

A38 Derby Junctions TR010022

8.14 Statement of Common Ground with Network Rail

Planning Act 2008

Rule 8 (1)(e)

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 8

November 2019

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure) Rules 2010**

A38 Derby Junctions
Development Consent Order 202[]

Statement of Common Ground
Network Rail

Regulation Number	Rule 8 (1)(e)
Planning Inspectorate Scheme Reference	TR010022
Application Document Reference	TR010022/APP/8.14
Author	Highways England (A38 Derby Junctions Project Team) and Network Rail

Version	Date	Status of Version
WIP	19 th November	Deadline 2 Submission

STATEMENT OF COMMON GROUND

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

Signed

[]

Project Manager on behalf of Highways England

Date: []

Signed.....

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[], on behalf of Network Rail

Date: []

Table of contents

Chapter	Pages
1 Introduction	1
1.1 Purpose of this Document	1
1.2 Parties to this Statement of Common Ground	1
1.3 Terminology	1
2 Record of Engagement	2
3 Issues	3
3.1 Introduction and General Matters	3
3.2 Issues arising from Section 42 Consultation	4
3.3 Issues related to the Compulsory Purchase of Land	6

Appendices:

Appendix A: The Planning Inspectorate Statement of Common Ground Issues List (Annex E, Rule 6 Letter)

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 A38 Derby Junctions application ('the Application') made by Highways England Company Limited ('Highways England'), the 'Applicant' for the order, 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'). The draft Development Consent Order seeks powers to enable the construction and operation of the 'Scheme', which is defined in the Chapter 2: The Scheme of the Environmental Statement [APP-040].
- 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 on the Planning Inspectorate's website¹.
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has, at this stage of the Examination process, 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 Highways England and Network Rail ('NR').
- 1.2.2 Highways England became the Government-owned Strategic Highways Company on 1st 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 to be conferred upon or assumed by Highways England.
- 1.2.3 Network Rail (NR) owns, operates and maintains the railway infrastructure in Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993.

1.3 Terminology

- 1.3.1 Section 3 of this SoCG sets out the issues that are considered material to NR at this stage of the Examination process. These tables indicate whether an issue is:
- 'Not Agreed'; or
 - 'Under Discussion' where points will be the subject of on-going discussion: wherever possible these will be resolved or refined; or
 - 'Agreed' where an issue has been resolved.

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/>

2 Record of Engagement

2.1.1 A summary of the meetings and correspondence that has taken place between Highways England and NR in relation to the Application is outlined in Table 2.1.

Table 2.1: Record of engagement

Date	Form of Correspondence	Key topics discussed and key outcomes
05.12.16	Teleconference meeting	Meeting to discuss the Document Review Notice (DRN) comments from Network Rail. During the meeting it was established that a Bridge Agreement would be required; a Signal Sighting evaluation (backed by a report) would be required; and Global Mobile Systems – Radio (MMS-R) Assessment is required to investigate the impact of the new structure.
11.01.16	Email	Drawings illustrating the proposed bridge extension were sent to Network Rail. Main points of discussion: <ul style="list-style-type: none"> • Network Rail stated that they would automatically object to the DCO if AIP [Agreement in Principle], land and bridge agreements were not in place. • Overhead line electrification installation and the construction of the Scheme. • Impacts of certain aspects of the Scheme, including but not limited to, lighting, access for maintenance works; bridge ownership plates; settlement details; and the construction plan. • A level crossing facility north of the Little Eaton bridge and impacts on the rail network.
23.01.17	Meeting	Meeting to discuss the Scheme and Network Rail's position.
08.06.17	Meeting	Meeting to update Network Rail on the progress of the Scheme and to discuss taking the bridge design forward.
09.07.19	Meeting	Network Interface Meeting to discuss works to the Little Eaton bridge under the A38; construction and timings; costs; types of possessions; reports required to inform the construction works such as signal sighting report.

3 Issues

3.1 Introduction and General Matters

- 3.1.1 This chapter sets out the 'issues' which are agreed, not agreed, or are under discussion between NR and Highways England at this stage of the Examination process.
- 3.1.2 The letter provided to Highways England by The Planning Inspectorate on the 23rd of August 2019 under Section 88 of the Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 6 (hereafter referred to as the 'Rule 6 Letter'), sets out in Annex B the Examining Authority's "Initial Assessment of Principal Issues". In Annex E of the Rule 6 Letter. The Planning Inspectorate set out a list of Statements of Common Ground that the Examining Authority request the Applicant to enter into with a number of parties including at paragraph E, NR.
- 3.1.3 The Examining Authority request the Statement of Common Ground between NR and the Applicant include the following issues:
- Bridge widening comfort/impediment
 - Any other matters on which agreement might aid the smooth running of the Examination.
- 3.1.4 The bullet point lists in Annex E of the Rule 6 Letter have been replicated using a numbered list and are available at Appendix A of this SoCG. The issues set out below refer to this numbered list, making it clear which issues have been addressed in this SOCG.

3.2 Issues arising from Section 42 Consultation

Issues reference (see Appendix A)	Document	Paragraph Ref	Sub-Section	Comment	Highways England Response	Status
Issues ref: E.1, bridge widening comfort/impediment	Consultation Report: Annex O [APP-038]	Statutory Consultation under s42(1)(a) of the Planning Act 2008 with Prescribed Consultees Consultation - 7 September to 18 October 2018 table	Assets and Wayleaves	With reference to the protection of the railway, Network Rail has no objection in principle to the proposals. In respect of the proposed work to the railway bridge over the Midland Mainline at the Little Eaton A38 junction, we presume that you will enter into the usual dialogue and necessary Basic Asset Protection Agreements with us regarding the bridge widening design and implementation.	<p>The fact NR had no objection in 2018, subject to the parties entering into appropriate agreements to safeguard their undertaking, was noted at the time. Discussions have been held with NR to resolve ongoing concerns regarding asset protection and in order to come to an agreement with NR before any works take place. An agreement is not yet in place.</p> <p>NR has been sent a copy of the draft Protective Provisions which are contained in the dDCO. Discussions are ongoing between NR's legal representatives and the Applicant's legal representatives.</p>	Under Discussion

3.3 Issues related to the Compulsory Purchase of Land

Issues reference (see Appendix A)	Document	Paragraph Ref	Sub-Section	Comment	Highways England Response	Status
Issues ref: E.2, other matters	Relevant Representation comments*	-	-	<p>The Book of Reference identifies land plan plots 8/5, 8/6, 8/7, 8/8 and 8/9 (Plots) as land owned and occupied by Network Rail in respect of which compulsory acquisition powers to acquire new rights and to acquire land are sought. The compulsory acquisition powers sought are described in the BoR as:</p> <p>In respect of Plot numbers 8/5 and 8/8:</p> <ul style="list-style-type: none"> • Temporary possession and use of land <p>In respect of Plot number 8/6:</p> <ul style="list-style-type: none"> • Compulsory acquisition of airspace together with the creation and compulsory acquisition of new rights (including where necessary, a right to impose restrictive covenants) <p>In respect of Plot numbers 8/7 and 8/9:</p>	Noted.	Agreed

Issues reference (see Appendix A)	Document	Paragraph Ref	Sub-Section	Comment	Highways England Response	Status
				<ul style="list-style-type: none"> Compulsory acquisition of all interests and rights in land (including as required subsoil, surface land or airspace) (Compulsory Powers). <p>Network Rail notes that the Compulsory Powers are sought in relation to operational railway land forming part of the operational railway being the East Midlands Main Line.</p>		
Issues ref: E.2, other matters	Relevant Representation comments*	-	-	<p>Network Rail objects to the inclusion of the Plots in the Order and to the acquisition of Compulsory Powers in respect of those Plots. The Plots constitute land acquired by Network Rail for the purpose of its statutory undertaking and, accordingly, this representation is made under section 56 and sections 127 and 138 of the Planning Act 2008. Network Rail considers that there is no compelling case in the public interest for</p>	<p>The Applicant has engaged with Network Rail over a number of years preceding the draft DCO application. The powers included within the draft DCO Book of Reference are for the realignment and widening works to an existing bridge which supports the existing A38 as it crosses the East Midlands mainline. As such, the interface between the railway and highway is well established and will continue to be maintained once the Scheme is operational, with</p>	Under Discussion

Issues reference (see Appendix A)	Document	Paragraph Ref	Sub-Section	Comment	Highways England Response	Status
				the acquisition of the Compulsory Powers and Network Rail considers that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that new rights and restrictions over the railway land can be created and land can be acquired without serious detriment to Network Rail's undertaking; no other land is available to Network Rail which means that the detriment cannot be made good by them.	the construction works appropriately managed, as set out below.	
Issues ref: E.2, other matters	Relevant Representation comments*	-	-	Network Rail also objects to all other compulsory powers in the Order to the extent that they affect, and may be exercised in relation to, Network Rail's property and interests.		
Issues ref: E.2, other matters	Relevant Representation comments*	-	-	In order for Network Rail to be in a position to withdraw its objection Network Rail requires: (a) agreements with the Applicant that regulate: - the manner in which the acquisition of land and the	In respect of Network Rail's specific requests for removal of its objection, the Applicant can	

Issues reference (see Appendix A)	Document	Paragraph Ref	Sub-Section	Comment	Highways England Response	Status
				<p>rights over the Plots and any other railway property are carried out including terms which protect Network Rail's statutory undertaking and agreement that compulsory acquisition powers will not be exercised in relation to such land; and - the carrying out of works in the vicinity of the operational railway network to safeguard Network Rail's statutory undertaking.</p> <p>(b) the inclusion of protective provisions in the DCO for its benefit. To safeguard Network Rail's interests and the safety and integrity of the operational railway, Network Rail objects to the inclusion of the Compulsory Powers and any other powers affecting Network Rail in the Order.</p>	<p>confirm that in respect of 'a', the Applicant is working with Network Rail to agree a 'Bridge Agreement' to address the detail of the construction and maintenance of the realigned bridge.</p> <p>In respect of 'b', protective provisions have been included for the protection of Network Rail's land and assets on the face of the draft DCO. In addition, these have been provided to Network Rail for review and comments and NR's legal representatives are in discussion with the Applicant's legal representatives in relation to the draft Protective Provisions. Further, the land use powers sought in the draft DCO in respect of Network Rail's land would, if the DCO was made in the form applied for, be – by</p>	

Issues reference (see Appendix A)	Document	Paragraph Ref	Sub-Section	Comment	Highways England Response	Status
					<p>virtue of the operation of the protective provisions for the benefit of Network Rail – subject to Network's Rail's consent; and that such consent may be subject to reasonable conditions. As stated above, the Applicant is working with Network Rail to reach a formal agreement to address the detail of these matters, but in any event, Highways England considers that controls are already built into the draft DCO to ensure that the scope for negative impacts to the railway can be managed.</p> <p>The protective provisions perform an asset protection function which ensures that Network Rail's approval is required for any part of the authorised development within 15 metres of railway property.</p> <p>The Applicant is hopeful that negotiations with Network Rail will result in an agreed form of 'Bridge Agreement' (and other agreements as may be required)</p>	

Issues reference (see Appendix A)	Document	Paragraph Ref	Sub-Section	Comment	Highways England Response	Status
					prior to the close of the Examination, and consequently that Network Rail can remove its objection.	
* https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/a38-derby-junctions/?ipcsection=relreps&relrep=37016						

Appendix A: The Planning Inspectorate SoCG Issues List (Annex E, Rule 6 Letter)

SoCGs are requested to be prepared between the Applicant and:

A. Derby City Council, Derbyshire County Council and Erewash Borough Council to include:

1. Compliance with the development plans, impacts on land use and the acceptability of proposed changes to land use
2. The need for development
3. Alternatives and compliance with relevant legal requirements and policy, including with respect to the Environmental Impact Assessment (EIA), flood risk and Compulsory Acquisition
4. Whether the business case and economic case adequately consider local matters
5. Minimisation of land take
6. Impacts on local transport networks, impact and mitigation of temporary and permanent closures of roads and other rights of way
7. Traffic management and communication with residents and businesses during construction
8. Air quality and the potential for a zone compliant with the Air Quality Directive to become non-compliant and the potential for delays for a non-compliant zone to achieve compliance
9. Dust, odour, artificial light, smoke, steam impacts and nuisance
10. Noise and vibration and impacts on local residents and others, construction noise and working hours limits, noise barriers, other mitigation and the need for any specific requirements in the draft Development Consent Order (dDCO)
11. Biodiversity and impacts on sites and habitats and species and mitigation
12. Impacts on open space, any assessments of whether any open space is surplus to requirements and the suitability of proposed replacement
13. “Good design” including functionality and aesthetics, the replacement bridge, noise barriers, site restoration, and “good design” in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform and vegetation.
14. Landscape and visual impact assessment and lighting
15. Green Belt
16. Impacts on Public Rights of Way, on pedestrians, cyclists and horseriders, and opportunities to improve
17. Temporary and permanent impacts on recreation
18. Socio-economic impacts
19. Community isolation, severance and accessibility, including by disabled users
20. Common law nuisance and statutory nuisance, nuisance mitigation and limitations and appropriate provisions in the dDCO
21. Whether the maintenance and decommissioning activities have been adequately defined in the dDCO and whether they have been appropriately assessed and mitigated
22. Measures to avoid, reduce or compensate for adverse health impacts, including cumulative impacts on health
23. Safety impact assessment and consistency with relevant highways safety frameworks
24. Whether appropriate bodies have been consulted about national security implications and whether any issues have been adequately addressed
25. The assessment of civil and military aviation and defence matters in accordance with the National Networks National Policy Statement

B. The Environment Agency, Derby City Council, Derbyshire County Council, Erewash Borough Council and Severn Trent Water to include:

1. Dust, odour, artificial light, smoke and steam scope and methodology of assessment
2. The water environment including main rivers, groundwater and other water bodies, any concerns on impacts on water quality/resources and the need for any specific requirements in the dDCO
3. Flood risk, adequacy of the Flood Risk Assessments, the selection of mitigation sites and any concerns about the proposal on flood risk grounds
4. Drainage, Sustainable Urban Drainage Systems (SuDS), compliance with national standards and the appropriate body to be given the responsibility to maintain any SuDS
5. Water abstraction, discharge, pollution control and permits and whether potential releases can be adequately regulated under the pollution control framework
6. Contaminated land
7. Climate change, including the appropriate use of UK Climate Projections, identification of maximum credible scenarios, adaptation, impacts, radical changes beyond the latest projections
8. Whether processes are in place to meet all relevant Environmental Permit requirements (including with respect to waste management), timescales, and any comfort/impediments to them being granted

C. Natural England, Derby City Council, Derbyshire County Council and Erewash Borough Council to include:

1. The Applicant's Habitat Regulation Assessment – No Significant Effects Report (NSER) and the included matrices which exclude the potential for likely significant effects to arise alone or in combination with other plans and projects
2. Impacts on habitats and species, habitat replacement and opportunities for enhancement
3. Assessment of noise, vibration, air and water quality impacts on designated nature conservation sites, protected landscapes, protected species or other wildlife.
4. Agreement of biodiversity and ecological conservation mitigation measures, any comfort/impediments for the granting of relevant licences and their timescales

- Waterbodies
- Agricultural land
- Green infrastructure

D. Historic England, Derby City Council, Derbyshire County Council and Erewash Borough Council to include:

1. Whether heritage assets have been identified and assessed appropriately
2. Derwent Valley Mills World Heritage Site
3. Darley Abbey Scheduled Ancient Monument
4. The approach to archaeology
5. Other historic assets, including non-designated historic assets identified by local authorities and in Historic Environmental Records
6. Written scheme of investigation
7. Historic landscape character areas

8. The need for any specific requirements in the dDCO

SoCGs A-D to include:

1. The applicable legislation and policy considered by the Applicant
2. The Environmental Impact Assessment methodology, including the assessment of cumulative effects and the other plans/projects included
3. The extent of the areas of potential impact considered
4. Baseline information, data collection methods, data/statistical analysis, approach to modelling, presentation of results and forecast methodologies
5. The application of expert judgements and assumptions
6. Identification and sensitivity of receptors with the potential to be affected by the proposed development, magnitude and the quantification of potential impact
7. Likely effects (direct and indirect) on protected (or equivalent) biodiversity sites, habitats and species
8. Nature of the likely effects (direct or indirect) on receptors
9. "Reasonable worst case" Rochdale Envelope parameters
10. Mitigation that is necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable
11. Whether the secured mitigation measures are likely to result in the identified residual impacts
12. The significance of each residual impact
13. Whether the mitigation identified in the Environmental Statement (ES) is adequately secured by the combination of Requirements in the dDCO with other consents, permits and licenses
14. dDCO provisions
15. The Outline Environmental Management Plan, The Construction Environmental Management Plan, the Transport Management Plan and the Handover Environmental Management Plan
16. Matters for which detailed approval needs to be obtained and the roles of the local authorities and of other independent statutory and regulatory authorities
17. The identification of consents, permits or licenses required before the development can become operational, their scope, any management plans that would be included in an application, progress to date, comfort/impediments and timescales for the consents, permits or licenses being granted
18. Whether the effectiveness of consents, permits or licenses as mitigation have been accurately identified in the impact assessment
19. Whether potential releases can be adequately regulated under the pollution control framework
20. Whether contaminated land, land quality pollution control and waste management can be adequately regulated by Environmental Permits
21. Any other relevant matters included in the Initial Assessment of Principal Issues in Annex B
22. Any other relevant and important considerations
23. Any other matters on which agreement might aid the smooth running of the Examination

E. Network Rail to include:

1. Bridge widening comfort/impediment
2. Any other matters on which agreement might aid the smooth running of the Examination

F. Statutory Undertakers to include:

1. Impacts on rights/apparatus and on the transmission/distribution systems that could be interfered with and their mitigation
2. The adequacy of the provisions in the dDCO to protect the public interest
3. The Outline Environmental Management Plan
4. Any other matters on which agreement might aid the smooth running of the Examination

G. The Royal School for the Deaf to include:

1. The assessment and mitigation of potential impacts, including in relation to the use and reinstatement of temporary possession land, noise and vibration, air quality, safety and security, access and liaison during construction
2. Any other matters on which agreement might aid the smooth running of the Examination

H. Cherry Lodge children's residential care home to include:

1. The assessment and mitigation of potential impacts, including in relation to parking, noise and vibration, air quality, other changes to the local environment and potential impacts on well-being, access and operation
2. Any other matters on which agreement might aid the smooth running of the Examination

I. Existing Businesses in the vicinity of Markeaton junction to include:

1. The assessment and mitigation of potential impacts, including in relation to access, safety and economic impact
2. Any other matters on which agreement might aid the smooth running of the Examination