

**A38 Derby Junctions**  
**TR010022**  
**8.105 Written Summary of Oral**  
**Submissions to CAH4 09 June 2020**

Planning Act 2008

Rule 8 (1)(i)

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 8

June 2020

Infrastructure Planning

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

**A38 Derby Junctions  
Development Consent Order 202[ ]**

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**Written Summary of Oral Submissions to CAH4  
09 June 2020**

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<b>Regulation Number</b>	Rule 8 (1)(i)
<b>Planning Inspectorate Scheme Reference</b>	TR010022
<b>Application Document Reference</b>	TR010022/APP/8.105
<b>Author</b>	A38 Derby Junctions Project Team Highways England

<b>Version</b>	<b>Date</b>	<b>Status of Version</b>
Version 1	18 June 2020	Deadline 14 submission

# 1 INTRODUCTION

## 1.1 Purpose of this Document

- 1.1.1 This document sets out a written summary of the oral submissions made by Highways England at the fourth Compulsory Acquisition Hearing (CAH) for the A38 Derby Junctions Scheme. The CAH took place on 09 June 2020. It was conducted using 'Microsoft Teams' online because of the Covid-19 pandemic.
- 1.1.2 The Item no. referred to in the first column of the Table below is a reference to the items in the ExA's agenda relating to this CAH. The ExA's questions and responses provided are reproduced in the second and third column of the table respectively.

<b>Compulsory Acquisition Hearing 4</b>		
<b>Date: 9 June 2020</b>		
<p><b>Speakers:</b> Highways England (the <b>Applicant</b> / HE) Derby City Council (<b>DCC</b>) Friends of Markeaton Park (<b>FoMP</b>)</p>		
<b>Item</b>	<b>Agenda</b>	<b>Response</b>
<b>1</b>	<b>Welcome, opening remarks, introductions and housekeeping</b>	
<b>2</b>	<b>The purpose of the Hearing and how it will be conducted</b>	
<b>3</b>	<b>Alternatives to Compulsory Acquisition (CA) or Temporary Possession (TP)</b>	
	<p><u>The case for CA of the gardens of 1 Sutton Close</u></p> <p>a) Please could the <b>Applicant</b> identify the number of vehicle movements anticipated to turn right into the proposed access road from the A52 and the potential for queueing on the A52?</p> <p>b) Please could the <b>Applicant</b> identify the number of vehicle movements anticipated to turn right out of the proposed access road onto the A52 and</p>	<p>a) and b) Highways England provided context for their response with reference to the Ashbourne Road access drawing [REP2-006], noting that the plot referred to as 'Gardens at no.1 Sutton Close' is part of a much larger unregistered piece of land covering ALL properties at Sutton Close. There is no confirmed owner at the Land Registry, but Highways England understand that it is owned by Sutton Turner Houses. There are no boundaries between the gardens; rather the whole space is a communal area around the properties.</p> <p>Highways England emphasised that Sutton Turner Houses has not objected to compulsory acquisition of this land and has begun discussion with Highways England regarding purchase of the land by voluntary agreement. Highways England also noted that whether the land required was outside no. 1 or no. 14 Sutton Close, it would still impact on the same landowner. The extent of the CA is determined by the impact on traffic and, as previously stated (Q9.5 response [REP12-007]), Highways England will make reasonable endeavours, in consultation with DCiC, to minimise the</p>

	<p>the potential for queuing on the access road?</p> <p>c) Does the Applicant consider that more detailed modelling is required to provide a robust quantitative response to a) and b)? If so, is that modelling required for the Applicant to justify its case for the CA of the gardens at 1 Sutton Close?</p>	<p>amount of land required during the detailed design phase, whilst maintaining an adequate level of safety for all users.</p> <p>Highways England acknowledged their obligation to conduct diligent enquiry. A series of steps has been taken to identify ownership: a Land Registry search; statutory notices served on all landowners (involving a questionnaire to which landowners do not always respond); further discussion/ negotiation. Highways England must be satisfied as to who is the owner before negotiation can take place. Highways England noted that meetings have taken place with the trustees of the Sutton Turner Houses charity which is believed to own the land. There has been an assumption that the charity owns all of the land and there has been no suggestion to the contrary. The ExA requested post-hearing evidence of engagement. Highways England agreed to follow this point up in writing to the ExA (refer to the Technical note on Compulsory Acquisition submitted at Deadline 14).</p> <p>Highways England noted that they have held a number of meetings with Sutton Turner Houses and with their legal representatives over the past 2-3 years. Highways England made the point that they require evidence of ownership to enter into compensation negotiations. If there is no evidence, Highways England will look to historic evidence of ownership. In line with the taking of possession of the land evidence of title must be provided within 4 years of compulsory acquisition.</p> <p>Highways England agreed to provide a written summary of the process for a compulsory acquisition compensation claim (refer to the Technical note on Compulsory Acquisition submitted at Deadline 14).</p> <p>(c) Highways England provided the following technical information in respect of the new access to Sutton Close: the controlled crossing must be located at least 20 metres from the roundabout. Highways England has tested the proposed road layout using trip forecast modelling. The right turn into Sutton Close requires a 5 metre taper plus a waiting area of a minimum 6 metres (i.e. at least 11 metres after the traffic island where the controlled crossing is located). There are zig zag markings after the controlled crossing and ideally the turning should be after this. Highways England also need to take account of the bell mouth needed for the access.</p> <p>Highways England agreed to provide an updated drawing of the right turn and confirmed that the current layout plans are supported by DCiC (refer to the Sutton Close Access Sketch submitted at Deadline 14).</p>
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4	<p><b>Individual objections and issues</b></p> <p><u>Resolution of issues through voluntary agreements</u></p> <p>a) Please could the <b>Applicant</b> provide an update on progress in finalising voluntary agreements, potential acquisition due to blight and relevant SoCG before the close of the Examination?</p> <p>b) Is the <b>Applicant</b> aware of any matters on which it appears that agreement is unlikely to be reached before the close of the Examination?</p>	<p>Highways England noted that progress is being made on voluntary agreements and that updates on the SoCG position statement submitted at D11 will be provided. The draft SoCGs with Euro Garages and McDonald's will be re-submitted as final documents before the close of the Examination (as these are the only SoCGs as requested by the ExA which are outstanding).</p> <p>Highways England's valuation officer provided a progress update on agreements with the properties at Ashbourne Road and Queensway and agreed to provide a written update to the Examination at D14.</p> <p>Highways England stated that they are not aware of any land issues generally. In the context of compulsory acquisition, Sutton Turner Houses appointed a land agent on 18 May 2020. Highways England agreed the fee basis for the agent and has provided plans. Discussions will follow in the next 3 weeks.</p> <p>The ExA invited a further submission from Highways England on alternative routes which could avoid some if not all compulsory acquisition of the Queensway properties, taking the A38 route further south and west of Markeaton junction and minimising impact on Euro Garages and McDonald's.</p> <p>In response to a comment made by the ExA, Highways England stated that to suggest alternative schemes at this point would not be appropriate, since the Scheme that is before the Examination has been fully justified. Highways England agreed to review what has been submitted so far,</p>

		<p>however, and emphasised the fact that there are no fundamental objections to the Scheme in terms of route alignment. Highways England considers that the Scheme meets all requirements, particularly at Markeaton Park, and an appropriate balance has been struck between the impact on the Park which has significant public amenity value, private rights and the benefits of the Scheme to the public (refer to the Technical Note on Markeaton Junction - Development of Proposed Alignment submitted at Deadline 14),</p> <p>In terms of the Mundy covenant, Highways England noted that the solicitors for Ms Clarke-Maxwell (the presumed beneficiary of the covenant) are working remotely and cannot access the relevant hard copy deeds. Highways England affirmed that they will continue to negotiate with Ms Clarke-Maxwell beyond the close of the Examination. The issue is now sitting with the beneficiary to provide evidence that she is the beneficiary of the covenant and, if the land is acquired compulsorily, she will have a 6-years to make a claim for compensation.</p>
	<p><u>Requests to speak accepted by the Examining Authority</u></p> <p>Brief oral submissions, which we anticipate will take no more than 5 minutes each and are not to repeat matters previously set out in written submissions.</p> <p>c) <b>Friends of Markeaton Park:</b> opposition to Compulsory Acquisition in Markeaton Park and the 'Mundy' covenant.</p>	<p>Friends of Markeaton Park made a request that Annie Clarke- Maxwell should be involved in the detailed design for this project. Further, if there is no alternative to placing a utility corridor in the park, they requested agreement with utility companies to ensure there are no phone masts or aerials in the park <u>ever</u>.</p> <p>Friends of Markeaton Park asked if the right to acquire airspace could be withheld from the compulsory acquisition powers in the DCO. They expressed the concern that at least half the mitigation put in place for the 1980s A38 dualling is likely to be removed. They also questioned why the connection of the curly footbridge had to be so close to the veteran tree, rather than being extended on the park side where there are no trees.</p> <p>Highways England stated that phone masts require separate consent and that new masts in the park do not form part of the Scheme. Highways England's role is to maintain the strategic road network and any impact on park will be discussed with DCiC. Highways England saw no reason to exclude air rights since phone masts are physical structures on the ground.</p> <p>Highways England confirmed that during discussions with Ms Clarke-Maxwell she had raised no objection to the Scheme. Highways England recognised the important role of Friends of Markeaton Park while noting the fact that the covenant beneficiary is a separate person.</p> <p>DCiC noted that they had advised Highways England of the need to resolve the covenant issue and welcomed their due diligence in seeking to do so. DCiC confirmed that phone masts are dealt with</p>

		by the city council through the planning process and that neighbours and groups will be able to make representations when/if applications are made.
	<p><u>Other objections or issues</u></p> <p>d) Any other objections or issues?</p>	No further comments from DCiC.
5	<p><b>Crown interests and consent</b></p> <p>Please could the <b>Applicant</b> provide an update on progress in securing written agreement and s135 consent?</p>	Highways England confirmed that the wording of the s135 consent had been agreed and was with TA's lawyers. Signing of the consent has been held up due to issues of accessibility related to Covid-19. Highways England noted that there are no complications relating to the consent and that they are confident it will be obtained before the close of the Examination.
6	<p><b>Statutory Undertakers and any other parties benefiting from statutory protections that may be affected</b></p> <p>Noting the comments from Network Rail Limited [REP12-016, item 9.9], please could the <b>Applicant</b> provide an update on progress in securing an alternative to the acquisition of rights from Network Rail of a Framework Agreement, a Deed of Easement, and a Basic Asset Protection Agreement?</p>	<p>Highways England confirmed that the Basic Asset Protection Agreement (BAPA) has been agreed and signed. The Framework Agreement (which Network Rail needs to be in place to allow them to withdraw their objection) has just one minor point outstanding. Highways England expressed confidence that this will be signed before the close of the Examination. The Bridge Agreement (currently with Highways England) and Deed of Easement (currently with Network Rail) are both progressing.</p> <p>Highways England noted that the Bridge Agreement will provide the rights required for the Scheme and that Network Rail has no issue with compulsory acquisition rights because the protective provisions in the DCO provide that Highways England will not use them in relation to Network Rail land.</p> <p>The ExA asked Highways England to provide a written statement explaining why compulsory rights are not needed in respect of Network Rail land.</p> <p>The ExA requested confirmation from Network Rail (via Highways England) that they are content with the approach outlined above.</p>



		Highways England stated that they are confident that the agreements will be finalised before the close of Examination. The Framework Agreement ensures that the other agreements must be pursued in any event. Highways England confirmed that they are working to get all the agreements signed off as soon as possible.
7	<p><b>Special Category Land, including open space and replacement land</b></p> <p>Please could the <b>Applicant</b> provide an update on identification and engagement with the successor to the title and progress in pursuing a voluntary agreement rather than CA?</p>	<p>The ExA clarified that this item relates to the Mundy covenant.</p> <p>Reference was made to Highways England's previous submission [Q 9.11, REP 12-007].</p> <p>Highways England stated that Ms Clarke-Maxwell was having difficulties contacting her own lawyers due to Covid-19. Highways England has not received any evidence that she is a beneficiary, although they have engaged with her. Highways England confirmed that they had received her contact details through the City Council and that she has not objected to the removal of the covenant. Highways England will enter into a voluntary agreement and consider possible compensatable interest if they receive evidence that Ms Clarke-Maxwell is a beneficiary. Highways England noted that they have conducted diligent enquiry and that there is no publicly available evidence of her status as beneficiary. There is an assumption from Ms Clarke-Maxwell that she is, but Highways England cannot enter into an agreement with her until they have seen documentary evidence of this.</p>
8	<p><b>Potential impediments to the proposed development</b></p> <p>Please could the Applicant provide an update to the Consents and Agreements Position Statement by Deadline 14?</p>	<p>Highways England agreed to provide an update as requested and noted that discussions with regulatory authorities regarding consents, which typically require detailed design work or implementation during construction, are ongoing. The update will give details of site visits/undertakings which will continue beyond the close of Examination (updated Consents and Agreements Position Statement was submitted at Deadline 14)</p> <p>Highways England confirmed that there are no outstanding issues relating to compulsory acquisition in respect of those consents.</p>
9	<p><b>Human rights and the compelling case in the public interest</b></p>	No additional comments from Friends of Markeaton Park or DCiC.
10	<p><b>Any other CA or TP matters</b></p>	Friends of Markeaton Park (Mrs Morgan) noted that the University of Derby has asked what temporary possession of land around the lake will involve and how this might affect their continuing work with crayfish.

		Highways England agreed to respond to the above points at D14 to provide confirmation that access to the lake will not be affected by the temporary access required by Scheme.  DCiC had nothing further to raise.
11	<b>The recording of the Hearing and the next steps in the Examination</b>	CA 5, CA 6, CA 7 are all now cancelled.
12	<b>Any other business and close of Hearing</b>	Highways England asked Friends of Markeaton Park to provide them with a copy of the email they had received from a professor at the University of Derby; it was confirmed that this would be provided at Deadline 14.