



The Planning Inspectorate

Planning Act 2008 – Sections 91, 92 and 93; and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 14

Application by Highways England for an Order Granting Development Consent for the A57 Link Roads

Agenda and arrangements for Issue Specific Hearing 1

In its letter dated 16 December 2021 the Examining Authority (ExA) notified the times, dates, and locations of hearings to be held from 8 to 11 February 2022:

<https://infrastructure.planninginspectorate.gov.uk/document/TR010034-000756>

The ExA has considered written submissions and requests to make oral representations. **The ExA did not receive requests to be heard at Open Floor Hearing 2 and Compulsory Acquisition Hearing 2 in accordance with the above letter and therefore those hearings will not be held during February 2022.**

This document provides the agenda for Issue Specific Hearing 1. The agenda is subject to change at the discretion of the ExA, although in making changes the ExA will be mindful of the need to provide opportunities for fair involvement to all.

The hearing will not cover all matters that the ExA is considering. If a topic is not included in a hearing it is because the ExA is satisfied that the issues can be fully considered through written submissions and responses to its written questions. The ExA will ensure that each party has a fair opportunity to put its case.

If you would like to observe the hearing in real time, then you will be able to access a public livestream on the National Infrastructure Planning website. A recording of the hearing will be published on the website as soon as is practicable:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-west/a57-link-roads-previously-known-as-trans-pennine-upgrade-programme>

Issue Specific Hearing 1 is being held for the ExA to examine the draft Development Consent Order (dDCO) and invite parties to make oral representations about the dDCO.

The Development Consent Order is the Order which the Secretary of State would make if they decided to grant consent for the application. Irrespective of its recommendation, the ExA is required to present a recommended Development Consent Order to the Secretary of State. Discussion about the specifics of the Development Consent Order does not indicate that the ExA has made up its mind about the application.

The hearing will be of a technical nature and will be based on the specific wording of the dDCO [[REP3-002](#)] and the Explanatory Memorandum [[REP3-003](#)].

Technical dDCO drafting considerations relating to Compulsory Acquisition and the Temporary Possession of land will be examined. Individual Affected Person's

concerns about their land and rights will be addressed in the Compulsory Acquisition Hearings.

Discussion at this hearing is “*without prejudice*”. This means that parties may make contributions to improve the quality of the dDCO without invalidating their own positions of support or opposition to the Proposed Development as a whole.

Participation

The following parties have registered to make an oral submission or are invited to participate by the ExA:

- The Applicant
- Tameside Metropolitan Borough Council
- Derbyshire County Council
- High Peak Borough Council
- Peak District National Park Authority
- Environment Agency
- CPRE Peak District and South Yorkshire
- Sharefirst My Journey to School
- Anthony Rae

An Arrangements Conference will be held for parties that have registered to make an oral submission or that the ExA has invited to participate. Those parties should please join the Arrangements Conference promptly using the instructions that are sent to them.

The Arrangements Conference will be hosted by the Case Team and will cover housekeeping arrangements and allow for questions to be asked about the hearing arrangements. The ExA will not be present and there will not be a public livestream of the Arrangement Conference.

Subject to the ExA’s power of control over the conduct of the hearings, it will invite relevant parties to make an oral submission at the appropriate point in the agenda.

The hearing and Arrangements Conference are being held in Microsoft Teams. Information on how to participate is provided in Advice Note 8.6:

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-8-6-virtual-examination-events/>

AGENDA FOR ISSUE SPECIFIC HEARING 1

10am on Tuesday 8 February 2022 and, if required, Friday 11 February 2022.

Arrangements conference from 9.30am.

Item 1	WELCOME, OPENING REMARKS, INTRODUCTIONS, AND HOUSEKEEPING
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	<p>The ExA will welcome participants, lead introductions, and go through some housekeeping matters.</p> <p>The public livestream and recording will start.</p>
Item 2	<p>THE OVERALL STRUCTURE OF THE DDCO</p> <p>The ExA will invite the Applicant to take up to 10 minutes to provide an overview of:</p> <ul style="list-style-type: none"> • its overall approach for the dDCO • a brief description of the structure of the dDCO, including the Schedules, explaining why each section is required • the role of the Explanatory Memorandum <p>The ExA may ask questions.</p>
Item 3	<p>GENERAL MATTERS, OTHER CONSENTS, AND PREAMBLE</p> <p><u>Other consents</u></p> <p>The Applicant did not provide an updated Consents and Agreements Position Statement [REP1-009] at Deadline 3.</p> <p>a) Please could the Applicant provide an updated Consents and Agreements Position Statements at Deadlines 5, 7 and 9?</p> <p><u>Letter of no impediment from Natural England</u></p> <p>Natural England [REP2-054 Q1.4] said that before issuing a letter of no impediment, it needed the Applicant to submit satisfactory relevant European and Protected Species Licensing applications providing their findings of ongoing survey work and any additional bat survey work required by Natural England’s bat specialists following their current review of the bat survey reports.</p> <p>b) Please could the Applicant provide an update? Has it agreed with Natural England which applications will be made?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>
Item 4	<p>PARTS 1 TO 7</p> <p><u>Article 2(1) Interpretation - commence</u></p> <p>Pre-commencement activities are those that are excluded from the definition of “<i>commence</i>”. The Applicant [REP2-021 Q1.7] said that pre-commencement operations are minor and are either de minimis or have minimal potential for adverse effects.</p> <p>a) Please could the local authorities comment?</p> <p>The Applicant [REP2-021 Q1.7] said that archaeological investigations would be in accordance with the Written Scheme of Investigation [REP1-034]. It also said that the Environmental Management Plan (EMP) [REP3-010] and Register of Environmental Actions and Commitments (REAC)</p>

[[REP1-037](#)] set out pre-commencement surveys, operations and details of how the actions would be implemented.

b) Given that the activities are pre-commencement, please could **the Applicant** comment on whether this mitigation is secured by the DCO?

The ExA is considering whether to add provisions to the DCO to secure mitigation for pre-commencement activities and, if so, what form that might take. The [A38 Derby Junctions recommended DCO](#) included mitigation for pre-commencement activities that were identified by the Applicant on that project. It includes a definition of "*preliminary works*" to Requirement 1, linked to the preliminary works mitigation set out in the EMP. Requirement 1 also identifies "*preliminary works*" as a "*part*", with provisions being added to Requirements 3, 8, and 14 for relevant mitigation measures to be produced "*for that part*" in advance. Other "*for that part*" mitigation was already identified under Requirements 5, 9 and 16. In addition "*other than the preliminary works*" was added to Requirements 5, 11 and 13 to identify mitigation that would not be required during the preliminary works, consistent with the EMP.

c) Please could **the Applicant** comment on the A38 Derby Junctions approach, in case the ExA decides that additional provisions are required?

Article 2(1) – cycle track

The Applicant [[REP2-021](#) Q1.8] said that a "*cycle track*" is a way over which the public have a right of way on foot.

d) Please could **the Applicant** update Article 2(1) to make that clear?

Article 2(3) – rights over land

The Applicant [[REP2-021](#) Q1.11] said that Article 2(3) goes further than Article 2(2) to deal with rights granted to statutory undertakers. The main difference appears to be to allow rights to be granted directly by those with an interest in the land rather than via the undertaker.

e) To improve precision, could **the Applicant** update Article 2(3) to limit the application to statutory undertakers?

Article 3(3) - Development consent etc. granted by the Order

Replying to the ExA's query whether this provision is necessary, the Applicant [[REP2-021](#) Q1.11] said that the activities would not ordinarily be the subject of further control.

f) Please could **the Applicant** set out whether anything in the dDCO would prevent the listed operations? If not, then why is the provision necessary?

The provision would appear to have the effect of no mitigation being secured for the listed activities.

g) Please could **the Applicant** comment? Would it be necessary to remove Article 3(3) if, as suggested above, provisions were added to the DCO to secure mitigation for pre-commencement activities?

Article 5(1) - Maintenance of drainage works

The Applicant [[REP2-021](#) Q1.13] said that responsibility for maintaining the drainage of any land while the Applicant holds it in temporary possession would lie with the landowner unless otherwise agreed.

- h) Please could **the Applicant** suggest how the DCO could provide the existing landowner with the rights needed to do that? Or should the Applicant have responsibility for maintaining the drainage of any land while it holds it in temporary possession?

Article 7(a) – Limits of deviation

The Works Plans [[REP1-002](#)] state that “*The linear works for the highway carriageway alignment have a horizontal deviation of up to a maximum of 5m within the DCO boundary or highway work limit of deviation (where not coincident with the DCO boundary).*”

- i) Please could **the Applicant** clarify how Rochdale Envelope allowances have been made for this amount of deviation in the Environmental Statement (ES). For example, in relation to the assessment of noise, vibration and air quality effects at residential properties or other receptors, particularly those in closed proximity to the linear works.

The Applicant [[REP2-021](#) Q1.13] confirmed that a vertical limit of deviation of 0.5m provided for bunds, verges, carriageways, and other features. Few spot heights are provided in the Works Plans to provide a basis for compliance with this to be assessed, for the ExA to be able to conclude that an adequate description of the Works has been provided, or to ensure that the Works are secured consistent with the assumptions in the ES.

- j) Please could **the Applicant** add enough spot heights on the carriageways and other features to ensure that the Works are adequately defined?
- k) Please could **the Applicant** clarify how the heights, location, and extent of cuttings and embankments are secured, consistent with the ES?

Article 10 – Street Works

Derbyshire County Council [[REP2-051](#) Q1.15] said that it operates a permit scheme and requested three months’ notice of any works.

- l) Please could **the Applicant** respond? Would the dDCO disapply the permit scheme?

Article 12(5) - Construction and maintenance of new, altered or diverted streets and other structures – responsibility for maintenance

- m) Please could **the Applicant** and **Derbyshire County Council** update on any requirements for Derbyshire County Council to maintain any highway works that would be constructed as part of the Works?

Article 13(9) - Classification of roads etc. - Public rights of way

The Applicant [[REP2-021](#) Q1.18] said that alternative locations for public rights of way would not result in any materially new or worse effects.

- n) Please could **the Applicant** clarify how it is secured that there would not be any materially new or worse effects? Could a provision be added to Article 13(9)?

	<p><u>Articles 14(6), 18(11), 19(8), 21(6) – Deemed consent</u></p> <p>The ExA is concerned that there is the potential for a lack of awareness about a guillotine being in place when the consents would be applied for. It is beneficial for consents to be properly considered and, therefore, for them not to be given by default unless reasonable measures have been taken. The ExA is concerned that the 28-day period appears to be less than some parties are comfortable with and is minded that highlighting the guillotine in any application for consent would be helpful for ensuring that the timescale for dealing with consents is reasonable. The Applicant does not appear to have provided a compelling reason why providing a statement to highlight the guillotine would cause it difficulty.</p> <p>o) Please could the Applicant and the local authorities comment? Is this a matter that the parties should take away to discuss and attempt to seek agreement? Please could an update be provided for Deadline 5, on Wednesday 23 February 2022?</p> <p><u>Article 15(2)(b) - Permanent stopping up and restriction of use of highways, streets and private means of access - Temporary alternative routes for private means of access dDCO reference</u></p> <p>p) Please could the Applicant clarify whether private means of access would be <u>maintained</u>?</p> <p><u>Article 28 - Application of the 1981 Act</u></p> <p>The Applicant [REP2-021 Q1.25] explained that the powers to permit land/ rights acquired by the undertaker to vest directly in third parties relates to powers invested in statutory undertakers where their apparatus is being relocated.</p> <p>q) To improve precision, could the Applicant update Article 28 to limit the application to statutory undertakers?</p> <p><u>Article 32(12) - Temporary use of land for carrying out the authorised development; Article 33(12) - Temporary use of land for maintaining the authorised development dDCO reference</u></p> <p>r) The ExA is considering whether, to ensure that the interference with human rights would be proportionate and justified, it should be secured that the part of the authorised development specified in relation to that land in column (3) of Schedule 7 must be completed within a reasonable timescale.</p> <p>s) Please could the Applicant comment and suggest appropriate wording?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>
	<p>Break</p>
<p>Item 5</p>	<p>SCHEDULES 1 AND 2</p> <p><u>Further development</u></p> <p>The Applicant [REP2-021 Q1.29] has explained its approach regarding the items of “<i>further development</i>”. The ExA is concerned that not allocating</p>

the “*further development*” activities to relevant Works means that their locations are uncertain and the ExA remains concerned about consistency between what has been assessed and what is secured.

t) Please could **the Applicant** suggest how it can be secured that “*further development*” activities (a) to (p) would not give rise to any materially new or worse effects?

Requirements 3-11 - Provisions for consultation and agreement

Tameside Metropolitan Borough Council [[REP2-056](#) Q1.32] made a number of suggestions about where it might be helpful to add provisions for consultation or agreement to be required with relevant bodies. The Applicant [[REP3-021](#) page 45] responded at Deadline 3.

u) Does **Tameside Metropolitan Borough Council** have any outstanding concerns about the provisions for consultation or agreement?

Requirement 4 – Requirement 4(1) and (2) second iteration EMP

The Applicant [[REP2-021](#) Q1.33] said that it had no objection to there being a requirement for consultation on the second iteration EMP with the local highway authorities and the Environment Agency, as well as with the relevant planning authority, should the local authorities and Environment Agency require this.

v) Please could the **local authorities** and the **Environment Agency** comment?

The ExA [[PD-009](#) Q1.33] suggested that provisions be added for the second iteration EMP to be required to:

- incorporate the measures for the construction stage referred to in the ES as being incorporated in the EMP
- contain a record of the consents, commitments and permissions resulting from liaison with statutory bodies
- be kept up to date with any material changes during construction and for consultation to be required on those changes

The Applicant [[REP2-021](#) Q1.33] responded that those are covered by the DMRB. The ExA considers that the provisions are key to the proper implementation of the EMP and therefore seeks certainty that they will be followed. Their inclusion in Requirement 4 appears to be supported by Tameside Metropolitan Borough Council [[REP2-056](#) Q1.33] and Derbyshire County Council [[REP2-051](#) Q1.33].

w) Please could **the Applicant** set out any reasons why the addition of appropriate provisions would cause any difficulty?

x) Please could **the Applicant** suggest appropriate wording?

Requirement 4(2)(c) - second iteration EMP - Working hours

The ExA [[PD-009](#) Q1.34] suggested that the following be added after Requirement 4(2)(c):

- *“Provided that written notification of the extent, timing and duration of each activity is given to relevant local authorities in advance of any works that are to be undertaken outside of the specified hours,*

except for any emergency works, which are to be notified to the relevant local authorities as soon as is practicable."

- *"Any other work carried out outside the specified working hours or any extension to the working hours will only be permitted if there has been prior written agreement of the relevant environmental health officer and provided that the activity does not give rise to any materially new or materially worse environmental effects in comparison with those reported in the environmental statement."*

Their inclusion appears to be supported by Derbyshire County Council [[REP2-051](#) Q1.34]. The Applicant raised concerns about restrictions to their flexibility.

- y) Please could **the Applicant** provide more detail on their concerns and suggest how the wording might be adjusted?
- z) Please could the **local authorities** comment?

Requirement 4(4) and 4(5) – third iteration EMP.

The ExA [[PD-009](#) Q1.35] suggested that provisions be added for the third iteration EMP to be required to:

- be submitted to and approved in writing by the Secretary of State
- be consulted on with relevant planning authorities, the local highway authorities and the Environment Agency
- be substantially in accordance with the measures for the management and operation stage in the first iteration EMP
- incorporate the measures for the management and operation stage referred to in the ES as being incorporated in the EMP

The Applicant [[REP2-021](#) Q1.35] responded that those are covered by the DMRB. The ExA considers that the provisions are key to the proper implementation of the EMP and therefore seeks certainty that they will be followed. Their inclusion in Requirement 4 appears to be supported by Tameside Metropolitan Borough Council [[REP2-056](#) Q1.35], Derbyshire County Council [[REP2-051](#) Q1.35], and the Environment Agency [[REP2-052](#)] Q1.35], except that they didn't comment in relation to the Secretary of State.

- aa) Please could **the Applicant** suggest appropriate wording?
- bb) Please could the **local authorities** comment?

Requirement 5 – Landscaping

cc) Please could the **local authorities** comment on whether it is sufficient to require the landscaping to be in accordance with an approved scheme? Or should the landscaping scheme be approved at a specified time, for example before pre-commencement works or before construction works commence?

- dd) Please could **the Applicant** comment?

Requirement 6 – Contaminated land and groundwater

The Environment Agency [[REP2-052](#) Q1.32] said that it wished to be consulted on any EMP detail to ensure mitigation for pollution prevention impacts of the construction are considered for the water environment.

The Environment Agency [[REP3-037](#)] made recommendations regarding model procedures and good practice for contamination.

The ExA [[PD-009](#) Q1.39] and the Environment Agency [[REP2-052](#) Q1.39] suggested additional provisions.

ee) Please could **the Applicant** comment and suggest how Requirement 6 should be updated.

ff) Please could the **Environment Agency** comment?

Requirement 7 – Protected species

The ExA [[PD-009](#) Q1.40] and Natural England [[REP2-054](#) Q1.40] suggested additional provisions.

gg) Please could **the Applicant** comment and suggest how Requirement 7 should be updated?

Requirement 8 - Surface and foul water drainage

Tameside Metropolitan Borough Council [[REP2-056](#) Q1.41] and Derbyshire County Council [[REP2-051](#) Q1.41] suggested that the local highways authorities should be consulted.

hh) Please could **the Applicant** update Requirement 8 accordingly?

The Environment Agency [[REP3-037](#)] commented in relation to the Environmental Permitting Regulations.

ii) Are **the Applicant** and the **Environment Agency** satisfied that the matters raised are covered by the Environmental Permitting Regulations and that no update is needed to Requirement 8?

Requirement 9(2) – Flood risk assessment

The Environment Agency [[REP3-037](#)] recommended that they should be consulted in relation to works proposed in accordance with the flood risk assessment and otherwise in accordance with the flood risk assessment. They also stated that all works should be carried out in accordance with an approved flood risk assessment regardless of whether affected landowners accept any exceedances of flood levels. They said that the flood risk assessment must show that risks would not be increased elsewhere. Tameside Metropolitan Borough Council [[REP2-056](#) Q1.42] and Derbyshire County Council [[REP2-051](#) Q1.42] made similar comments.

jj) Please could **the Applicant** comment and suggest how Requirement 9 should be updated?

Requirement 10 – Archaeological remains

The ExA [[PD-009](#) Q1.35] suggested that requirements be added for

- any matters to be consulted and/ or agreed in writing with the Secretary of State or the County Archaeologist
- any programme of archaeological reporting, post excavation and publication to be consulted on and/ or agreed in writing

	<ul style="list-style-type: none"> • suitable resources and provisions for long term storage of any archaeological archives to be consulted on and/ or agreed in writing <p>Their inclusion is supported by Tameside Metropolitan Borough Council [REP2-056 Q1.43], Derbyshire County Council [REP2-051 Q1.43], and High Peak Borough Council [REP2-053 Q1.43].</p> <p>kk) Please could the Applicant comment and suggest how Requirement 10 should be updated?</p> <p>The Applicant has submitted a Written Scheme of Investigation [REP1-034].</p> <p>ll) Please could the Applicant comment on whether this should be referenced by Requirement 10 and included as a certified document in Schedule 10?</p> <p>mm) Do the local authorities have any comments on the Written Scheme of Investigation? Should be included in Requirement 10 and Schedule 10?</p> <p><u>Requirement 12(1) Details of consultation – minimum period</u></p> <p>The Applicant and local authorities have suggested consultation periods ranging from 14 days to 28 days.</p> <p>nn) Please could the Applicant, local authorities and the Environment Agency comment further? Can a consultation period be agreed?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>
<p>Item 6</p>	<p>SCHEDULES 3 TO 10</p> <p><u>Schedule 3, 4 and 5</u></p> <p>The Applicant has updated Schedule 3 and 4.</p> <p>a) Have Tameside Metropolitan Borough Council and Derbyshire County Council reviewed the latest versions [REP3-002]? Do they have any further comments?</p> <p><u>Schedule 9 – Protective Provisions</u></p> <p>The Applicant [REP2-021 Q1.56] summarised progress in agreeing Protective Provisions, side agreements and Statements of Common Ground.</p> <p>The Environment Agency advised [REP2-052 Q1.57] that it would like to recommend a shorter form.</p> <p>The Applicant is reminded that if written confirmation is not received by all relevant parties before the close of the Examination, then the ExA will be minded to recommend to the Secretary of State that it does not make a decision until it has satisfied itself that the protective provisions and any relevant side agreements have been agreed with between the Applicant and any Statutory Undertakers that are named in Schedule 9 and/ or have raised relevant matters requiring agreement during the examination.</p>

	<p>b) Please could the Applicant provide an update, including for Drainage Authorities?</p> <p>c) Does the Applicant expect all agreements to be reached before the end of the Examination?</p> <p><u>Schedule 10</u></p> <p>The ES is referenced in the dDCO and a number of the documents are being updated during the Examination. The ExA wishes to ensure that the latest versions are certified.</p> <p>d) Please could the Applicant comment? Should the DCO refer to a separate register for the latest versions? Should that register be included in Schedule 10?</p> <p>The Register of Environmental Actions and Commitments has been removed from Schedule 10. Although it is part of the EMP, it is a separate document and the ExA wishes to ensure that the latest version is certified.</p> <p>e) Please could the Applicant add the Register of Environmental Actions and Commitments to Schedule 10?</p> <p>The ExA may ask more questions or invite more oral submissions.</p>
<p>Item 7</p>	<p>ANY OTHER DRAFT DEVELOPMENT CONSENT ORDER MATTERS</p> <p>Please could the Applicant provide a written summary of its responses for Deadline 4, on Wednesday 16 February 2022?</p> <p>Time permitting, and at its discretion, the ExA may invite other oral submissions related to the draft Development Consent Order.</p>
<p>Item 8</p>	<p>ANY OTHER BUSINESS AND CLOSE OF ISSUE SPECIFIC HEARING 1</p>

Issue Specific Hearing 1 may be completed on Tuesday 8 February 2022. If it is then notification that Friday 11 February 2022 is no longer required will be provided during the hearing before it closes and published as soon as is practicable on the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-west/a57-link-roads-previously-known-as-trans-pennine-upgrade-programme>