6 Development Consent Order  
Scheme Number TR010027**

**8.60 Written Summary of Applicant's Case at  
the Fourth ISH (DCO 3) on 21 August 2019**

Planning Act 2008

Rule 8(1)(k)

The Infrastructure Planning (Examination Procedure)  
Rules 2010

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(Examination Procedure) Rules 2010

**M42 Junction 6**  
Development Consent Order 202[ ]

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A Precedents for Article 19 and Article 50

## 1. Introduction

- 1.1.1 This document summarises the case put forward by Highways England (the Applicant), at the fourth Issue Specific Hearing (DCO 3) on the draft Development Consent Order (DCO) for the M42 Junction 6 scheme (the Scheme) which took place at the Ramada Hotel, Church Hill Road, Solihull on 21 August 2019.
- 1.1.2 Nick Evans (NE) of BDB Pitmans, on behalf of the Applicant, apologised that the Examining Authority's (ExA) previous request for the Applicant to provide precedents for article 19 (Clearways and prohibitions) had been overlooked.
- 1.1.3 NE explained that with regards to the provision of precedents for article 50 (Amendment of local legislation) it had been the Applicant's understanding that the ExA had, in fact, requested that the Applicant provide extracts of the relevant local legislation identified in that article. NE confirmed that the Applicant had complied with this request at Deadline 3 (15 July 2019), but that the Applicant had, in any event, identified precedents for this article.
- 1.1.4 NE confirmed that precedents in respect of both articles would be provided with the Written Summary of the Applicant's Case for ISH 4 (see Appendix A).
- 1.1.5 It was also confirmed that the next iteration of the dDCO will be submitted to the ExA for Deadline 5 on 16 September 2019. This dDCO to incorporate any drafting changes arising from ISH 4.

## 2. Representations at ISH 4

### 2.1 Articles of the DCO

#### **General: 'guillotine' provisions**

- 2.1.1 NE on behalf of the Applicant noted the additional wording suggested by the ExA in item 3 of the agenda for ISH 4 for articles where the deemed consenting provisions would apply. NE submitted that the Applicant did not consider that the wording was necessary for all the potential consents and notifications that would need to be given, and that the Applicant proposed to consider this on a case by case basis, and added to the dDCO where it was appropriate to do so.
- 2.1.2 NE commented that a body such as Solihull Metropolitan Borough Council (SMBC), which is the consenting authority for many of the consents, would be aware of the nature of deemed consenting provisions.
- 2.1.3 When asked by the ExA, SMBC confirmed that it had nothing further to add on this point. Warwickshire County Council (WCC) reiterated it was happy with the deemed consent provisions and the 28-day timeframe as this was comparable to that applied by HS2.
- 2.1.4 The Gooch Estate (GE) submitted that the proposed wording suggested by the ExA would provide a sensible safeguard but that its main concern was the retention of access to its land and that if continuous access could be guaranteed then concerns regarding the deemed consenting provisions would disappear.

2.1.5 NE for the Applicant envisaged that the issue of access to GE land could be addressed as part of the ongoing discussions between the GE and the Applicant and confirmed that a draft agreement was being discussed between the parties. NE confirmed that the Applicant and the GE would provide an update on negotiations for Deadline 5.

2.1.6 The GE confirmed that if agreement on this point could be reached it was considered unlikely that additional drafting to the dDCO would be required.

**Article 12 – Street works**

2.1.7 In response to the ExA's proposed amendment to article 12 to include a list of affected streets, NE reiterated that the Applicant's view was that such a list was redundant as the list streets would be a list of all streets within the Order Limits.

2.1.8 NE confirmed, however, that the Applicant was content to list the streets in a Schedule to the dDCO if the ExA so required.

2.1.9 The ExA confirmed its request for a list of streets to be added and this was supported by SMBC, WCC and the GE.

**Article 15 – Classification of roads etc.**

2.1.10 NE on behalf of the Applicant submitted that the drafting amendments suggested by the ExA to article 15 to provide flexibility for the earlier opening of Public Rights of Way, where appropriate, was not required as the appropriate flexibility was provided by the existing drafting.

2.1.11 This view was supported by SMBC whilst WCC had no comment on this issue.

**Article 16 – Temporary stopping up and restriction of use of streets**

2.1.12 The ExA acknowledged that issues relating to access to land had been dealt with earlier (see paragraphs 2.1.4 to 2.1.6 above).

**Article 23 – authority to survey and investigate the land**

2.1.13 GE was asked by the ExA to confirm its concerns in relation to the authority to survey and investigate the land, especially in regard to land adjacent to the Order Limits. GE did and requested that the Applicant be required to give two months' notice before entering the land.

2.1.14 In response, NE reiterated the Applicant's position that it was envisaged the power would mainly be used in circumstances where species are discovered (such as Great Crested Newts) and they have a range that will take them (and any related investigative works) outside of the Order Limits.

2.1.15 Such survey works may be required both during construction and afterwards when replacement habitats are bedding in. NE explained that the Applicant could not foresee every eventuality where surveys or investigations may be required and so a power of this type was necessary and proportionate. NE submitted that such articles are commonly found in other DCOs and are also included in the model provisions.

2.1.16 NE submitted that a 14-day notice period was proportionate and that a longer notice period may result in the species disappearing before investigative works could be carried out.

- 2.1.17 The ExA asked whether a compromise could be a 14-day notice period for habitat surveys and a longer notice period for more intrusive engineering related surveys.
- 2.1.18 The GE submitted that their concerns remained and suggested further amendment to the article so that it only related to surveys required by a statutory body. NE confirmed that the Applicant would consider the suggestions raised and confirmed to the ExA that issues relating to this article could also be addressed in the ongoing discussions and agreement with the GE.
- 2.1.19 The GE concurred with this view and it was confirmed that both parties would revert to the ExA by Deadline 6 if matters remained unresolved.

#### **Article 37 – Crown Rights**

- 2.1.20 This matter had been considered the previous day at the first Compulsory Acquisition Hearing. It was confirmed that the ExA would be provided with an update on the latest position by Deadline 6

#### **Article 39 – felling or lopping of trees and removal of hedgerows**

- 2.1.21 NE confirmed that the Applicant would provide a schedule of the information requested by the ExA in relation to the felling or lopping of trees and removal of hedgerows (article 39) in order that the ExA may obtain a clearer understanding of the impact of the provision. It was agreed that the Applicant will provide this information for Deadline 6.
- 2.1.22 SMBC submitted that its Cabinet wanted to understand the different impacts of the temporary and permanent works on the trees and hedgerows and asked for a provision to be included in the parties' Statement of Common Ground. NE confirmed that Applicant would provide this information and continue to work with SMBC.

#### **Article 48 – Removal of human remains**

- 2.1.23 In response to the feedback from the County Archaeologist, the Applicant confirmed that it would amend article 48 to recognise that human remains may have an archaeological interest.

#### **Article 50 – Amendment of local legislation**

- 2.1.24 SMBC confirmed to the ExA that it had no further comments on the drafting of this article at this time.

## **2.2 Schedules to the DCO**

#### **Schedule 1 – authorised development**

- 2.2.1 In response to the ExA's concerns about the clarity of the wording in Schedule 1 regarding further development within the Order Limits, NE confirmed that the Applicant would amend the drafting to clarify that the "materially new or materially different" test would apply to all the lettered works, not only to lettered work (o). It was confirmed that this amended drafting would be included in the next iteration of the dDCO submitted at Deadline 5.

## **Schedule 2 - Requirements**

- 2.2.2 Birmingham Airport confirmed that it was broadly happy with the revisions made to the requirements that were applicable to the airport and informed the ExA that, given the technical nature of its comments, it would submit written comments to the Applicant.
- 2.2.3 NE confirmed that the Applicant would work with Birmingham Airport on its suggested amendments.

## **Requirement 7 – protected species**

- 2.2.4 SMBC confirmed that it was happy with the revised drafting made to this requirement.

## **Requirement 9 – Archaeological remains**

- 2.2.5 NE confirmed that the intention was to adopt the wording being used on the A303 Stonehenge requiring the Applicant to put forward an archaeological strategy and work in accordance with that.
- 2.2.6 This proposal was supported by SMBC. NE confirmed that the draft DCO would be amended to reflect this for Deadline 5.

## **Schedule 11 – Documents to be certified**

- 2.2.7 The GE reiterated its position that the outline Construction Environmental Management Plan (outline CEMP) to be included in the list of certified documents in Schedule 11. However, the GE explained that should the parties be able to come to an agreement about the access arrangements to the GE land then certification would likely cease to be an issue.
- 2.2.8 NE on behalf of the Applicant, explained that this issue was a matter of terminology – the outline CEMP referred to in other schemes is known as an Outline Environmental Management Plan (OEMP) in this particular case, and that the OEMP is a certified document in Schedule 11. In any event, NE submitted that the Applicant supported the GE's comments about seeking agreement between the parties.

## **3. Protective Provisions**

- 3.1.1 NE, on behalf of the Applicant, updated the ExA on the progress being made on protective provisions. NE confirmed that the Applicant had provided draft protective provisions to HS2 Limited (HS2). Whilst HS2 had still to respond, the Applicant did not think that there was anything significant between them and hoped that they would be able to reach an agreed position in good time.
- 3.1.2 NE informed the ExA that Network Rail had confirmed that it was content with the position and had contacted the Planning Inspectorate the previous day to withdraw its application.
- 3.1.3 NE confirmed that the Applicant was in ongoing discussions with Severn Trent Water, the three statutory undertakers for power (Cadent, National Grid Electricity Transmission and Western Power Distribution) and Royal Mail, as well as Esso



given that their apparatus is similar to that of a statutory undertaker and they have a pipeline affected by the scheme.

- 3.1.4 NE explained that many of the above parties are also affected by a number of different projects being carried out by the Applicant and are therefore each currently seeking consistent protective provisions across the Applicant's schemes.
- 3.1.5 NE reported that good progress was being made on these negotiations.

## 4. Other issues arising from deadline 3 submissions

- 4.1.1 In response to Mr Cotterill's question as to whether the Applicant would be carrying out a Visual Amenity Report, NE confirmed that the Applicant would not be doing so for the reasons set out in 8.3.5 of the Environmental Statement [**APP-053/Volume 6.1**].
- 4.1.2 The ExA requested that the Applicant provide an indicative plan of where the temporary satellite compounds would be and link the larger compounds to the activities in the OEMP, where possible. NE confirmed that the Applicant would provide this information for Deadline 6.
- 4.1.3 John Horton (JH), of Bickenhill and Marston Green Parish Council raised concerns about a soil stockpile at location 3/51a that the village had recently become aware of. JH asked the Applicant to consider the encircling effect this would have on Bickenhill and whether there were any further developments planned for the village. JH also submitted that the Parish Council would be interested to know the landscaping plans for the scheme and for the Parish Council to have some input into the approval of the landscaping plans.
- 4.1.4 NE explained that the soil stockpile at 3/51a had been included in the original application but that it may not have been apparent to the Parish Council given the scale of documents.
- 4.1.5 NE confirmed that the Applicant would share landscaping information with the Parish Council so that they could feed their views into the Local Planning Authority, SMBC.
- 4.1.6 In response to Camilla Burton's (CB) request for further information as regards a proposed timetable and schedule of works NE confirmed that the precise schedule of works will have to wait for the contractor to be appointed. NE explained that the Applicant has additional powers enabling it to commence some early works ahead of the DCO, for example permitted development rights to commence works on the highway. NE confirmed that the Applicant's intention, assuming consent for the DCO was granted, was to start the main works as soon as possible after consent.



- 4.1.7 In response to CB's question about the amount of notice residents would receive for the scheduled works, NE confirmed that the Applicant would review the wording in the OEMP regarding community liaison and that whilst it was not possible to provide a definite timetable of works at this stage, NE agreed that the Applicant would also look at what additional information could be provided for Deadline 6.

## Appendix A: Precedents of Use for Provisions in the dDCO

Article	Precedents for the provision in the dDCO
19 (Clearways and prohibitions)	<p>The A19/A184 Testo's Junction Alteration Development Consent Order 2018 (article 15)</p> <p>The A19/A1058 Coast Road (Junction Improvement) Order 2016 (article 14)</p> <p>The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (article 16)</p> <p>The M20 Junction 10a Development Consent Order 2017 (article 17)</p>
50 (Amendment of local legislation)	<p>The National Grid (Hinkley Point C Connection Project) Order 2016 (article 47)</p> <p>The National Grid (Richborough Connection Project) Development Consent Order 2017 (article 46)</p> <p>The Silvertown Tunnel Order 2018 (article 41)</p> <p>Similar provisions were made in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 57), and have also been made in numerous Transport and Works Act Orders and Harbour Orders.</p>