

## A303 Sparkford to Ilchester Dualling Scheme TR010036

### 8.16 Statement of Common Ground with Virgin Media

Volume 8.0

APFP Regulation 5(2)(q)  
Planning Act 2008  
Infrastructure Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009  
June 2019



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**

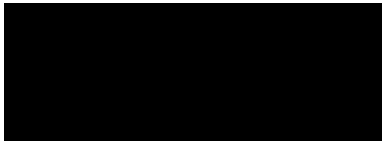
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<b>Regulation Number:</b>	Regulation 5(2)(q)
<b>Planning Inspectorate Scheme Reference</b>	TR010036
<b>Application Document Reference</b>	8.16
<b>Author:</b>	A303 Sparkford to Ilchester Dualling Scheme Project Team, Highways England

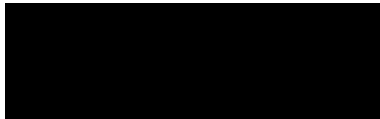
<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
A	March 2019	Draft submission for deadline 4
B	May 2019	Final

## **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... ....**  
**Hannah Sanderson**  
**Senior Project Manager**  
**on behalf of Highways England**  
**Date: June 2019**



**Signed... ..**  
**Cemlyn Price**  
**Regional Network Planning Manager**  
**on behalf of Virgin Media**  
**Date: May 2019**

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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.
- 1.1.4 This SoCG contains reference to the protective provisions contained within the DCO at Schedule 8 Part 2, which are included to provide additional protection to operators of electronic communication code networks and so are applicable to Virgin Media.

## **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.

## 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>Virgin Media are concerned that the application to date might 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>This is accepted.</p> <p>The works (described in Schedule 1 of the draft Development Consent Order and illustrated in the Works Plans) include diversionary works to ensure Virgin Media's apparatus, is moved into an appropriate location. Proposed works to Virgin Media's apparatus are listed as Work Nos 8, 13, 31, 34, 36, 47, 69, 72, 84, 96, 97 and 98 in Schedule 1 of the draft Development Consent Order and the Works Plans.</p> <p>The existing apparatus is within the existing A303 boundary, and therefore diversionary or protection works to Virgin Media's apparatus are classified as 'Street Works' under the New Roads and Street Works Act. The associated Code of Practice "Measures Necessary where Apparatus is affected by Major Works (Diversionary Works)" sets out the procedure for ongoing liaison between Highways England and Utility companies in this respect, particularly in Appendices C4 to C6.</p>	<b>AGREED</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</p>	<p>The existing apparatus is within the existing A303 boundary, and therefore diversionary or protection works to Virgin Media's apparatus are classified as 'Street Works' under the New Roads and Street Works Act (NRSWA). Practical implementation of the liaison requirements of NRSWA are set out in the associated Code of Practice "Measures Necessary where Apparatus is</p>	<b>AGREED</b>

Topic	Sub-section	Virgin Media comment	Highways England response	Status
		<p>their property as well as their customers' services.</p> <p>Virgin Media will give the client an approximation 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>	<p>affected by Major Works (Diversionary Works)". Appendices C4 to C6 of the Code of Practice set out timescales for the utility company feeding information such as designs, specifications, programmes and estimates into the process, and allows for the utility companies' own programmes for procuring material and contracts and undertaking works to be incorporated into the main works contract.</p>	
		<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>AGREED</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.</p> <p>Virgin Media acknowledge that, in line with the guiding principles in the code of practice</p>	<p>Virgin Media's existing cable route is located within the verge of the existing A303 trunk road. As such works to divert or protect this apparatus will be undertaken in accordance with the New Roads and Street Works Act. Specifically, financial arrangements for</p>	<b>AGREED</b>

Topic	Sub-section	Virgin Media comment	Highways England response	Status
		<p>“Measures necessary where apparatus is affected by major works (diversionary works)” there should be a general presumption against moving apparatus, Highways England have made efforts to retain their infrastructure in existing verges where these sections of carriageway are being retained as local roads. However, although it may be possible and acceptable to retain some apparatus in its current location, Virgin Media wish to make it clear that it will not be possible to replace cables in such a piecemeal way. Virgin Media are likely to require two new sections of fibre optic cable to be installed along the full length of the scheme between the existing joints outside of the works area at Podimore Services and Sparkford.</p> <p>The cost of these works is likely to be high in value and we require a guarantee that payment will be made to fund the works.</p> <p>Virgin Media require an explanation of how the undertaking for the diversionary works will be approached? In particular:</p> <ul style="list-style-type: none"> <li>a) What is definition of ‘allowable costs’? For example, if Highways England are of the opinion the diversion costs are too high can they agree to fund to a certain amount?</li> <li>b) In relation to 85 (4) in what circumstances will the undertaker bear/</li> </ul>	<p>diversionary works are included in Section 85 of the Act. The draft Development Consent Order does not amend section 85 of that Act.</p> <p>Specific responses to items a, b and c are:</p> <ul style="list-style-type: none"> <li>a) Allowable costs are defined in section 9 of the Code of Practice “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)”.</li> <li>b) The circumstances relating to sharing of costs are set out in section 9 of the Code of Practice “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)”.</li> <li>c) Section 85 will apply regardless of who carries out the works (and is subject to the Code of Practice).</li> </ul>	

Topic	Sub-section	Virgin Media comment	Highways England response	Status
		<p>share the costs of the diversion with the authority?</p> <p>c) Does Section 85 only apply where the Highways England undertake the diversion works themselves?</p>		
		<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>AGREED</b>
		<p>(a) Virgin Media's existing apparatus is located in an accessible position within the existing public highway. Where this is left in-situ or where diverted apparatus is provided, we would expect it to continue to be in an accessible position within the public highway. We consider that the</p>	<p>(a) Diverted apparatus will be located in an accessible position. 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>	<b>AGREED</b>

Topic	Sub-section	Virgin Media comment	Highways England response	Status
		<p>central reserve of the proposed A303 is not a suitably accessible location. Virgin Media require clarification in relation to the diversion route in order to determine if any further Wayleave, permissions and or/further financial costs would be attached to the new route.</p> <p>(b) In particular, a critical element of Virgin Media's apparatus – an inspection chamber that is currently located between Plowage and Canegore Corner – will require relocation as a result of the scheme. Virgin Media require reassurance that arrangements will be made for Virgin Media to determine a suitable location for the chamber</p>	<p>(b)The inspection chamber is located within the extent of Work No 36, as described in Schedule 1 of the draft Development Consent Order and Works Plans. This work passes along the existing verge of the retained A303 carriageway (to be downgraded to local road) and along the verge of new local roads that are proposed to connect to the retained carriageway. Land to be acquired for these new roads and Work No 36 is identified as plots 4/1k, 4/3i, 4/3j, 4/3k, 4/8a, 4/8d and 5/1c in the Land Plans and Statement of Reasons. Arrangements for establishing the exact position of the chamber will involve the procedure within the Code of Practice which includes a site survey and provision by Virgin Media of a detailed design and specification of the works once requested by Highways England via an enquiry in accordance with Appendix C4 of the Code of Practice.</p>	
		<p>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?</p>	<p>Because the existing apparatus is within the A303 boundary these works are classified as 'Street Works', and as such works to divert or protect them are covered by the New Roads and Street Works Act. The associated Code of Practice "Measures Necessary where Apparatus is affected by Major Works (Diversionary Works)" sets out the procedure for liaison between Highways England and Utility companies in this respect, particularly within appendices C4 to</p>	<b>AGREED</b>

Topic	Sub-section	Virgin Media comment	Highways England response	Status
			C6. The Code of Practice recommends that the utility companies and highway authorities should work together towards an agreed programme of works through this process.	
		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. Paragraph 17 of Part 2 of Schedule 8 of the draft Development Consent Order covers the cost of damage caused by the authorised development and confirms that this will be met by Highways England and that reasonable compensation will be paid for any interruption in the supply of the service.	<b>AGREED</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>

