

**From:** [REDACTED]  
**To:** [A38 Derby Junctions](#)  
**Subject:** For the attention of the A38 Derby Junctions Case Team  
**Date:** 26 October 2021 14:38:36  
**Attachments:** [A38 oct 21 response.pdf](#)

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Dear Sirs

I attach comments from Derby City council in respect of the A38 re-determination of the application by Highways England.

Regards,

**Paul Clarke** MRTPI | Chief Planning Officer | Communities and Place | Derby City Council, The Council House, Corporation Street, Derby, DE1 2FS | [REDACTED]  
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Derby City Council

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(By Email)

Date 26 October 2021

Dear Sirs,

### **A38 Derby Junctions - Interested Party comments**

I refer to the request by the Secretary of State (SoS) for Derby City Council (DCiC) to provide representations in relation to the re-determination of the quashed Development Consent Order (DCO) for the Derby Junctions Scheme, originally granted in January 2021.

The following comments apply to the submitted details as read, without any interpretation, agreement or attempts to influence or predict the outcome of the ongoing DCO re-determination and are provided by technical officers on behalf of Derby City Council.

The following documentation has been reviewed in connection with the comments below:

- Letter of 2<sup>nd</sup> August 2021 from the Department for Transport - request for representations
- *Applicant's Response to Secretary of State's Statement of Matters of 2 August 2021* – Highways England, August 2021.

The Secretary of State invites further representations for the purposes of his re-determination of the application:

- *the carbon impact of the development; the implications, if any, of the development in relation to the Paris Agreement and the UK's nationally-determined contribution under the Paris Agreement, the 2050 net zero target in the Climate Change Act 2008, and carbon budgets set under the 2008 Act (including the sixth carbon budget as set out in the Carbon Budget Order 2021); and, whether the increase in carbon emissions resulting from the development is so significant that it would have a material impact on the ability of the Government to meet its carbon reduction targets;*

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Derby City Council's Local Transport Plan (2011-2026), LTP3, recognises the need to grade separate the A38(T) Derby Junctions. The A38(T) forms an important part of Derby's highway network and the junctions are identified as major congestion points. Congestion on the trunk road network in Derby has a significant influence upon local route choice and traffic patterns. The Derby LTP3 states that the A38(T) Derby Junctions Scheme would separate local and long-distance traffic reducing delays and congestion, allowing the City Council to better manage the local network and improve linkages across the A38(T) for public transport, pedestrians, and cyclists. However, the LTP identifies, the significant economic price associated with climate change and the role that domestic road transport plays in contributing to CO<sub>2</sub> emissions. The climate impacts are directly related to traffic volumes, modes of transport and traffic patterns, including congestion. As such, the principle set out in LTP3 is to only support new infrastructure that is targeted, which make best use of the available road capacity.

In working with the developer we have supported them in facilitating the use of active and sustainable modes of transport. We have been working with HE and Linkconnex on the detail design of the scheme to incorporate improvements for cyclists and pedestrians, where appropriate, to further encourage active travel. We have also continued to work with the Travel Behaviour Change Group to help identify measures to incentivise change in mode of transport to active and sustainable modes in advance of the start of works to help reduce congestion. Additionally HE has been working with local businesses and voluntary sector on a two-year trial of electric vans to enable a 'try before you buy' scheme. We have also fed back comments around the travel plan for the employees and visitors during the construction phase of the development to help facilitate active and sustainable modes of transport.

The climate impact of the development is a wider issue across the Strategic Road Network, due to the very nature and function of the scheme, and how traffic reacts to the scheme i.e. the level of induced traffic vs re-assigned traffic. There was no specific guidance regarding significance levels for GHG emission impacts at the time of the DCO process. The UK has legally binding GHG reduction targets and, therefore, the ES measured the level of significance of the development scheme against the UK National GHG inventory and the UK achieving its reduction targets with the information available at that time.

It is for the applicant to demonstrate the impacts on GHG and how these will be off set because it must be considered against the wider management of the strategic road network

as a national asset. However, since the DCO additional national strategies and aspirations have been published (regarding the phasing out of ICE vehicles, alongside many more policies as part of the transport decarbonisation plan, the delivery plan for the transition to zero emission cars and vans and other related documents).

The applicant in their response to the Secretary of State's statement of matters has provided further information to reflect the scheme contributions taking into account the 6<sup>th</sup> carbon budget. The applicant has also highlighted the consideration that it is an overestimate of emissions taking into account that within the emissions factor toolkit account is not taken for the increase of electric vehicles beyond 2030. In addition mention is made of the recent National Government and National Highways plans and commitments that will have a direct impact on the further reduction of road user emissions. As a result the applicant does not consider that CO<sub>2</sub>e emissions resulting from the Scheme will have a material effect on the Government's ability to comply with the carbon budgets. **It is considered an appropriate approach to take in addressing this question.**

- *the direct, indirect and cumulative likely significant effects of the development on climate, including greenhouse gas emissions and climate change adaptation, in light of the requirements set out in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ('the EIA Regulations') and in light of paragraphs 5.17 and 5.18 of the National Policy Statement for National Networks ('NNNPS');*

The approach the applicant has taken to address the question **seems appropriate considering the national requirements and guidelines for a scheme of this type.**

### **Point 3 – Air Quality**

- *whether, taking account of any more recent data than that which was available during the examination, the Development's construction and/or operation would lead to a significant air quality impact or a deterioration in air quality in a zone/agglomeration, cause delays in areas not compliant with the Air Quality Directive becoming compliant, or cause any compliant areas to become non-compliant, both generally (if necessary), and in particular for Stafford Street within the Derby ring road Air Quality Management Area*

## Local Data

DCiC has undertaken a review of more recent air quality data which has come to light since the previous examination which took place in 2019 - 2020. In terms of data produced by Derby City Council, this consists solely of diffusion tube data (for NO<sub>2</sub>) which continues at a total of 70 monitoring sites across the City.

Since local NO<sub>2</sub> concentrations are driven primarily by traffic emissions, as one would expect, NO<sub>2</sub> levels have been affected significantly by the various stages of lockdowns which took place in 2020 and early 2021. At the peak of the first lockdown in March and April 2020, roadside concentrations in Derby had fallen by an average of 29% (March) and 44.8% (April), when compared with data for the same periods in 2019.

Whilst traffic volumes have steadily increased since that time, it is clear that the data for 2020, and to a lesser degree 2021, has not been representative of 'normal' conditions.

Since the primary use of diffusion tube monitoring data within the air quality modelling assessment work is to validate the modelling results, it would not be deemed appropriate to use this data in an updated model verification.

In fact, use of the data would inevitably have the effect of 'watering-down' potential air quality impacts caused by the scheme. Consequently, the existing modelling presented as part of the examination in 2019/20 is considered to provide a more conservative and robust assessment than any updated assessment would, using recent monitoring data.

Derby City Council has not completed any updated modelling following the PCM-based exercise completed in 2018 and which was discussed under the previous examination.

## National Data

The national Pollution Climate Mapping (PCM) model, which is produced by DEFRA in order to estimate air pollutant concentrations across the whole of the UK, was updated in 2020.

The latest predictions for Derby suggest compliance with the national standards/regulations slightly earlier than previously suggested. This is partly on the assumption that Derby has completed implementation of the Local Roadside NO<sub>2</sub> Plan (otherwise referred to as the

Stafford Street scheme), but also relates to continually more optimistic (and arguably realistic) assumptions for fleet turnover towards a higher percentage of lower emission vehicles.

The physical road improvements associated with the Stafford Street Scheme have now been implemented, however the delivery of the proposed enhanced Urban Traffic Management Control (UTMC) system is not yet complete.

Although the predictions are perhaps slightly optimistic on this basis, they nonetheless present a scenario which reduces, rather than increases, the previously reported Derby Junctions air quality impacts.

Therefore again, the existing modelling considered under the 2019/20 examination is deemed to represent a more conservative scenario than the updated data reflects.

#### Highways England Data

I note as part of Highways England's response to the request for representations, an updated assessment of construction-related air quality impacts is summarised.

The documentation does not include the input data or any of the analysis results themselves, other than a statement that the updated assessment concludes that "*construction of the Scheme will not give rise to materially worse or materially new air quality effects*". It isn't possible to verify this statement without the relevant supporting information.

#### Conclusions Regarding Point 3

The assessment work undertaken, and input data used in order to predict air quality impacts within the Environmental Statement produced as part of the previous examination, **are considered to remain both robust and relevant.**

Consequently, the conclusions drawn in 2019/20 in respect of the A38 Derby Junction Scheme's potential to either create a significant air quality impact, cause a deterioration in air quality in a zone/agglomeration, cause a delay in areas not compliant with the Air Quality Directive becoming compliant or cause any compliant areas to become non-compliant, **remain valid.**

#### **Point 4 – Relevance to current plans and policies**

- *Any change in whether the Development would be consistent with the requirements and provisions of relevant local or national policies, given the length of time since the examination closed. This will include those policies included in the Applicant's Planning Statement and National Policy Statement Accordance table and any updated versions thereof (including the updated Derwent Valley Mills World Heritage Site Management Plan 2020-25), as well as any wholly new policy that may be applicable.*

#### DCiC Air Quality Action Plan

Derby City Council published an updated *Air Quality Action Plan (AQAP)* in November 2020, which is available here:

<https://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/environmentalndplanning/pollution/derby-air-quality-action-plan-2020.pdf>

The AQAP contains a list of measures, with associated supporting evidence, describing the action the Council intends to take in order to achieve compliance with the National AQ Objectives (as distinct from the *Air Quality Standards Regulations 2010* – formally the EU Ambient Air Quality Directive (2008/50/EC)), in particular ensuring compliance within the Council's designated Air Quality Management Areas (AQMAs).

The actions (see Table 9 of the Report) are however exclusively based around measures that the Council is itself delivering and therefore does not include projects outside of the Council's full control.

It is however worth reiterating the position of DCiC with respect to air quality impacts arising from the A38 Derby Junctions Scheme, as was highlighted by DCiC during the previous examination, namely that the scheme is perceived to bring about net air quality benefits to the City of Derby.

This is through reallocation of traffic away from the more congested inner city road network and AQMAs and onto the A38 strategic network, away from the greater density of sensitive

receptors that exist within the City and thus being a net benefit for human health risks associated with air pollution exposure.

Since the DCO additional national strategies and aspirations have been published regarding the phasing out of ICE vehicles, alongside many more policies as part of the transport decarbonisation plan, delivery plan for the transition to zero emission cars and vans and other related documents. The applicant has made reference to these documents (point2, 1<sup>st</sup> bullet). The applicant's approach to addressing the questions seems appropriate.

The A38 Derby Junctions Scheme is therefore **not considered to be in contravention with any of the measures contained within the Council's new AQAP** and indeed, is deemed to largely support the Plan and its efforts to reduce vehicle emissions within the city's AQMAs.

DCiC is unaware of any other new local plans or policies likely to affect the previous examination conclusions.

#### **Point 5 – Adequacy of Environmental Information**

- *other than the matters set out above, the adequacy of the environmental information produced in support of the application for the Development and whether further or updated environmental information is now necessary given the length of time since the examination closed*

Whilst environmental conditions will inevitably have changed over the period of time since the previous examination took place, DCiC is unaware of any significant factors or changes in circumstances which have the potential to have materially impacted upon the earlier environmental assessment work regarding noise, air quality or land contamination.

As mentioned above with respect to air quality data, the previous 18 to 24 months have been abnormally affected by the covid-19 pandemic, primarily through a reduction in road traffic volumes, leading to lower-than-normal air pollutant and noise levels in particular.

Therefore, use of more recent environmental data would likely have the effect of influencing the environmental assessment conclusions in a way that would lead to less, as oppose to more, reliable data.



Consequently, it is the view of DCiC that the previous conclusions resulting from the Environmental Statement produced at the last examination, **are still valid and relevant and would not benefit from reassessment using more recent data.** The applicants approach to addressing the question seems appropriate.

Derbyshire Wildlife Trust (DWT) on behalf of DCiC, as our technical advisors, has reviewed the applicant's response to the Secretary of State's Statement of Matters of 2 August 2021 and with respect of **Section 6** of the applicant's response wishes to highlight that the ecological assessment did not include the use of a biodiversity metric to quantify the biodiversity losses that will occur and the proposals for habitat creation and enhancement that the applicant proposes. In detail DWT has raised concerns with and through Derby City Council and Erewash Borough Council in relation to the absence of biodiversity metrics and this question was discussed during the public enquiry. As DWT understand it the applicant has indicated that a biodiversity metric will be applied at the detailed design stage. However, the lack of metric information to date means that the magnitude of the impacts on habitats remains largely unquantified and it is therefore difficult for individuals and organisations reviewing the application to gain an understanding of whether the current proposals for mitigation and enhancement will be adequate to fully address the biodiversity losses. The lack of metrics is particularly concerning when habitats such as Wood-pasture and Parkland are being directly affected as these are treated as unacceptable loss requiring bespoke compensation measures in Defra's metric.

As far as DCiC is aware HE has still not applied a biodiversity metric to the ecological assessment, so this remains a concern. In terms of other survey information HE has carried out surveys in 2020 and 2021 so we don't have any immediate concerns although if the scheme continues and there are further delays some survey work will need to be updated again in due course.

With regard to **section 8** and the potential impact on the veteran oak tree T358 there remains uncertainty on Highways England's part as to whether or not this tree will be retained. DCiC consider that the tree should be retained in situ. Veteran trees are irreplaceable habitats and impacts should in the first instance be avoided.

Despite the applicant agreeing that it may be possible to retain the tree there still appears to be an overwhelming desire/predisposition to remove it. Site investigations to determine

root growth at specific locations were attempted earlier this year but were halted due to protester presence.

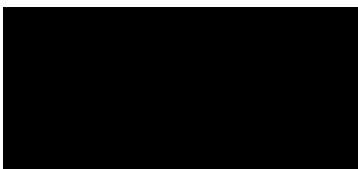
Figure 1: T358 Root Protection Area (RPA) Impacts - shows utility diversions and a drainage ditch within the RPA. Consideration must be given to relocating the utilities and ditch to limit the impact on the RPA.

DCiC do acknowledge that the tree's RPA will be seriously compromised. Following the anticipated loss of some of the RPA it is accepted that the tree would not be retained as a full canopy tree and that if retained it will need to be managed in a much-reduced state. Retaining the tree in a much-reduced state would retain much of the valuable habitat associated with veteran trees including the immediate soil habitat with associated mycorrhizal associations. This soil habitat would be lost if the tree was felled, and the trunk installed in Markeaton Park as a totem (habitat) pole. If retained in a reduced state it may need to be subject to periodic static pull tests to confirm that it is safe to retain. The statement does not mention any proposed works to manage the tree in a reduced state.

Further detailed assessment is required to determine if the tree can be retained, albeit in a reduced state. The detailed assessment must include a tree works management plan. The councils tree section and the TPO officer must be consulted during the detailed assessment.

I trust that this response is of assistance going forwards.

Yours sincerely



Paul Clarke  
Chief Planning Officer