

A38 Derby Junctions
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8.107 Written Summary of Oral
Submissions to ISH7 09 June 2020

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Infrastructure Planning (Examination Procedure) Rules 2010

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

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

**Written Summary of Oral Submissions to ISH7
09 June 2020**

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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 seventh Issue Specific Hearing (ISH) for the A38 Derby Junctions Scheme. The ISH 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 ISH. The ExA's questions and responses provided are reproduced in the second and third column of the table respectively.

Issue Specific Hearing 7		
Date: 9 June 2020		
Item	Agenda	Summary of oral responses by Highways England
1	Welcome, opening remarks, introductions and housekeeping	Anne Morgan noted that she would be speaking in her personal capacity, not on behalf of the Friends of Markeaton Park, as she had not discussed her submissions for this hearing with the trustees of the Friends of Markeaton Park.
2	The purpose of the Hearing and how it will be conducted	
3	Specific issues by topic	
	Biodiversity and ecological conservation	
	<p><u>Alfreton Road Rough Grassland Local Wildlife Site</u></p> <p>a) Does Erewash Borough Council or Derbyshire Wildlife Trust have any comments on the inputs or methodology used in the Biodiversity Metric Assessment, Alfreton Road Rough Grassland Local Wildlife Site (LWS) [REP12-010]?</p>	<p>Erewash Borough Council did not comment. Derbyshire Wildlife Trust confirmed that they welcome the use of the Biodiversity Metric Assessment (BMA) as a recognised and standardised tool for measuring biodiversity in a consistent and transparent way. However, Erewash Borough Council explained that they have concerns as to the restricted scope of the BMA.</p> <p>Highways England explained the BMA as it applies to the site. Highways England clarified that although the BMA was provided at the request of Erewash Borough Council and Derbyshire Wildlife Trust, Highways England has concerns about it being looked at in isolation in respect of the Alfreton Road Rough Grassland Local Wildlife Site (LWS), rather than in relation to the Scheme as a whole. Highways England challenged the notion that BMAs are a recognised and standard approach for measuring impact. Highways England explained that they are recognised for assessing habitat losses or changes, but that they do not account for subtleties of protected species impacts. Highways England referred to <i>Biodiversity Net Gain – Good practice principles for development. A practical guide</i> (2019) published by CIEEM/CIRIA/IEMA (https://www.ciria.org/Events/Post_event_information2/2019/Biodiversity_Net_Gain_Principles_and_guidance.aspx). Technical Note 6 of this guidance states that the BMA should not be used to assess impacts on statutory designated sites. Highways England explained that the BMA is typically used to measure overall losses and gains and changes in habitats for a scheme as a whole, rather than looking at specific impacts.</p> <p>Derbyshire Wildlife Trust confirmed that the BMA does not raise any new concerns that are not considered in the application and the overall impact assessment.</p>

	<p>b) The Applicant considers that the core biodiversity importance of the LWS falls outside the scheme boundary and will be unaffected by the proposal [REP13-006 paragraph 6.1]. How has Erewash Borough Council defined the 'core habitat' of the LWS and concluded that it would be reduced in extent by some 28% [REP12-009]? Does the reference to a net loss mean that the loss takes into account the habitat created by the scheme? Does Erewash Borough Council or Derbyshire Wildlife Trust agree that the percentage loss of area and biodiversity units cannot be directly compared?</p>	<p>Definition of 'core habitat'</p> <p>Highways England agreed that the issue between Highways England and Erewash Borough Council relates to the definition of the terminology of 'core habitat' as used in Highways England's approach to impacts on the LWS. With regards to Highways England's definition and identification of 'core habitat', Highways England explained that this is based on botanical and bird survey information from 2015 to 2018.¹ Highways England directed the ExA to a map of the LWS site areas ES Figure 8.10 Botanical Baseline Summary Map Little Eaton Junction [APP-104]. Highways England explained that Area 2E falls within the Scheme boundary and Area 2F falls outside of the Scheme boundary. Highways England explained that they recorded a number of local wildlife species, which can be used to assess the quality of the land and whether it is worthy of consideration for local wildlife status. Highways England explained that from 2015 to 2018, Area 2E did not contain enough species to warrant qualification as a local wildlife site, but that Area 2F did qualify. Highways England explained that this was factored into their assessment.</p> <p>Highways England explained that there are subtleties in value between Areas 2E and 2F and that this is supported by the bird surveys; the results of those surveys from 2015 to 2018 were significantly different in terms of species recorded and numbers, with greater numbers recorded outside of the boundaries of the Scheme than inside. Highways England explained that, despite these differences, none of the species met the criteria for a local wildlife site in Derbyshire. Highways England noted in addition that there is an invasive species in the area, shown purple within the Scheme boundary, which spreads out into the LWS. Highways England concluded that these are the main bases for their 'core area' definition.</p> <p>Highways England agreed with Derbyshire Wildlife Trust's contention that the area that floods, and therefore supports biodiversity, is variable. However, Highways England explained that they have carried out survey work over multiple years and that at no point was there an important bird breeding species recorded within the area that is to be affected by the Scheme. Highways England added that some species which they consider to be notable in 2015 (including Lapwing) were not recorded at all within the Scheme area and that only one pair of Little Ringed Plovers were recorded in the south of the site.</p> <p>Meaning of 'net loss'</p>
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¹ **Botanical Surveys at the LWS:** [APP-182] ES Appendix 8.4a Botanical Survey in 2018, [APP-183] ES Appendix 8.4b Botanical Survey in 2017, [APP-184] ES Appendix 8.4c Botanical Survey in 2015; **Breeding Bird Surveys at the LWS:** [APP-193] ES Appendix 8.8 Breeding Bird Survey in 2017, [APP-194] ES Appendix 8.8 Breeding Bird Survey in 2015

		<p>With regards to the suggestion that Highways England’s proposed mitigation is not sufficient in terms of being equivalent to what is being lost, Highways England explained that no further mitigation is being provided because, for the purposes of the assessment undertaken, Highways England’s conclusion is that the loss of this part of the LWS is not a significant effect (with the mitigation approach proposed), so it does not trigger the requirement for further mitigation.</p> <p>Highways England explained that mitigation is not based on the outcome of the metric as they do not consider this to be a viable or necessary way of assessing impacts on the LWS. Highways England explained that they followed the mitigation hierarchy and their industry’s guidance – the CIEEM guidance (CIEEM Guidelines for Ecological Impact Assessment in the UK and Ireland, Terrestrial, Freshwater and Marine (September 2019) https://cieem.net/resource/guidelines-for-ecological-impact-assessment-ecia/) on how to assess impact on a LWS – to determine whether the Scheme would undermine the ecological value of the LWS. Highways England confirmed that, based on their assessment, there is no further mitigation required for the assessed impact.</p> <p>Highways England explained that there will not be a 28% permanent loss, but that the losses will instead be both permanent and temporary. There will be some improvement to the site, such as the amenity grassland and woodland screening. Further, the timing of the works will be timed where possible to fall outside of the breeding or wintering bird season. These factors are all put forward by Highways England as a mitigation package to address the impact of the Scheme. Following this, Highways England’s conclusion is that there will not be an effect on the site for which it is designated for, nor will conservation of the LWS will be undermined. As such, Highways England noted that they have done what is required of them under environmental regulations.</p>
	<p>c) Would Erewash Borough Council and Derbyshire Wildlife Trust comment on the Applicant’s contention that the actual loss of biodiversity value of the LWS would be less than 17% (measured in biodiversity units) since the Metric Assessment does not take into account the woodland habitat created by the scheme or the control of</p>	

<p>non-native invasive species.</p>	
<p>d) Do the Applicant, Erewash Borough Council or Derbyshire Wildlife Trust consider that there is any potential for further on-site mitigation or enhancement either as part of the proposed development or through the Environment Designated Fund project?</p>	<p>The ExA referred Highways England to paragraph 5.23 of the National Policy Statement for National Networks (NPSNN), which states that <i>'The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests'</i>.²</p> <p>With regards to the ExA's reference to the NPSNN, Highways England explained that the NPS also clarifies that loss of LWSs is not in itself a reason to refuse an application. The NPS sets out an express need for projects such as this Scheme. Highways England explained that the designated funds are not guaranteed projects, and that they were being considered because Highways England had raised them as an option. They fall outside of the Scheme and may take time to bring forward. Highways England reaffirmed that the impact of the Scheme does not trigger the need for any additional mitigation.</p> <p>With regards to Highways England's ability to deliver mitigation on the site effectively, Highways England raised the issue that the site is currently in private ownership. Highways England has contacted the owner, who was not aware that the site was a LWS and does not have plans to enhance its ecological condition. Highways England added that, as the site is not under the council's control and the majority of it is not being acquired by Highways England, deliverability of additional mitigation (including outside of the Scheme boundary) by Highways England is further complicated.</p> <p>In response to the 17% point, Highways England noted that that figure could be much smaller. Highways England explained that the BMA is not used in isolation to assess the impact of the Scheme. The BMA is only used to assess part of the impact and it should be used in conjunction with other factors that the BMA does not account for, in order to tell a story about the impact of the Scheme as a whole. One problem inherent in the BMA is that it does not account for subtleties of habitats on the site, for example, differences in distribution of species across the site. Another issue is that the BMA does not account for any benefits that woodland screening can bring to the ornithological interest of the site post-development. The BMA also does not account for the additional benefits of removing invasive species that the Scheme will provide. Highways England contended that if the BMA was to be used to determine the significance or otherwise of an effect to the designated site, then it would need to account for these factors through the use of additional multipliers that would in reality show that the retained area of the designated site supports a much greater percentage of overall biodiversity value of the site, and the loss of the habitats within the area to be developed constitutes a much smaller percentage than the 17% stated.</p>

² Department for Transport, *National Policy Statement for National Networks* (17 December 2014)

	<p>With regards to the 'species rich grassland', Highways England explained that this is not a term that is used in the BMA. The term used is 'semi-improved grassland'. Species richness is accounted for by the condition of the grassland post-development. In the Technical Note [REP12-010] submitted by Highways England, 0.38 hectares of species rich, semi-improved grassland are included. Highways England confirmed that they hope to achieve a higher condition than that of the current grass. Highways England confirmed that the location of the land referenced here is within the LWS boundary and that it is replacement habitat. The land will consist of woodland and amenity grassland, but it also improves species rich grassland.</p> <p>Derbyshire Wildlife Trust questioned whether Highways England should have tried to recreate lowland meadow which would have boosted the BMA score. Highways England explained that the loss calculated by the BMA is not the only factor determining Highways England's assessment and that there are other matters to be taken into account. Highways England explained that one of the principles of biodiversity offsetting, with regards to the habitat assessment, is that it should try to achieve 'like for like'. Highways England noted that the area of the LWS is flooded at certain points of the year and that lowland meadow may therefore not be most appropriate for this area.</p> <p>In response to Highways England, Derbyshire Wildlife Trust explained that they only expect 'like for like' to be of high distinctiveness habitats. Derbyshire Wildlife Trust explained that offsetting asks for a trade for better quality habitats, and that it would be useful if semi-improved habitats were replaced by higher quality grassland. Derbyshire Wildlife Trust noted that lowland meadow might not be possible.</p> <p>Highways England clarified that they will be improving the baseline condition of the grassland at the LWS. In their metric, they are trying to achieve grassland of a moderate quality and part of the grassland to be reinstated will be of a better condition than what is there already.</p> <p>The ExA suggested that, on the question of post-mitigation loss, there is a difference of opinion between Highways England and Erewash Borough Council. Erewash Borough Council agreed with this.</p> <p>Highways England stated that they think that once one has taken account of habitats reinstatement, woodland screening, the timing of the works, and the removal of invasive species, the mitigation provided by Highways England is proportionate to the impact of the Scheme.</p> <p>The ExA requested that Highways England provide a written response regarding the Scheme impacts on the LWS and in particular how the Scheme responds to the NPSNN requirement that "<i>The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests</i>".</p>
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<p><u>Other matters</u></p> <p>e) Any other matters on the topic?</p>	<p>No other matters raised.</p>
<p>Landscape and visual impact</p>	
<p><u>The effect of the proposed development on veteran tree T358</u></p> <p>The Applicant's submission [REP7-007 paragraph 7.1] sets out its approach to the retention of the veteran tree. This includes the possibility of retaining the tree with a reduced canopy. The OEMP [REP12-002, page 25, item PW-LAN] has also been amended.</p> <p>a) Are Derby City Council content with the OEMP provisions?</p>	<p>Derby City Council confirmed that they are now more reassured with regard to Highways England's proposals to retain the veteran tree. Derby City Council explained that they are comforted by the knowledge that Highways England's compliance with the OEMP is a DCO requirement. Derby City Council added that they now have more comfort in going forward and working with Highways England on the design and at various stages of impact testing on the tree.</p>
<p>b) Do the Friends of Markeaton Park have any comments?</p>	<p>Anne Morgan asked for further explanation as to why the red line boundary on the east side of the park could not be moved so that the tree falls outside of the Scheme. Anne Morgan questioned whether the position of the bridge could be moved. Anne Morgan later explained that they had been confused between the east and west sides of the site.</p> <p>Highways England explained that the positioning of the bridge was originally sited further to the south of the current position. However, following a non-statutory consultation in 2015 and discussions with local residents and users of the park, it was decided that the bridge should be situated in the current position. The reason for this was to maintain existing trees to the greatest possible extent on the western outer edges of the park. If the bridge were to be</p>

		<p>relocated, it would have further significant impact on trees in that area. The reason for the extension of the bridge to the east is associated with the carriageway alignment.</p> <p>Highways England referred to the Highways England document Veteran Tree Loss TS58 [REP7-008]. Highways England explained that the map clearly shows the outline of the root protection area (RPA). Highways England explained that the RPA does extend under the proposed carriageway and that there will be a degree of invasive work done in that area. However, Highways England has agreed that should it become apparent during the detailed design stage that the tree can be retained, but that impacts on the tree's RPA remain, options to reduce the tree's canopy will be investigated. Highways England added that for the purposes of the Environmental Impact Assessment it was assumed that the tree would be lost, despite the position in the OEMP. Highways England explained that the OEMP includes measures to ensure that Highways England protects the tree to the extent possible. Highways England also explained that, in terms of the road and the bridge, Highways England has considered everything that was raised in the consultation and have taken appropriate action in response.</p> <p>The ExA questioned whether the measures in the OEMP, as it stands now, would allow for the eastern end of the bridge to move northwards so as to move closer to the magenta line on the map [REP7-008], and therefore slightly further away from the tree canopy. Highways England explained that they have not looked into this point in detail because movement further east would impact the Mill Pond, which is situated very close to that area. However, the exact position of the footbridge will be reviewed during the detailed design stage.</p>
	<p><u>Other requests to speak accepted by the Examining Authority</u></p> <p>c) Friends of Markeaton Park: Markeaton Park proposals for tree removal and replacement; and the creation of the utility corridor.</p>	
	<p><u>Other matters</u></p> <p>d) Any other matters on the topic?</p>	<p>No other matters raised.</p>

	<p>Noise and vibration The water environment The historic environment</p> <p>The ExA does not intend to raise any matters on these topics.</p> <p><u>Other matters</u></p> <p>a) Any other matters on these topics?</p>	No other matters raised.
4	The recording of the Hearing and the next steps in the Examination	
5	Any other business and close of Hearing	