

## A303 Sparkford to Ilchester Dualling Scheme TR010036

### 8.16 Statement of Common Ground with Virgin Media

APFP Regulation 5(2)(g)  
Planning Act 2008  
Infrastructure Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009  
April 2018



Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning  
(Applications: Prescribed Forms and  
Procedure) Regulations 2009**

**A303 Sparkford to Ilchester Dualling  
Scheme**

Development Consent Order 201[X]

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**STATEMENT OF COMMON GROUND**

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<b>Regulation Number:</b>	Regulation 5(2)(q)
<b>Planning Inspectorate Scheme Reference</b>	TR010036
<b>Application Document Reference</b>	8.16
<b>Author:</b>	A303 Sparkford to Ilchester Dualling Scheme Project Team, Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
A	March 2019	Draft submission for deadline 4

**STATEMENT OF COMMON GROUND**

**This Statement of Common Ground has been prepared and agreed by (1) Highways England Company Limited and (2) Virgin Media.**

**Signed.....**  
**[NAME]**  
**[ROLE]**  
**on behalf of Highways England**  
**Date: [DATE]**

**Signed.....**  
**[NAME]**  
**[ROLE]**  
**on behalf of Virgin Media**  
**Date: [DATE]**

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# **1. Introduction**

## **1.1 Purpose of this document**

- 1.1.1 This Statement of Common Ground ("SoCG") has been prepared in respect of the proposed A303 Sparkford to Ilchester Dualling ("the Application") made by Highways England Company Limited ("Highways England") to the Secretary of State for Transport ("Secretary of State") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("PA 2008").
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application documents. All documents are available in the deposit locations and / or the Planning Inspectorate website.
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.

## **1.2 Parties to this Statement of Common Ground**

- 1.2.1 This SoCG has been prepared by (1) Highways England as the Applicant and (2) Virgin Media.
- 1.2.2 Highways England became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing Highways England made provision for all legal rights and obligations of the Highways Agency, including in respect of the Application, to be conferred upon or assumed by Highways England.
- 1.2.3 Virgin Media Limited is a British company which provides telephone, television and internet services in the United Kingdom. Virgin Media is a statutory undertaker with legal rights to carry out permitted developments as well as highway works. Virgin Media is defined as an Operator under section 106 of the Communications Act 2003 and are regulated by The Office of Communications (Ofcom). Virgin Media has statutory entitlements under the Electronic Communications code to install, maintain, adjust, repair or alter electronic communication apparatus on public and private land with the relevant permission.

## **1.3 Terminology**

- 1.3.1 In the tables in the Issues chapter of this SoCG, "Not Agreed" indicates a final position, and "Under discussion" where these points will be the subject of on-going discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. "Agreed" indicates where the issue has been resolved.
- 1.3.2 It can be taken that any matters not specifically referred to in the Issues chapter of this SoCG are not of material interest or relevance to Virgin Media, and therefore

have not been the subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to Virgin Media.

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## 1.4 Record of Engagement

1.4.1 A summary of the meetings and correspondence that has taken place between Highways England and Virgin Media in relation to the Application is outlined in Table 1.1.

Table 1.1: Record of engagement

Date	Form of correspondence	Key topics discussed and key outcomes (the topics should align with the issues tables)
17/12/15	Records search	Highways England's agent (Mott Macdonald-Sweco) search of Virgin Media's plant records to determine presence of Virgin Media's plant within the scheme area.
29/02/16	Letter	Highways England's agent (Mott Macdonald-Sweco) request budget estimate for diversionary or protection works to Virgin Media's plant.
24/03/16	Email	Virgin Media provision of budget estimate for diversionary works.
07/09/17	Meeting	To discuss preliminary design and request Virgin Media's assistance in the provision of preliminary layouts for input to the Development Consent Order (DCO) application.
19/02/18	Email	Further provision, by Virgin Media, of budget estimate and outline layout plans to assist with the preparation of the DCO application.
19/11/18	Meeting	Corridor wide meeting (A30/A358/A303) to discuss co-ordination of works to fibre optic cables across all schemes along the corridor.
22/11/18	Telecon and follow up email	Highways England's agent (Mott Macdonald-Sweco) outlining the status of the scheme, key elements of the DCO application, and requesting input to a Statement of Common Ground (SoCG).
14/01/19	Telecon	Catch-up regarding production of SoCG
28/01/19	Telecon	Virgin Media provision of input to draft SoCG.

1.4.2 It is agreed that this is an accurate record of the key meetings and consultation undertaken between (1) Highways England and (2) Virgin Media in relation to the issues addressed in this SoCG.

## 2. Issues

Topic	Sub-section	Virgin Media comment	Highways England response	Status
General	General	Virgin Media have reviewed the relevant elements of Highways England's application and are generally content that this addresses their requirements, subject to any issues raised in the following rows of this table.	Noted	<b>AGREED</b>
Application Form(s)	General	Virgin Media have reviewed these elements of the application and have no comment to make.	Noted	<b>AGREED</b>
Compulsory Purchase Information	General	Virgin Media have reviewed these elements of the application and have no comment to make.	Noted	<b>AGREED</b>



Topic	Sub-section	Virgin Media comment	Highways England response	Status
Development Consent Order	The draft Development Consent Order	<p>Virgin Media have reviewed these elements of the application and have comments to make in relation to Schedule 1 and Schedule 8.</p> <p>The application to date does not protect Virgin Media's interest. The position is that Virgin Media currently have a fibre optic cable installed in a duct which is currently leased from Instalcom.</p> <p>The applicant wishes to upgrade the A303 between Sparkford and Ilchester which is currently a single carriageway; to a high quality dual carriageway. Virgin Media's fibre optic cable is currently situated in a duct positioned in a verge. This means once the upgrade works take place to widen the carriageway, the duct position will move to the middle of the carriageway.</p> <p>Instalcom's duct and Virgin Media fibre optic cable will need to be diverted and we require that both Instalcom and Virgin's Media's interests are protected.</p>	<p>Agreed.</p> <p>The works (described in Schedule 1 of the draft Development Consent Order [APP-017] and illustrated in the Works Plans [APP-006]) include diversionary works to ensure Virgin Media's apparatus is moved into an appropriate location. The relevant works are Work Nos 8, 13, 31, 34, 36, 47, 69, 72, 84, 96, 97 and 98.</p>	<b>UNDER DISCUSSION</b>
	Schedule 1	<p>Virgin Media's current apparatus are situated along the A303. Work plan/s [included in the examination library as submission ref APP-006] highlight the cable will need to be diverted. To date no undertaking or financial amounts have been provided to confirm the diversion will be paid for by the applicant. The network is currently live and serving customers. Virgin Media needs to protect their property as well as their customers' services. Virgin Media give the client an approximation</p>	<p>The expenses to be paid by Highways England to Virgin Media in connection with the proposed diversion of the apparatus are set out in paragraph 69 of the Electronic Communications Code and paragraph 17 of Part 2 of Schedule 8 to the dDCO.</p> <p>The notice given by Highways England would be in accordance with the Electronic Communications Code, which (at paragraph 67) provides a notice period of 10 days for</p>	<b>UNDER DISCUSSION</b>

Topic	Sub-section	Virgin Media comment	Highways England response	Status
		<p>for completion of works in number of weeks following receipt of C5 payment and agreed programme of works</p> <p>Can the applicant confirm how much notice would be provided to Virgin Media to remove/divert their apparatus?</p> <p>Virgin Media require clear direction of timescales to reduce the impact of the works to the public. Virgin Media will only enter into the 50 working day notice period we give to our customers of the planned downtime to their services once the Virgin Media fibre cable is installed in the new duct route.</p>	non-emergency works.	
		<p>Virgin Media will require 24/7 access to the apparatus to carry out maintenance work. Can the applicant confirm that there will be no issues with access prior to the proposed works taking place?</p> <p>This is also the same for when the new fibre optic cable is installed along areas of the scheme that are still under construction, Virgin Media require guarantees that their plant will be protected and accessible at all times.</p>	<p>Confirmed.</p> <p>Access to Virgin Media's apparatus will be maintained throughout the works.</p> <p>Virgin Media's apparatus will only be diverted when its intended location is accessible for uninterrupted maintenance access either in a temporary location or its final location.</p>	<b>UNDER DISCUSSION</b>
	Schedule 8	<p>As a result of the proposed work schedule to be carried out to A303, Virgin Media will need to divert their apparatus. To do this Virgin Media require two new sections of fibre optic cable to be installed between the existing joints outside of the works area at Podimore Services and Sparkford.</p> <p>The cost of this diversion is high in value and we have no guarantees that payment will be</p>	<p>Virgin Media's existing cable route is located within the existing verge of the A303 trunk road, and as such financial arrangements for diversionary works are included in Section 85 of the New Roads and Street Works Act. The draft Development Consent Order does not amend section 85 of that Act.</p> <p>In line with the guiding principles of the code of practice "Measures necessary where</p>	<b>UNDER DISCUSSION</b>

Topic	Sub-section	Virgin Media comment	Highways England response	Status
		made to fund the diversion. This issue is therefore unresolved at this stage. In absence of this guarantee Virgin Media faces great risk. Can the applicant provide Virgin Media with an undertaking for the diversionary works?	apparatus is affected by major works (diversionary works)” there has been a general presumption against moving apparatus and, where-ever the existing A303 carriageway is being retained as a local road, Virgin Media’s apparatus is being left in place in order to limit costs to both parties.	
		<p>Instalcom have not confirmed the exact new location of their duct. At this stage, Virgin Media are unable to confirm/comment on whether additional costs will be incurred if Instalcom are unable to relocate their ducting. Virgin Media may be subjected to further costs from the Highways Authority, Statutory Undertakers or others if the new position cannot be confirmed. There is no confidence at this stage that Virgin Media’s interests will be protected.</p> <p>Virgin Media are currently unaware whether the proposed duct route submitted by Instalcom is in a viable location. The proposed duct route that was submitted as part of the C3 is along roads that are to be constructed as part of this scheme. This puts pressure on VM to install a live fibre optic cable in a location that will still be part of a construction area.</p>	<p>The proposed line of Virgin Media’s diverted apparatus is substantially within land that is either to be acquired permanently by Highways England or already within the extents of a highway that will be retained, and will therefore benefit from access rights. The Statement of Reasons [APP-020] confirms these arrangements. Four plots (5/9b, 5/3j, 7/5a and 7/8b) within which proposed Virgin Media apparatus will be located are to be acquired temporarily for the purpose of dedicating rights and then returned to the landowner. This is also confirmed by the Statement of Reasons</p> <p>It is understood that Instalcom are working with Virgin Media and Sky to prepare a proposal for surveys of the existing apparatus. The findings of this survey will assist with the exact determination of the extent of works to Virgin Media apparatus.</p>	<b>UNDER DISCUSSION</b>
		There is no clarification in relation to the diversion route therefore Virgin Media are unable to comment whether any further Wayleave, permissions and or/further financial costs would be attached to the new route.	Work numbers relating to the proposed diversion of Virgin Media’s apparatus are confirmed in a previous row of this schedule. Financial arrangements for diversionary works are also confirmed above.	<b>UNDER DISCUSSION</b>

Topic	Sub-section	Virgin Media comment	Highways England response	Status
		Virgin Media will require reasonable notice to remove their apparatus. If the apparatus cannot be diverted then Virgin Media may not be able to fulfil their obligations. Can the applicant confirm the minimum notice they can provide? Can this notice be extended?	The notice given by Highways England would be in accordance with the Electronic Communications Code, which (at paragraph 67) provides a notice period of 10 days for non-emergency works.	<b>UNDER DISCUSSION</b>
		Virgin Media is concerned that the removal/diversion of their apparatus may result in interruption in the supply of their services. Can the applicant confirm that Virgin Media will be compensated for any costs incurred in making good any damage or restoring the supply as well as any other expenses, loss, damages, penalty or costs as a consequence of the interruption?	Confirmed. Clause 17 of Part 2 of Schedule 8 of the dDCO covers the cost of damage caused by the authorised development.	<b>UNDER DISCUSSION</b>
Environmental Statement		Virgin Media have reviewed these elements of the application and have no comment to make.	Noted	<b>AGREED</b>
Other documents		Virgin Media have reviewed these elements of the application and have no comment to make.	Noted	<b>AGREED</b>

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