

Standing up for the Warwickshire Countryside

2 September 2019

National Infrastructure Planning  
Planning Inspectorate

**Planning Act 2008**

**Application by Highways England for Order granting Development Consent for M42  
Junction 6 Improvement, Metropolitan Borough of Solihull  
Representations due 2 September 2019 on 'ExQ2'**

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**(1) Status of the link road**

This Question quotes S.22 of the 2008 Planning Act as the basis for the link road element of the Application proposals being validly a trunk road. The suggestion is that because Highways England would be the highway authority for the road, it must be part of the 'national system of routes for through traffic in England'.

S.22.2.b states that Highways England is appointed by the Secretary of State for Transport as a 'strategic highway company'. The Secretary of State can only assign roads to a strategic highway company if they are part of 'the national system of routes for through traffic in England' and any works have to be 'extending, improving or reorganisation of that system' (Highways Act 1980 S.10). A strategic highways company has no more power to build other roads than the Secretary of State himself.

The test is not whether HE is to be the highway authority but whether the link road would form part of a system of routes for through traffic. Normally, a connection between a motorway junction built in open land (that is, not where a motorway crosses a principal road) and the nearest road operated by a local highway authority, that connection becomes a local Authority road.

That is the appropriate status for the proposed link road, because the A45 west of M42 Junction 6 was detrunked some 30 years ago along with the former A41 and A34. It was determined by the Secretary of State at the time that flows between the motorway and the urban area of Birmingham were not part of the national system of routes for through traffic any longer. The proposed link would serve the same role as the A45 between M42 Junction 6, connecting the M42 with Birmingham city and Birmingham Airport. The A45 between Junction 6 and the Clock Interchange is a principal road.

A further reason why the link road if approved would not be a valid trunk road is that it would take over and replace a section of B4438 Catherine de Barnes Lane. It would become the local road between the A45 (Clock Interchange) and Catherine de Barnes, so would have a very local function. This is a local authority road role.

It appears that there was negotiation between the Highways Agency (pre-2016) and Solihull MBC on the status of the Link Road. Solihull did not want to promote the link road itself. Unfortunately application for Solihull MBC's papers on these negotiations have at present been turned down by the Council.

The question also asks what bearing this status would have on the NSIP. If the link road were to be proceeded with, it would be as a Solihull Council highway and would need to be defined as a side road (equivalent Order in 1980 Highways Act is S.14. This would be similar to the A441 Hopwood Link that connected the Pershore Road at Hopwood to M42 Junction 2, as built in 1981. (The A441 Alvechurch Bypass south of junction 2 was added by Worcs County Council some 15 years later.)

## **(2) The provision of reasonably convenient routes where highways are stopped up**

The Question quotes S.136 of the Planning Act 2008. This requires that the Secretary of State be satisfied that 'an alternative right of way has been or will be provided' or that 'an alternative right of way is not required'. This appears to be a looser test than in S.14(6) of the Highways Act 1980 that requires that 'another reasonably convenient route is available or will be provided'. The Inspectors however say that they will report on the convenience of alternative routes proposed.

An alternative that is so long that it would be inconvenient or unattractive to users by comparison to the existing route would not be a valid 'alternative' and it is not plausible that the Secretary of State would apply a less strict test for roads promoted under NSIP procedures than under Highways Act 1980 S.14 or S.18. If necessary clarification on this can be obtained from the Department for Transport.

The current Application proposes to stop up a 'street' for which no substitute is to be provided. The B4438 is to be stopped up between points A/18 and A/19 shown on Sheet 4 of the Streets, RoW and Access Plans. See Draft Development Consent Order p64 Schedule 5 Part 2. The Order does not state the alternative route or that an alternative is not required.

The Application proposes to stop up ProW M106 north of Bickenhill and proposes a very indirect and far from convenient alternative via Church Lane, a footbridge over the A45, and a long detour back to the B4438 north of the A45. See Draft Development Consent Order p64 Schedule 5 Part 3 first box. This is not only very devious in routeing but would almost certainly mean that Bickenhill residents would continue to use the existing route, despite the loss of footpath over the eastern bridge of the Clock Interchange. It would thus create a road safety risk of some significance.

The Application also proposes to stop up part of footpath M107 between points 5/4, 5/2 and 5/6 east of the M42. See See Draft Development Consent Order p66 Schedule 5 Part 4. This is actually part of the one practicable cycle route between Knowle, Hampton in Arden and Coleshill, using Middle Bickenhill Lane and Old Station Road. No alternative is specified for that facility in the Order.

## **(3) Changes to application proposal (alternatives)**

The NSIP Examinations Guidance booklet (2015) covers changes to proposals. It states at para 111:

"Other parties can highlight those areas where they think a proposal should be changed during their discussion with the applicant in the pre-application period and also in their written representations."

This confirms that interested parties may submit proposed changes to proposals – in the case of road schemes that means alternative alignments or junction layouts.

This is not so formalised as in the Highways Act 1980 procedures (Schedule 1 Part III Section 19) but the right to submit alternatives is central to any participation in road planning.

The Question quotes Section 104 of the Planning Act 2008, but does not refer to the Guidance booklet. The suggestion that the Inspectors are not required to consider changes to the application is in conflict with the Guidance booklet para 111.

Moreover the proposals before the Examination have changed from those presented for public consultation in December 2016. The 2016 booklet (page 9) (attached extract) showed free-flow links on all four quadrants of the M42 Junc 6 gyratory. But in the NSIP Application one (east-to-south) has been deleted, and one (south-to-west) which exists is proposed to be removed.

It is reasonable that those who participated in 2016-17 should be able to propose that the application have those links included again, and the link road omitted. It was explained on the Site Visit on 4 July that they have been omitted because the link road would fulfil their roles.

The NPSNN says nothing about interested parties not being able to submit changes or realignments, and the Guidance booklet of May 2015 says that they can do so.

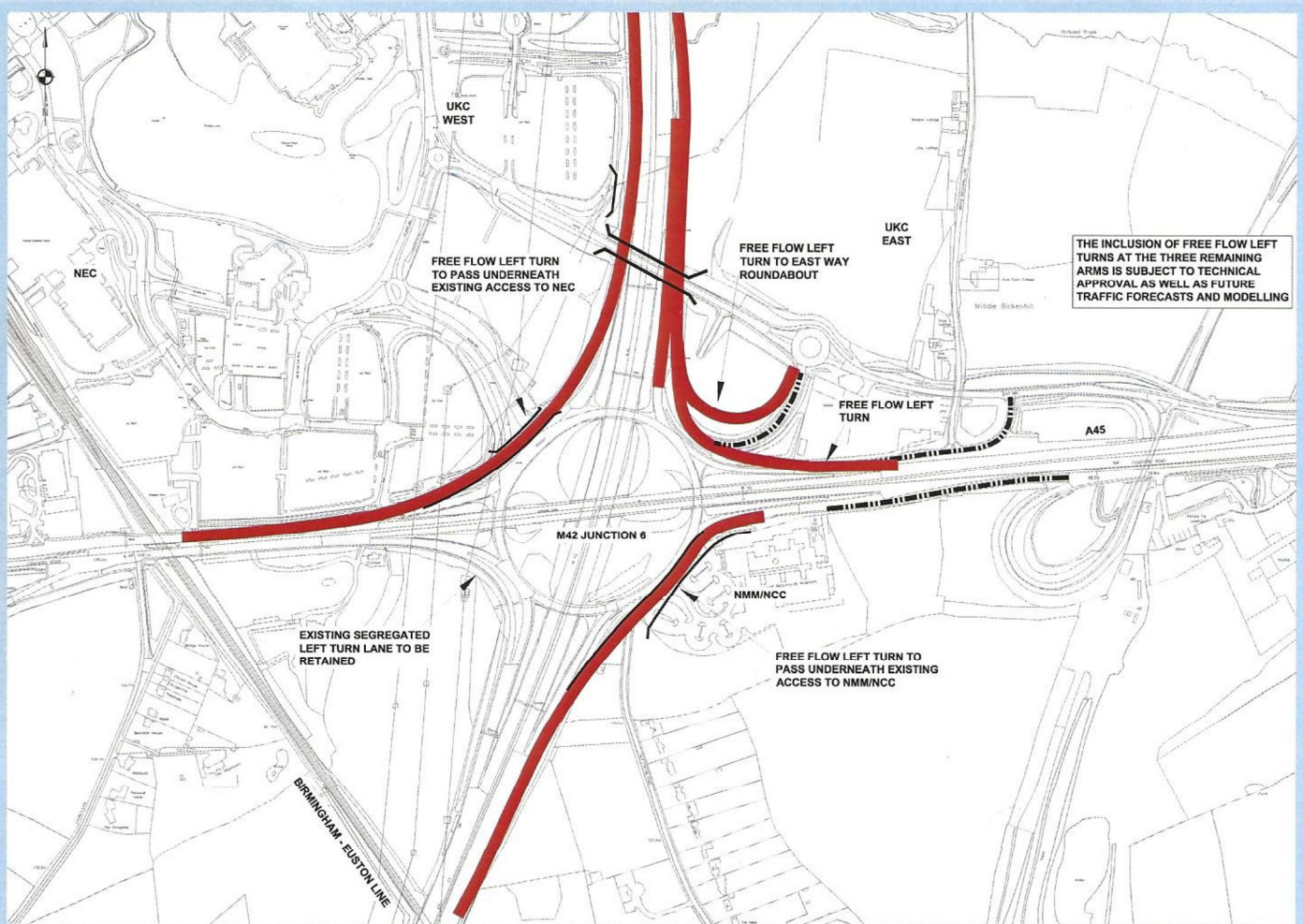
#### **(4) BMV Agricultural Land**

The NPPF and other guidance makes no distinction between Grade 1, 2 and 3a land – all have equal status as ‘Best and Most Versatile’.

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## Optional free flow left turns



Whichever option we take forward, there is the potential to maximise the improvement at M42 junction 6 even further by providing dedicated free flow left turns.

These links could effectively remove traffic from the roundabout by providing dedicated left turn links at the NEC, National Motorcycle Museum and north east quadrant of the roundabout, and could enhance the scheme in addition to reducing future congestion.

Further design, discussion and more detailed traffic modelling is required to determine the benefits of each link before they could be included.