

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

## **8.100 Applicant's Comments on any Additional Information or Submissions Received by Deadline 9**

Planning Act 2008

Rule 8 (1)(k)

The Infrastructure Planning (Examination Procedure) Rules 2010

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The Infrastructure Planning (Examination Procedure) Rules 2010

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

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**Applicant's Comments on any Additional Information or Submissions  
Received by Deadline 9**

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# 1 Applicant's Comments on any Additional Information or Submissions Received by Deadline 9

- 1.1.1 This document provides the comments of Highways England (the Applicant) on some of the responses made by Interested Parties to the Planning Inspectorate on Deadline 9, 15 November 2019 in respect of the M42 Junction 6 scheme (the Scheme) Development Consent Order (DCO) application.
- 1.1.2 The Applicant has sought to provide comments where it appeared to be helpful to the Examination to do so, for instance where a response includes a request for further information or clarification from the Applicant or where the Applicant consider that it would be appropriate for the Examining Authority (ExA) to have the Applicant's comments on a matter raised by an Interested Party in its response.
- 1.1.3 Where an issue raised within a response has been dealt with previously by the Applicant, for instance in the Applicant's own response to a question posed by the ExA in its second round of written questions or within one of the documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.4 The Applicant has not provided comments on every response made by an Interested Party to the questions raised. In some cases, no comments have been provided, for instance, because the response provided a short factual response, it reiterated previously expressed objections in principle to the Scheme or expressions of opinion without supporting evidence, or it simply contradicted the Applicant's previous response to a question without providing additional reasoning.
- 1.1.5 For the avoidance of doubt, where the Applicant has chosen not to comment on matters raised by Interested Parties this is not an indication that the Applicant agrees with the point or comment raised or opinion expressed in that response.

**Table 1-1 Applicant's comments**

Submitted by	Title	Comments	
Open Spaces Society	Additional representation responding to Highways England Submission on Actions Arising from hearing on 1 October 2019	Part 2	<p><b>Open Spaces Society comment:</b></p> <p>In the most recent response from the Applicant , the section in Appendix A is useful in understanding this design issue. It appears an extra 115mm is necessary to increase the width of the south verge to the minimum allowed by the Design Manual for Roads and Bridges, TA90/05. The widths proposed at present are: North verge 1.754m North free-flow carriageway 3.035m North carriageway 6.927m Central reservation 2.821m South carriageway 6.941m South verge 1.185m. Thus the total non-carriageway width is 5.76m, of which about 2m would be allocated for vehicle restraint barriers at 4 places. The road run slightly skew beneath the viaduct, and the free-flow slip road diverges at this point, but it appears to the Society that further detailed work would provide a solution. Flexibility should be exercised as indicated by the Design Manual:</p> <p>"As with all highway design, there is a need to balance issues of safety and practicality. This Advice Note provides 'preferred' and 'acceptable' minimum values based on best available evidence, but in exceptional circumstances it may be appropriate to apply some flexibility in using these figures over short distances and where other measures are used such as 'SLOW' markings to encourage lower speeds." The provision of a separate dedicated underpass does not appear to have been investigated.</p> <p><b>The Applicant response:</b></p> <p>The Applicant notes the Open Spaces Societies comments in relation to the Underpass beneath Airport Way, in particular that "an extra 115mm is necessary to increase the width of the south verge to the minimum allowed by the Design Manual for Roads and Bridges, TA90/05". The Applicant raised in its representation that this verge may be subject to other ancillary highway features such as signage and vehicle restraint systems.</p> <p>Whilst any ancillary highway features are subject to confirmation at detailed design, these features would place additional constraints on the available space for a footway and would result significantly less than 1.3m being available in those areas for pedestrians. This would result in a footway which would not provide appropriate passing points and would not comply with the guidelines set by the Government for inclusive mobility.</p>

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Open Spaces Society	Additional representation responding to Highways England Submission on Actions Arising from hearing on 1 October 2019	Part 4	<p><b>Open Spaces Society comment:</b></p> <p>The applicant has now produced a detailed plan and section of the area where an overbridge with a supporting column could be provided. With regard to the Airport Safety Zone, there appears to be something of a dual standard being applied. The existing ground level is depicted as already infringing the Zone by about 8 m. This implies a small, but recognised, risk that an aircraft deviating from the normal path could contact the ground. The disaster at Kegworth , 30 years ago, shows the potentially catastrophic effect of an abrupt change of ground profile. It is appears unlikely a footbridge within the cutting would cause a significant increase in the risk. As a three-dimensional design problem, the constraints have been set out, but no options have been worked through to the stage that the proposed bridge should be dismissed.</p> <p><b>The Applicant response:</b></p> <p>As part of the Actions Arising out of ISH on Living Conditions on 1 October 2019 for Deadline 7 [REP7-011/Volume 8.86], the Applicant set out the constraints that need to be considered if a pedestrian footbridge were to be installed to serve Public Right of Way M112. Based upon these assessments, it was concluded that a footbridge could not be implemented without either compromising Birmingham Airport's Safeguarding Zones, requiring departures from standard on the mainline dual carriageway link road or alternatively implementing a material change to the draft Development Consent Order. As a consequence, the Applicant remains of the view that the alternative route provided in this application is, on balance, the most appropriate solution having been developed in consultation with Solihull Metropolitan Borough Council.</p>
Cadent Gas	Comments on the Panel's Preferred dDCO or dDCO commentary		<p><b>Cadent Gas comment:</b></p> <p><b>[Cadent Gas submitted representations at Deadline 9 relating to their preferred form of protective provisions]</b></p> <p><b>The Applicant response:</b></p> <p>The Applicant refers Cadent Gas to the Protective Provision Note [Volume 8.101] submitted by the Applicant at Deadline 10.</p>

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Cadent Gas	Comments on the Panel's Preferred dDCO or dDCO commentary	4.3	<p><b>Cadent Gas comment:</b></p> <p>Cadent's submission of 11 October 2019 still stands. In this submission, Cadent outlines the amendments that are required to the dDCO to address the fact that there are currently (i) insufficient rights for the relocation of the AGI, (ii) insufficient rights of access to the AGI, and (iii) insufficient rights over gas pipelines. Cadent submission of 11 October 2019 outlines the implications if insufficient land and rights are included in the dDCO. In the event that a side agreement is concluded before the close of Examination, then Cadent will provide the Examining Authority with a further update in respect of these submissions.</p> <hr/> <p><b>The Applicant response:</b></p> <p>So far as points (i) and (ii) are concerned, the Applicant addressed this position at the Compulsory Acquisition hearing on 22 October 2019, and at action 14 of its Actions Arising out of ISH on Compulsory Acquisition and Temporary Possession on 22 October for Deadline 8 [REP8-006/ Volume 8.93]. As stated in <b>Volume 8.93</b>,</p> <p style="padding-left: 40px;">“Cadent has advised the Applicant that the detailed design would not be complete until after the recommendation, and so the Applicant and Cadent will update the Secretary of State (SoS) at that stage.</p> <p style="padding-left: 40px;">For the purposes of the ExA's recommendation and in accordance with Section 127 of the Planning Act 2008, the Applicant considers that the dDCO can be made without causing a serious detriment to Cadent's undertaking. This is because the protective provisions set out in Schedule 10 to the dDCO require the Applicant to afford to Cadent sufficient facilities and rights for the construction and maintenance of their relocated AGI.”</p> <p>The terms of an agreement under which the Applicant and Cadent would acquire the necessary rights to relocate the AGI have now been agreed, and it is in the process of execution.</p> <p>So far as point (iii) is concerned, as indicated at the Compulsory Acquisition Hearing on 22 October, Cadent has misunderstood the effect of Schedule 7 to the dDCO, which sets out the purposes for which rights may be acquired rather than, as is sometimes the case in other DCOs, specifying precisely which rights may be acquired. In addition, as Sch. 7 allows rights to be acquired for the purpose of “<i>construct, operate, access and maintain</i>” and the definition of “<i>maintain</i>” in the dDCO (which applies to Sch.7) includes “<i>inspect, repair, adjust, alter, improve,</i></p>

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		<p><i>landscape, preserve, remove, reconstruct, refurbish or replace</i>", the purpose for which rights may be acquired can be read as covering "<i>construct, operate, access, inspect, repair, adjust, alter, improve, landscape, preserve, remove, reconstruct, refurbish [and] replace</i>".</p> <p>This means that the rights sought by Cadent are covered by the purposes set out in Schedule 7, as follows:</p> <table border="0" data-bbox="817 550 1635 1420"> <thead> <tr> <th data-bbox="922 550 1193 582"><b>Cadent right sought</b></th> <th data-bbox="1240 550 1417 582"><b>M42 Purpose</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="922 614 972 646">Lay</td> <td data-bbox="1240 614 1368 646">Construct</td> </tr> <tr> <td data-bbox="922 678 999 710">Relay</td> <td data-bbox="1240 678 1635 710">Adjust/Alter/Replace = maintain</td> </tr> <tr> <td data-bbox="922 742 1048 774">Construct</td> <td data-bbox="1240 742 1368 774">Construct</td> </tr> <tr> <td data-bbox="922 805 1016 837">Inspect</td> <td data-bbox="1240 805 1352 837">Maintain</td> </tr> <tr> <td data-bbox="922 869 1032 901">Maintain</td> <td data-bbox="1240 869 1352 901">Maintain</td> </tr> <tr> <td data-bbox="922 933 1010 965">Repair</td> <td data-bbox="1240 933 1352 965">Maintain</td> </tr> <tr> <td data-bbox="922 997 1016 1029">Protect</td> <td data-bbox="1240 997 1496 1029">Preserve = maintain</td> </tr> <tr> <td data-bbox="922 1061 976 1093">Use</td> <td data-bbox="1240 1061 1346 1093">Operate</td> </tr> <tr> <td data-bbox="922 1125 1030 1157">Replace</td> <td data-bbox="1240 1125 1352 1157">Maintain</td> </tr> <tr> <td data-bbox="922 1189 1014 1220">Renew</td> <td data-bbox="1240 1189 1503 1220">Refurbish = maintain</td> </tr> <tr> <td data-bbox="922 1252 1077 1284">Supplement</td> <td data-bbox="1240 1252 1635 1284">Adjust/Alter/improve = maintain</td> </tr> <tr> <td data-bbox="922 1316 1084 1348">Connect into</td> <td data-bbox="1240 1316 1635 1348">Adjust/alter/improve = maintain</td> </tr> <tr> <td data-bbox="922 1380 1032 1412">Remove</td> <td data-bbox="1240 1380 1352 1412">Maintain</td> </tr> </tbody> </table>	<b>Cadent right sought</b>	<b>M42 Purpose</b>	Lay	Construct	Relay	Adjust/Alter/Replace = maintain	Construct	Construct	Inspect	Maintain	Maintain	Maintain	Repair	Maintain	Protect	Preserve = maintain	Use	Operate	Replace	Maintain	Renew	Refurbish = maintain	Supplement	Adjust/Alter/improve = maintain	Connect into	Adjust/alter/improve = maintain	Remove	Maintain
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		<p>Decommission            Alter/Remove = maintain</p> <p>Render unusable        Alter/Adjust/remove = maintain</p> <p>access                    Access</p> <p>It is therefore clear that the dDCO authorises the acquisition of the rights over gas pipelines sought by Cadent.</p>
Philip O'Reilly	Responses to any Further Information Requested by the Panel	<p>18        <b>Phillip O'Reilly Comment:</b></p> <p>[Mr O'Reilly queried the calculations underlying the lighting technical note and Highways England's submissions in relation to the likelihood of lighting Barber's Coppice Roundabout and Bickenhill Roundabout].</p> <hr/> <p><b>The Applicant response:</b></p> <p>The Applicant can add further clarification to its response to Actions Arising out of the ISH on the dDCO 4 [REP8-007/Volume 8.94], the lighting assessments made in the Lighting Technical Note were conducted during preliminary design. This preliminary design layout was different to the design that is now presented in this dDCO and which is being referred to by Mr Philip O'Reilly in his representations. The distances used cannot therefore be compared with each other in the way that Mr O'Reilly seeks to do. As previously stated, these lighting assessments were prepared for the purpose of undertaking the environmental assessments; they are not definitive statements of whether particular junctions will be lit.</p> <p>The Applicant, states in its responses in document 8.94, that the BCR scores will become more refined as the design progresses through the detailed design phase when more accurate costs are provided for the lighting infrastructure and updated accident data is provided. However, the BCR is not a definitive tool for determining the need to provide street lighting infrastructure, and only provides guidance in justifying whether street lighting is required. Other factors including environmental impacts, the road safety audit and the view of the local highway authority, will also be taken into account.</p>

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			<p>The Applicant notes that Mr O'Reilly has queried the reference to ILP PLG02 in <b>Volume 8.94</b>. Whilst this is not directly referred to by name in the Lighting Technical Note [<b>REP2-021/Volume 8.23</b>], it is referred to in British Standard (BS) - BS 5489-1: 2013 - Code of practice for the design of road lighting - Part 1: Lighting of roads and public amenity areas, under section 7.5. This British Standard has been referenced in the Lighting Technical Note.</p>
Philip O'Reilly	Responses to any Further Information Requested by the Panel	4.2	<p><b>Philip O'Reilly comment:</b></p> <p>Lighting to the southern and western extents of a predominantly rural landscape does not mean that "the character area within which the new Barber's Coppice roundabout would emerge – is already disrupted by existing lighting". There is no street lighting outside my property. There is no street lighting visible from viewpoint EE. There is no street lighting in the near vicinity of my property. The proposed location for 'Barber's Coppice Roundabout' is currently open greenbelt land which is unlit. It is a predominantly rural landscape into which HE are proposing to install lighting.</p> <p><b>The Applicant response:</b></p> <p>Barber's Coppice roundabout largely sits within Landscape Character Area (LCA) 2, as illustrated in Figure 8.1 Viewpoint Plan and Landscape Character Areas [<b>APP-085/Volume 6.2</b>]. As can be seen from Figure 8.1, LCA2 extends over many square kilometres and the ES takes into account the impact on this LCA in its entirety and not just the area to which Mr O'Reilly refers. Chapter 8 Landscape [<b>APP-053/Volume 6.1</b>] of the Environmental Statement outlines the baseline for this LCA as generally a sparsely settled landscape containing few scattered settlements and farmsteads. There is little influence from the nearby urban expanses and transport corridors within the LCA, with the exception of the southern and western extents near to the M42 and A45 corridors where extensive road layouts, lighting and overhead electricity transmission infrastructure disrupt the rural character. Barber's Coppice Roundabout would be located within the south west extents of this LCA.</p>

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Philip O'Reilly	Responses to any Further Information Requested by the Panel	4.3	<p><b>Philip O'Reilly comment:</b></p> <p>The views from my property to the north-east, the east and the south-east will be dominated by the proposed Mainline link road, the proposed realigned Catherine de Barnes Lane, the proposed overbridge, the proposed 'Barber's Coppice Roundabout' and the proposed Merge Slip from 'Barber's Coppice Roundabout' to the proposed Mainline link. However, HE did not think a visualisation of the landscape and visual impact on my property would be representative "to illustrate how the Scheme would likely appear in close proximity, mid-distant and long-distance views across the study area". Instead HE have provided a visualisation from viewpoint R, which shows a close-proximity view of the lower edge of the 'Catherine de Barnes South Overbridge'; a view that does not show how the overbridge sits within the landscape.</p> <ul style="list-style-type: none"> <li>• It is beyond belief that none of the viewpoints HE have chosen as "representative" include a visualisation of 'Barber's Coppice Roundabout' and the surrounding area.</li> </ul> <p><b>The Applicant response:</b></p> <p>Visualisation locations are chosen to be representative and proportional to the assessment of a proposed scheme and to illustrate how the Scheme would likely appear in close proximity, mid-distant and long-distance views across the study area. These are agreed with SMBC. A visualization at viewpoint EE would not provide any further understanding of the impact of the Scheme in this location, as the landscape assessment as presented within Chapter 8 [APP-053/Volume 6.1] of the Environmental Statement already states a large adverse effect at this viewpoint would occur.</p>
Philip O'Reilly	Responses to any Further Information Requested by the Panel	4.4	<p><b>Philip O'Reilly comment:</b></p> <ul style="list-style-type: none"> <li>• HE have provided no response to the suggestion of reducing speed limits on both the southernmost section of the 'realigned Catherine de Barnes Lane' and the 'Diverge Slip from proposed Mainline link to Bickenhill Roundabout' to 40mph.</li> </ul>

Submitted by	Title	Comments
		<p><b>The Applicant response:</b></p> <p>Representations relating to the reduction of speed limits in the draft order were submitted by numerous parties at Deadline 7 and the Applicant refers Mr O'Reilly to the Applicant's Response to the Catherine-de-Barnes Resident Association submitted as part of any Additional Information or Submissions Received by Deadline 7 [REP-008/Volume 8.95].</p>
Philip O'Reilly	Responses to any Further Information Requested by the Panel	<p>4.5</p> <p><b>Philip O'Reilly comment:</b></p> <ul style="list-style-type: none"> <li>• Contrary to their response above, Highways England have not provided a response to this point in Volume 8.80.</li> </ul> <p><b>The Applicant response:</b></p> <p>Noting the omission correctly picked up by Mr O'Reilly, the Applicant's response to this point is as follows.</p> <p>The Applicant disagrees that it has used a flawed noise model to predict the future operational traffic noise levels at noise sensitive receptors.</p> <p>The operational traffic noise assessment and noise models have been prepared in accordance with the standard UK prediction methodology set out in the 'Calculation of Road Traffic Noise' (CTRN) as prescribed in the 'Design Manual for Roads and Bridges' Volume 11 Section 3 Part 7 HD 213/11 and the relevant government policy: National Policy Statement for National Networks.</p> <p>CRTN does not specifically include the prediction of noise from events that may arise at roundabouts e.g. acceleration, deceleration, braking or tyre roll during cornering. However, for the prediction of future operational traffic noise levels at noise sensitive receptors, the free flow speeds for Catherine-de-Barnes Lane have also been assigned to the roundabout junction area to the south of Four Winds. This results in higher predicted noise levels in the Do-Something scenario (i.e. with the Scheme in operation) and is therefore a conservative approach.</p>

Submitted by	Title	Comments	
Solihull Metropolitan Borough Council (SMBC)	Comments on the Panel's Preferred dDCO or dDCO commentary	R9	<p><b>SMBC comment:</b></p> <p>Whilst an archaeological Written Scheme of Investigation (WSI) has been included in Appendix 7.1 of the Environmental Statement, we would highlight that this only covers the arrangements for archaeological evaluation by trial trenching; it does not include any provision for undertaking any further archaeological works should archaeological features be identified during that trial trenching, or provision for alternative approaches to assessing and mitigating archaeological impacts if these are considered more appropriate.</p> <hr/> <p><b>The Applicant response:</b></p> <p>The Applicant confirms that the WSI submitted under Requirement 9 will include provision for undertaking those further works and alternative approaches.</p>