

A38 Derby Junctions TR010022

8.115 Applicant's Responses to Information or Submissions Received by Deadline 13 (Friends of Markeaton Park)

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Rule 8 (1)(k)
The Infrastructure Planning (Examination Procedure) Rules 2010

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(Examination Procedure) Rules 2010**A38 Derby Junctions**
Development Consent Order 202[]

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Received by Deadline 13**

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Applicant's Responses to Information or Submissions Received by Deadline 12

Introduction

This document provides the comments of Highways England (the Applicant) on the responses made by Interested Parties to the Planning Inspectorate on Deadline 13 in respect of the A38 Derby Junctions scheme (the Scheme) Development Consent Order (DCO) application.

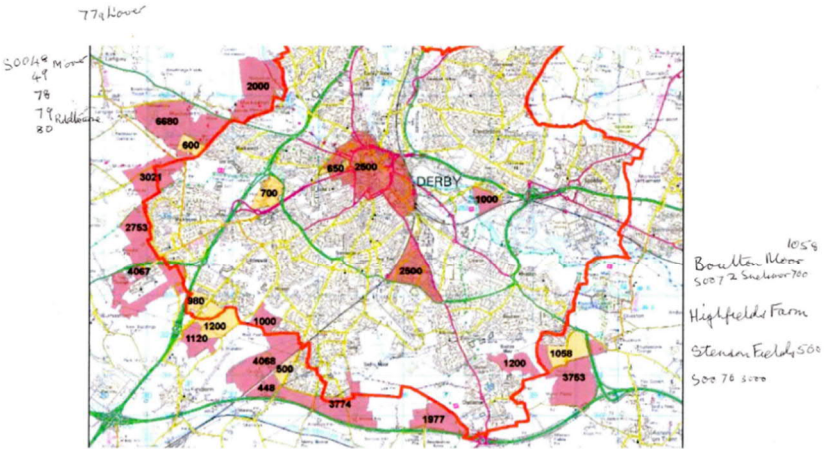
The Applicant has sought to provide comments where it appeared to be helpful to the Examination to do so, for instance where a response includes a request for further information or clarification from the Applicant or where the Applicant considers that it would be appropriate for the Examining Authority (ExA) to have the Applicant's comments on a matter raised by an Interested Party in its response.

Where an issue raised within a response has been dealt with previously by the Applicant, for instance in the Applicant's own response to a question posed by the ExA or within one of the documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.

The Applicant has not provided comments on every response made by an Interested Party to the submissions or questions raised. In some cases, no comments have been provided, for instance, because the response provided a short factual response, it reiterated previously expressed objections in principle to the Scheme or expressions of opinion without supporting evidence, or it simply contradicted the Applicant's previous response to a question without providing additional reasoning.

For the avoidance of doubt, where the Applicant has chosen not to comment on matters raised by Interested Parties this is not an indication that the Applicant agrees with the point or comment raised or opinion expressed in that response.

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Friends of Markeaton Park		
	<p>TR0 10022 had its first consultation in 2003. Around that time Regional studies were being conducted, including the Strategic Housing Land Availability Assessments, which were based on increases of population of 6% annum. It is not possible for TR0 10022 to achieve its objectives “To help facilitate regional development and growth in Derby City and its surrounding areas and increase capacity of the strategic road network to absorb growth” because all the possible actions have already been covered by the adopted City of Derby Local Plan. The area of land and the capacity of the roads do not grow at 6% per annum. Everywhere adjacent to this scheme is already developed. Any “reduction of delays” will solely benefit the through traffic, not the people of Derby and Derbyshire.</p> <p>When the access to the A38 from Brackensdale Avenue and Greenwich Drive is closed how are the drivers who live in Mackworth to get to other parts of Derby?</p> <p>Disruption of A52 Eastbound traffic will not be minimised by closing the current entrances direct off the A38 and placing traffic lights at a new entrance to Markeaton Park, in a spot where accidents and pollution incidents have occurred previously. The businesses</p>	<p><u>Scheme History</u></p> <p>The A38 Improvements were first consulted upon in the 1970s and resulted in the construction of the A38 Queensway, which opened to traffic in 1983. The junction with the A6 was grade separated (the “Palm Court” junction); and the junctions with the A5111, A52 and A61 were built as “at grade” roundabouts.</p> <p>During the 1990s it became clear that the capacity of these three “at grade” junctions was inadequate and therefore the Government Office for the East Midlands (GOEM) set up a regional steering group (RSG) to examine the problems and identify possible transport solutions. The RSG commissioned a road-based study (RBS) in 2001, which was led by a Technical Project Management team formed of members from many organisations and included the local highway authorities and a representative from Highways England.</p> <p>The overall aim of the RBS was to identify the preferred strategy for action and investment based upon an in-depth appraisal of the congestion, safety and development problems at the junctions. The 2001 RBS included several public roadshows to gather ideas on the potential transport</p>

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	<p>involved in the Behaviour Change Group fear permanent loss of footfall, not economic success and the City Council expects a severe fall in its income.</p> <p>[Extract from DCC housing map attached]</p>  <p>Some of these housing allocations have been built, others are going through the system. Now the overwhelming need is for public transport.</p> <p>The Government Policy is the Transport Decarbonisation Plan, 2020, that aims to make public transport or walking / cycling / scooters the first choice for people. Derby Cycling group is disappointed in the low number of their</p>	<p>solutions and various workshops were held with the stakeholder organisations.</p> <p>The RBS reported in 2003 and Highways England was instructed to develop options to grade separate the three junctions. This instruction led to the road-based improvement consultations that FoMP refer to as "TR0 10022 had its first consultation in 2003". In fact, the regional studies into multi-modal transport options had already been completed by 2003. Grade separation had already been identified as the most cost-effective solution to the observed transport problems.</p> <p>Between 2003 and 2015, various programmes to progress the grade separation of the three A38 junctions were initiated and these programmes included public consultations on the layout options. However, each subsequent development programme was frustrated by a succession of government funding cuts, austerity programmes and more recently political delay to the preferred route announcement (PRA). Instead of grade separation, low-cost capacity improvements using traffic signals installed on the roundabouts, were implemented in 2004 (the 'Interim Improvements') and again in 2014 (the 'Pinch Point' schemes at the Little Eaton and Markeaton roundabouts) in an attempt to ease the capacity shortfalls at the junctions. However, these short-term capacity improvements were not sufficient to address all of the identified problems.</p>

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	<p>suggestions that Highways England has incorporated into the design.</p>	<p>Following the lobbying of central government by DCiC, the A38 Derby Junctions grade separation programme was included in the first Road Investment Strategy (RIS1) in 2015. Highways England then held further public consultations in 2015, which resulted in the Secretary of State for Transport making the PRA on 31 January 2018. This PRA released the public funds that allowed Highways England to achieve "Project Control Framework" (PCF) Stage 3, and develop the Preliminary Scheme Design and the Environmental Assessment work that supports this DCO application.</p> <p>The preliminary designs identified that the existing local accesses onto the A38 at Brackensdale Avenue (which has a connection from Greenwich Drive South), and at Raleigh Street, will need to be closed. The replacement access will be provided by the extension of Kingsway Park Close to form a direct connection with the new Kingsway Junction.</p> <p>In advance of the submission of the DCO application, Statutory Public Consultation under the Planning Act 2008 on these preliminary designs was held in September-October 2018.</p> <p>The scheme's development history demonstrates that extensive thought and many public consultations have been conducted over the last 20 years in order to develop the optimum and most cost-effective solution to the <u>observed</u> capacity shortfalls and road safety problems in the area.</p>

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		<p>Every ten years, successive central governments have allocated sufficient funds to Highways England such that an interim solution could be applied to address the observed problems at the three A38 Derby Junctions. The works included within the A38 Derby Junctions DCO are intended to provide a long term solution and, if consent is granted, are scheduled to be complete and open in 2024.</p> <p><u>Housing Development Plans</u></p> <p>FoMP refer to housing plans. There are four planning authorities that have a direct impact upon the future trip demands at the A38 Derby Junctions. These four planning authorities are: Derby City Council, Amber Valley Council, Erewash Borough Council, and South Derbyshire District Council. All four planning authorities have published various Local Plans over the last 20 years. In every Local Plan the strategy has been to meet their housing provision requirements by extending the Derby urban area.</p> <p>These housing growth plans are constrained by the <u>existing</u> capacity restraints and safety problems of the A38 strategic road network, which constraints become concentrated at the three "at grade Derby Junctions". As noted above, some short-term capacity improvements were implemented in 2004 and in 2014, but these were not sufficient to meet the existing traffic demands without accommodating any future increase in traffic..</p> <p>Highways England has statutory powers to direct the refusal of planning applications where the trips generated by a</p>

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		<p>development site could compromise the operation and efficiency of the strategic road network. Highways England has not directed refusal of outline planning applications given that there is a central government funded scheme in the RIS programme to improve the capacity of the A38 which will address any issues. However, some local development sites do have planning conditions imposed in relation to their size and the timing of their occupation (e.g. at Manor Kingsway).</p> <p><u>Public Transport & Decarbonisation Planning</u></p> <p>Transport Planning is devolved by central government to the various local government organisations although the control of the overall transport policy framework and the granting of the orders required to implement major infrastructure projects is retained by central government.</p> <p>With respect to this Development Consent Order, the 'Applicant' is Highways England who is an agent of the Department of Transport and is given responsibility for the operation and management of the strategic road network (SRN) and for the development and implementation of both small and major infrastructure improvements to the SRN. Whilst the 'Applicant' is not directly responsible for planning public transport nor for formulating decarbonisation policies, the 'Applicant' is invited to provide information to steering groups that deal with such matters.</p> <p>One such example was published in May 2020 by 'Midlands Connect' (MC). MC is a government group consisting of</p>

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		<p>those organisations and authorities with an interest in transport planning in the Midlands regions. Participants in the group include Derby City Council, Derbyshire County Council and Highways England.</p> <p>It is recognised by MC that Public Transport in the East Midlands region will need to be improved over the next twenty-five years (to 2045). This period covers a similar timeframe to DfT's Transport Decarbonisation proposal which is currently in consultation. Their identified Public Transport funding priorities are set out in their document published in May 2020. [link: MidlandsConnectUK May2020].</p> <p>The document identifies public transport improvements to be implemented in the East Midlands in three phases. Phase One is £455 million to be spent over the next ten years. Phase Two is for £1.2 billion to be spent over the next twenty years. Phase Three is for £1.05 billion to be spent on public transport improvements (over the next twenty-five years) by 2045. These public transport investment plans for the East Midlands region sum a total expenditure of £2.705 billion. These published plans are focused on providing for travel demands on radial routes to/from a Transport Hub located at Toton in Nottinghamshire.</p> <p>In the light of MC's plans for public transport investment in the East Midlands it is clear that, in relation to Derby, all the public transport investment will be focused upon providing</p>

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		<p>for east-west movements and will be located to the east of the city.</p> <p>By comparison, the A38 route passes to the west of the city and is providing for travel movement between trip-ends to the north of Derby and trip-ends to the southwest of Derby. The public transport investment plans directed towards the East Midlands region for the next twenty-five years will do little to reduce the existing transport demands upon the A38 route.</p> <p>By comparison with MC's plans for public transport investment, the A38 Derby Junctions scheme is a modest infrastructure investment and is needed to address the <u>existing</u> travel problems on the SRN.</p>
	<p>In response to the Examiner's question about trees Highways England directed us to ES Chapter 7: Landscape and Visual [APP045]. Studying those maps it was a shock to discover that there are NO plans to replace trees in mitigation for the loss of the present tree belt along Queensway. That is to be replaced by amenity grassland. Environmental Plans 6.2 Figures 7.8 A-C has twelve lists of plants. The numbers of trees to be planted (in linear strips at the edge of the slip roads or in triangles between the slip roads) is listed as a different percentage of each tree in each different list. The actual number will be determined at the Detail Design Stage. Presumably that is when the width of the Utility Diversion will be decided, and the numbers of trees that will be lost to pumps, drains and</p>	<p>ES Figure 7.6A [APP-092] indicates that whilst some trees along the edge of Markeaton Park will be lost due to the Scheme, a belt of trees between the Scheme and Markeaton Park will be retained. ES Figure 7.8B [APP-094] shows that the landscape design for Markeaton junction includes woodland edge planting (labelled as LE2.1) in the vicinity of the existing park entrance (to be closed as part of the Scheme), plus individual tree planting along the park boundary with the Scheme (see circles which relate to LE5.1). Such planting will include semi-mature trees. The landscape design shown in ES Figure 7.8B [APP-094] is indicative and will be confirmed during the detailed design stage, noting that Highways England has confirmed that the landscape design will result in a net increase in the number</p>

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	<p>sewers etc. will become known. No ratio of numbers lost to numbers replaced is suggested, either for mitigation or for the Climate Change Law Obligations. The rules as to replacement if a plant dies within five years are clear. IT MUST be replaced. Will "vegetation to be retained" that dies within five years of having diggers going to and fro over its roots during construction, and subsequent utility repair work, also be protected by "MUST be replaced" rules? If so how many saplings for each 40 year old tree? What if the new path built with Heritage Funds is damaged every time a Utility has to be repaired? Tree DWT 26 is an irreplaceable Oak old enough to shed a branch naturally.</p>	<p>of trees in Markeaton Park, with the tree planting proposals being finalised following consultation with the park owners, DCiC – this is confirmed in the OEMP [REP12-002].</p> <p>It is also confirmed that the dDCO [REP9-004] at Requirement 6 states <i>"Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted"</i>.</p> <p>This is a standard timeframe applied to new planting to ensure it is successful.</p> <p>With regard to vegetation to be retained and potential damage during the construction works, the OEMP [REP12-002] at PW-LAN2 states <i>"Where trees are to be retained within or immediately adjacent to the order limits, Highways England will adopt the default position that the root protection area (RPA) and canopy spread will form an effective Construction Exclusion Zone, secured with robust fencing where no access will be permitted. Works within the root protection area of trees will be avoided wherever practicable. However, where some works within the RPA cannot be avoided e.g. for access or stockpiling, the contractor shall use cellular confinement systems to minimise/avoid compaction to the ground. Protection will still be required to avoid physical damage to the tree i.e.</i></p>

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		<p><i>trunk, branches or crown. In addition, if works are deemed essential within the RPA the length of time of the impact shall be limited'. As such, the Scheme construction works will be undertaken in a manner that suitably protects vegetation that is to be retained – such protection plans will be defined in the Arboricultural Mitigation Strategy as detailed in MW-LAN2 of the OEMP [REP12-002].</i></p> <p>With regard to loss of vegetation due to works within the utilities corridor, this area will be suitably landscaped such that removal of planted trees (or retained trees) will not be required during any infrequent maintenance works. Such works would be temporary in nature, with areas affected being suitably restored and landscaped.</p> <p>With regard to the comment on how many saplings will be provided for mature trees, as detailed above, Highways England has confirmed that the landscape design will result in a net increase in the number of trees in Markeaton Park, with the tree planting proposals being finalised following consultation with the park owners, DCiC – this is confirmed in the OEMP [REP12-002].</p> <p>With regard to the comment on damage to the footpath that runs parallel to the utility corridor during utility repair works, any infrequent temporary maintenance works will not require closure of the footpath given that the footpath and utilities will be suitably separated.</p> <p>As detailed in Highways England's responses to Friends of Markeaton Park received at Deadline 12 [REP13-006],</p>

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		<p>veteran tree DWT no. 26 is a Common oak <i>Quercus robur</i> and is illustrated in ES Figure 8.9 [APP-103] and referenced as tree T287 in ES Appendix 7.2 [REP9-014]. The veteran tree is located within Markeaton Park beyond the Scheme boundary and will be unaffected by the Scheme (refer to tree retention plan ES Figure 7.6A [APP-092]).</p>
	<p>The Applicant wants temporary possession of all the land around Markeaton Lake. How is the partnership working to eliminate the Signal crayfish from the lake to continue that project? I hope Highways England make sure they can reach all parts of the lake day or night to continue their work, and that Highways England can find some funding for them from their budget because both the National Trust and the Derbyshire Wildlife Trust have had their income badly damaged by the lock-down.</p>	<p>Highways England requires temporary possession of the land around Markeaton Lake as detailed in the Land Plans [REP9-003] – temporary access is needed during the Scheme construction phase in order to create a new species rich grassland within the park, as well as the creation of bat roost features in 10 selected trees within the park. Such works will not restrict access to the lake for any planned works relating to the control of American signal crayfish within the lake. The Scheme cannot provide funding for any signal crayfish control works within the lake as they are not related to the A38 proposals. However, outside of the DCO as part of the ongoing Highways England Designated Fund biodiversity enhancement project (refer to ES Chapter 8: Biodiversity [REP9-009]), and/or voluntary Corporate Social Responsibility days, there may be opportunities for Highways England to work in partnership with stakeholders to enhance the biodiversity in Markeaton Park, including potential control of signal crayfish within Markeaton Lake, if appropriate.</p>
	<p>Question 9.1 Special Category Land The Markeaton Park 'Mundy covenant</p>	<p>Noted</p>

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	<p>9.1 b) Please clarify the consideration given to the rights of wider beneficiaries due to their use of the land as protected by the covenant, e.g. in relation to public amenity, for this specific matter.</p> <p>DCiC response quoted in Highland England 8.100 Volume 8:</p> <p>“The successor in title has been identified as Annie Clarke-Maxwell. Her contact details have subsequently been provided to the Applicant in order that they may directly liaise with Annie to determine if any suitable alternative arrangements can be made. It is considered that the Applicant needs to establish the position directly with the successor in title since DCiC has no authority to act without the express consent of the beneficiary.”</p> <p>Applicant's response: Highland England 8.100 Volume 8</p> <p>“Annie Clarke-Maxwell has written to confirm that they have not been able to access the legal documents which are stored hard copy, as a result of the Covid-19 restrictions. In her email, dated 1 May 2020 she states that: “We are a very old family in [sic] derby and have a large trunk which contains our information and because of Coronavirus the solicitors is shut up xxxxx xxxxx xxxxx xxxxxxxxxxxxxxxxxxx xxxxx xxxxx xxxxx xxx. [redacted] I honestly have no intention of causing any issue or trying to stop the work going ahead on the a38. As far as I am aware the council will require me to sign a waiver but their legal department is terribly slow at the best of times, so I</p>	

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	<p>hope my assurance helps you". Applicant's response in 8.101 Volume 8</p> <p>"b) The parties to the 'Mundy covenant' are the Mundy family and the Council. The public who use the land for its amenity value have no formal Interest in the right. Formally, the beneficiary of this right is the Mundy Family, rather than the public who enjoy the amenity value of the park. The removal of the right (in circumstances where CA powers were not used) would be one that could be agreed between the Council and the Family, without any involvement of the parties who enjoy the park.</p> <p>c) The Book of References and Statement of Reasons will be updated, as required, once evidence of succession of the beneficiary is obtained."</p> <p>Friends of Markeaton Park response</p> <p>Friends of Markeaton Park are very aware that they have no formal rights under the Mundy covenant. Friends of Markeaton Park are grateful to the Inspector for scrutinising this aspect of the A38 3-junctions scheme. We are grateful to Annie Clarke-Maxwell, and to her father Charles Clarke-Maxwell who attended our steering group meetings, for their diligent supervision of what Planning matters are considered for the park. Several times we were told that CCM had made sure that a planning application would not go ahead, especially when it involved telephone masts; once it was a for a wind-turbine. I cannot offer any written evidence to support that</p>	

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	statement. I apologise for forgetting to include the words "for the use of" or "wider" to qualify "beneficiaries" in our answers for deadline 12.	
	I believed the assurances that had been given at the consultations, that mitigation would more than compensate for the loss of a few low value trees, so I did not take any notice of the start of this Inquiry; I thought it would improve traffic flow. At the beginning of February this year Friends of Markeaton Park Trustees asked me to write a report about it. As I read the proposals I became more and more horrified. I am a pensioner with no day job, and who is banned from leaving the house because of the Corona virus lock-down. I find it is extremely difficult to get information from the thousands of pages of the applicants' documents although I have all day every day to read them. Often I know I have read something relevant to the Inspector's questions but I am not able to find it again.	Noted
	The City Council officers have been subject to severe austerity cuts and they have to cover the workload of people who have been compelled to retire early as well as participating in the Inquiry. Both they and the Covenant Guardian have too much to do in the time available to them, yet somehow they do manage to do it well.	Noted
	Friends of Markeaton Park do not know the arrangements between the Covenant Guardian and the Council Liaison officer for exchanging details about this scheme as they	The maximum width of the utilities corridor is as indicated in the submission drawings [REP2-006], if feasible, this will be reduced during the Scheme detailed design stage.

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	<p>are gradually revealed by the Examiner's questions for this Inquiry. The depth and width of the Utility diversion corridor and a number of other contradictory matters have been deferred to the Detail Design stage. Is it correct procedure to seek signatures before the details are confirmed?</p>	
	<p>Shouldn't the Acquisition of permanent Rights of Access to that strip of the Covenanted land also be deferred until those details and the mitigation that would be forthcoming have been decided? Then the parties to the Covenant would know the impact upon the amenity of the park and on the Carbon-Dioxide reduction targets. They would be in a position to discuss compensation funding if the HLF wide path is damaged by a Utility company, and finance for the delivery of additional benefit through the enhancement of existing assets, particularly the improvement of existing park infrastructure to mitigate the impact of the scheme on park users and increase the numbers of trees and ponds.</p>	<p>For a DCO application, sufficient design is carried out to determine the land take requirements for the Scheme and to identify the environmental impacts the Scheme will have (and the mitigation of adverse impacts). Limits of deviation have been set and these are secured in the draft Development Consent Order to provide surety that the Scheme that is being examined is the one that will be built. This is the case for all major highway schemes including the A38 Derby Junctions.</p>