

M42 Junction 6 Development Consent Order Scheme Number TR010027

8.84 Written Submission of Oral Case for ISH on dDCO on 23 October 2019

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M42 Junction 6
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Table of contents

Chapter	Pages
1. Introduction	1
2. Representations at ISH 7	1
2.1 DCO 3 Issue Specific Hearing Action Points	1
2.2 Specific issues and questions bearing on the DCO	4
2.3 Protective Provisions	8
2.4 Statements of Common Ground (SoCGs)	9
2.5 Other issues arising from Deadline 6 submissions	9

1. Introduction

- 1.1.1 This document summarises the case put forward by Highways England (the Applicant), at the seventh Issue Specific Hearing (ISH 7) on the draft Development Consent Order (dDCO) which took place at the Ramada Hotel, Church Hill Road, Solihull on 23 October 2019.
- 1.1.2 Nick Evans (NE) of BDB Pitmans represented the Applicant and was assisted by experts at AECOM.
- 1.1.3 The summary of the submissions below broadly follows the Examining Authority's (ExA) agenda.

2. Representations at ISH 7

2.1 DCO 3 Issue Specific Hearing Action Points

Completed actions

- 2.1.1 The ExA welcomed the Applicant's proposed amendments to Article 12 of and Schedule 2A (streets subject to street works) to the dDCO.

Guillotine Provisions

Requirement 10 - Traffic management

- 2.1.2 The ExA noted they were aware that a draft agreement was being discussed between the Applicant and the Gooch Estate related to these matters, and asked for an update on discussions. NE explained that the Applicant was hopeful that all issues could be resolved through negotiations and noted that the Gooch Estate would make representations to the ExA if they did not think the issues had been resolved.
- 2.1.3 With regard to the points that had been made about the certification of the Construction Environmental Management Plan (CEMP), NE confirmed that the Applicant considered no change was required to the dDCO to make the CEMP a certified document. NE explained that the Outline Environmental Management Plan (OEMP) does for this dDCO what the CEMP does on other schemes and the OEMP is already a certified document.

Article 39 - felling of trees and removal of hedgerows

- 2.1.4 The ExA thanked the Applicant for its deadline 6 submission and queried whether an amendment was necessary to amend paragraph 2 so it referred to paragraph 4 and hedgerows as well as to paragraph 1. NE agreed that paragraph 2 should be reframed to refer to damage to hedgerows and reordered.
- 2.1.5 The ExA noted that Schedule 9 of the dDCO was currently blank and asked when a completed Schedule could be expected. NE explained that now the plans had been produced, the schedules would be populated.

- 2.1.6 Derek Lawlor (DL), appearing on behalf of Solihull Metropolitan Borough Council (SMBC), noted that SMBC would like to have a discussion with the Applicant about the removal of trees for temporary works. He noted that SMBC would like to ensure that trees are only removed to accommodate temporary works where absolutely necessary. NE noted that the Applicant would check to see if the Register of Environmental Actions and Commitments (REAC) addressed this point. If not, NE considered that the REAC would be the best place to record a commitment of this type.
- 2.1.7 The ExA noted that the tree survey plans didn't currently show the works proposed to the identified linear groups of trees and that it was therefore difficult to tell which of the trees in the linear groups would be affected. The ExA suggested that new plans with the works plans superimposed on the tree plans would assist. NE confirmed that the Applicant would provide this plan for Deadline 7.
- 2.1.8 David Cuthbert (DC), appearing on behalf of the Catherine-de-Barnes Residents' Association, queried the wording of Article 39 and noted that it should be as difficult as possible for the Applicant to remove trees. NE explained that the wording of the article meant that the Applicant could not remove trees just because it made carrying out the works easier; the Applicant would only be able to remove a tree if it was necessary: that is, if it needed to do so. NE explained that the use of the word 'reasonably' in the article meant that the question of whether there was such a need was an objective test and SMBC could challenge the proposal to remove trees if they did not think there was a sufficient reason for the removal.
- 2.1.9 Philip O'Reilly (PO'R) of Four Winds noted that he considered the full consequences of the Scheme on hedgerows had not been taken into account. For example, he noted that the hedgerow behind his property could be removed at a later date by the landowner, once the proposed works were complete. NE explained that if a landowner wished to make changes to their land after the Applicant had completed its works, the landowner would need to go through the normal planning process and apply for relevant licences if required. The DCO did not change this position.

Article 48 - removal of human remains

- 2.1.10 The ExA noted that the applicant had added new wording and DL confirmed that SMBC had nothing further to add on this issue. The ExA asked the Applicant to clarify who would determine whether any human remains discovered were of archaeological interest. NE explained that this would be dealt with in the Written Scheme of Investigation which would apply to all remains or artefacts discovered.

Requirements 1, 3, 4, 5 and 8 - Birmingham Airport

- 2.1.11 The ExA noted that Birmingham Airport's (BAL) Deadline 6 submission contained proposed amendments to the requirements and queried whether the Applicant was content to make the proposed changes to the dDCO. NE noted that the Applicant and BAL were due to meet to discuss the proposals and would provide an update on the outcome of these discussions to the ExA by Deadline 7.

Requirement 5 - landscaping – involvement of the Parish Councils

- 2.1.12 The ExA noted the Applicant's commitment to sharing information regarding proposed landscaping with the Parish Councils at the same time as SMBC and queried what opportunities there would be for Parish Councils to be involved. NE explained that the REAC would contain a commitment to provide the information to the Parish Councils but how SMBC decided to engage with the Parish Councils would be a matter for those councils.
- 2.1.13 The ExA asked whether the provision of information could be added to the responsibilities of the community liaison officer. NE confirmed that it would be.
- 2.1.14 Jon Horton (JH), appearing on behalf of the Bickenhill and Marston Green Parish Council, queried whether a change could be made to Requirement 5 to provide that the parish councils should be consulted on the landscape management plans. NE explained that the Applicant's view was that this was not necessary if there is a commitment in the REAC as compliance with the REAC is secured under Requirement 4.

Requirement 9 - archaeological remains – consideration of amended drafting

- 2.1.15 The ExA noted that the wording of Requirement 9 was consistent with that used on the A303 Stonehenge project but noted that for that project, the archaeological mitigation strategy referred to was a certified document and this was not the case for the Scheme. The ExA asked if the Applicant was content with the drafting of this requirement on the basis that there is a low potential for archaeological remains within the Order limits or whether any changes were proposed.
- 2.1.16 NE confirmed that the Applicant considered that, on the basis of the survey work undertaken, there was a low potential for archaeological remains within the Order limits, by comparison with Stonehenge, and therefore there was no need for any further changes at this stage.
- 2.1.17 DL noted that the county archaeologist was happy with the works so far but hoped there would be an ongoing dialogue and potentially a meeting between SMBC and the Applicant at a later stage. DL undertook to confer with the county archaeologist and confirm next steps.

Timing of works

- 2.1.18 The ExA requested an update on the Applicant's response to the question raised by Camilla Burton (CB) of Church Farm Accommodation about the amount of notice residents would receive of works. NE explained that this would be one of the obligations the Applicant would seek to put on the community liaison officer in the updated REAC. NE explained that the community liaison officer would be responsible for all communications between the contractor and landowners, other stakeholders and the general public.

- 2.1.19 NE explained that the community liaison officer's role would be full time, based at the site compound near the village and would include acting as a first point of contact for residents, responding to any concerns or complaints, liaising with the project manager and environmental manager and the public and keeping people informed using a combination of emails, notices, meetings and phone calls.
- 2.1.20 NE explained that the role would not formally start until the Order is made, a contractor had been appointed and the CEMP had been approved, which would not be likely to happen until a few months after a decision on the order had been made. However, NE explained that, informally, the contractor would be likely to want to get started as soon as possible if there is a positive decision on the Order.

2.2 Specific issues and questions bearing on the DCO

Article 6 Limits of Deviation – aerodrome safeguarding

- 2.2.1 The ExA noted that BAL had submitted a proposed amendment to Article 6 in its Deadline 6 Submission. NE indicated that the Applicant had a different opinion from BAL on this particular amendment, which the Applicant considered to be inappropriate because article 6 was intended to set the legal limits of the works powers, whereas the requirements were a more appropriate way of obliging the Applicant to consult on matters. NE and BAL agreed that the Applicant and BAL would discuss the proposed amendment and provide the ExA with an update on discussions by Deadline 7.

Articles 16 and 17 - notice for temporary and permanent stopping up

- 2.2.2 The ExA highlighted a request from the Catherine-de-Barnes Residents' Association for the Applicant to provide residents with prior warning about stopping up local roads. DC clarified that there had been a typo in the request and that 7 days' notice, not 77 days' notice, would be preferable. DC also asked whether this could be part of the community liaison officer's role. NE confirmed that this would be part of the traffic management plan which would set out the role of the community liaison officer in this respect.
- 2.2.3 DC also asked whether the traffic management plan would be consulted on and JH requested that Parish Councils be included in this consultation. The ExA explained that Requirement 10 required consultation with SMBC, and NE confirmed that the community liaison officer would provide copies to the parish councils where that parish council would be affected.
- 2.2.4 DL raised the potential of using the internet to keep local residents up to date. NE noted that the Applicant was required to maintain an electronic register of documents submitted, and the most appropriate means of keeping residents up to date would be something for detailed discussions at a later stage.

Requirement 4 - Outline Environmental Management Plan and associated register of environmental actions and commitments

- 2.2.5 The ExA asked when an updated OEMP would be received. NE confirmed that this would be submitted for Deadline 9 and would include the Applicant's response to all previous actions up to Deadline 8.

Requirement 4 - Outline Management Plan for Main Site Compound

Screening

- 2.2.6 JH highlighted that local residents had undertaken some work on screening and had concluded that screening should be placed closer to the compound than the village. Jamie Gleave, on behalf of the Applicant noted that the Applicant had carried out additional work on where the most effective position for screening would be and would be submitting this for Deadline 7.

Construction hours

- 2.2.7 The ExA asked for clarity on the provisions for working hours. Phil King, on behalf of the Applicant, and DL explained that Applicant's and SMBC's intention was that no one would arrive on site before 7am, no 'annoying' noisy activities would be carried out between 7am and 8am and, if the Applicant wished to carry out noisy activities, these would be subject to a section 61 consent from SMBC.
- 2.2.8 JH and PO'R asked how it would be decided that a noise was or wasn't annoying. NE explained that the OEMP contained a specific obligation to use best practicable means to reduce noise and to comply with the relevant British standards on noise and vibrations. NE explained that the Applicant expected SMBC would look at these standards when responding to a s.61 application because there would need to be an objective test, notwithstanding the subjective nature of "annoyance". DL agreed and noted that it would be a matter of judgement. DL undertook to speak to SMBC's noise specialist and consider whether there would be a benefit to agreeing an objective noise threshold against which noise could be measured.
- 2.2.9 PO'R asked what the procedure would be for making a noise complaint because residents would not want to wait until the Council's offices were open to have complaints addressed. DL explained SMBC expected complaints would be raised with the contractor in the first instance and if there was still a problem the complaint could be addressed to SMBC. NE confirmed that in the first instance, residents would be able to contact the Community Liaison Officer and a 24/7 phone line would be available for residents to ring if they had complaints. The Community Liaison Officer's role would be to log all complaints and escalate them where appropriate.
- 2.2.10 JH asked what the provisions in the dDCO were for weekends and bank holidays and asked why works could not be made to start at 8am on weekdays rather than 7am. The ExA explained that there would be no works on Sundays and bank holidays. NE explained that the DCO provided for an 8am start on Saturdays and that an 8am start throughout the week would add a considerable amount of time to the construction programme, which the Applicant considered would result in a worse impact on residents.

- 2.2.11 DC asked if there would be noise monitors installed to measure noise and whether the Community Liaison Officer would be able to stop works if necessary. NE confirmed that the Outline Dust, Noise and Nuisance Management Plan contained provisions for the installation of noise monitors, the training of staff on noise management and a requirement to follow a specified complaints procedure and that these provisions would apply to the whole of the site. NE explained that the Community Liaison Officer would not have the power to order a stop to the works, this power would rest with the Principal Contractor.
- 2.2.12 PO'R and CB raised the issue of the noise caused by lorries arriving on site in the morning and idling near to their properties. NE explained that there would be no arrivals on site before 7am and the routes for construction traffic would be included in the Traffic Management Plan, which would be provided to SMBC and the Parish Councils. NE also explained that the Outline Pollution Management Plan required construction traffic not to leave their engines idling and that the Applicant had provided further details on the noise impacts of construction traffic in **[REP6-018/Volume 8.77 Applicant's Responses to actions in respect of ISH on Living Conditions on 1 October 2019]**. This document explains that as part of the contract between the Applicant and the Principal Contractor, the Contractor would need to comply with the Considerate Constructors Scheme and if the local community had complaints, a complaint could be made direct to the Applicant as well as to the Community Liaison Officer and SMBC, although the Applicant hoped this would not be necessary.

[Afternote: The Applicant can confirm that if there are complaints, including incidents of noise complaints, an escalation process along the following lines would apply:

- 1. Report of disturbance made to community liaison officer or to the 24hr reporting line.*
- 2. Duty manager identifies work area and contacts supervisor to stop works.*
- 3. Investigation of incident undertaken (in event of abusive language or anti-social behaviour), noise monitoring undertaken to determine noise levels.*
- 4. Report back to individual(s) who has raised complaint.*

If reports of abusive language/behaviour are received the individuals involved would be stopped from working and an investigation undertaken. In the event of the findings confirming that the complaint is correct the individuals involved would face disciplinary process, which can include removal from site. All subcontracts on the Scheme are likely to contain a clause that permits termination of the contract in the event of non-conformance to the site rules.

The values and behaviours expected from all workers on the project will be set out within all subcontracts on the Scheme. This will include the behaviours laid down in the Considerate Constructors Scheme.]

Satellite compounds and localised storage and laydown for construction materials and fabrication

- 2.2.13 The ExA asked if the satellite compounds should have their own Management Plans, similar to that prepared for the outline Management Plan for the Main Site Compound, or whether additional provisions could be added to existing management plans to deal with satellite compounds. NE noted that this point would be picked up in the redrafted REAC which the Applicant proposed to submit, however, the Applicant considered that in most cases, the necessary controls on activities within the satellite compounds were already governed by the various Management Plans that will form part of the CEMP, and do not need to be addressed in a specific additional Management Plan. The ExA suggested they would give further information in the post-hearing actions note about what information they would like the Applicant to provide. The Applicant would then review how it thought those controls could best be imposed.
- 2.2.14 HC asked whether satellite compounds would have the same bunding as the main site compound. NE noted that this point would be picked up in the redrafted REAC.
- 2.2.15 The ExA asked what the relationship was between the Catherine-de-Barnes North satellite compound and the main site compound, and whether the Catherine-de-Barnes North satellite compound would be covered by the Management Plan for the Main Site Compound. NE advised that the Catherine-de-Barnes North satellite compound was needed for the construction of the bridge and would not fall within the Management Plan for the Main Site Compound as it fell outside of the main site compound boundary. However, activities on the satellite compounds would be covered by the specific management plans within the CEMP.
- 2.2.16 The ExA noted that the Deadline 6 submission from BAL also raised concerns about the management of the satellite compounds. Robert Eaton (RE), appearing on behalf of BAL, explained that BAL's concern was that although it would be consulted about the Management Plan for the Main Site Compound, it would not have input into the lighting of the satellite compounds and this could have an impact on BAL's runway approach lights. NE noted that the Applicant would discuss this point with BAL further in their upcoming meeting.

Requirement 13 - Bickenhill Meadows SSSI

- 2.2.17 The ExA noted they had reviewed the new wording for Requirement 13 and queried whether Natural England and Warwickshire Wildlife Trust should be added to the consultees. NE considered that, given Natural England's statutory function, the Applicant can see the reason for including Natural England as a consultee. However, he queried whether the Wildlife Trust, as a non-statutory body with limited resources, would be able to respond within the necessary timescales.

- 2.2.18 The ExA asked whether additional wording could be added to paragraph 13(2)(b) so it read, 'details of trigger points and action measures which must be taken in event the trigger points are met/exceeded'. NE agreed that wording to this effect would be helpful. The ExA also asked if the Applicant had provided information about what the trigger points and action measures were in the draft Management Plan. NE confirmed that this was under review by Natural England and the Wildlife Trust, and that the draft Management Plan would be submitted at Deadline 7.
- 2.2.19 The ExA noted that Work No. 76 currently still referred to a pumped rather than a passive system. NE explained that at this stage the Applicant could not guarantee that a passive system would work and therefore wished to retain provision for a pumped system. NE noted that the Management Plan would set out when a decision on the type of system would be made.

Schedule 11 – Certification of plans and documents

Crown Land Plans

- 2.2.20 The ExA asked when the Crown Land Plans would be submitted. NE confirmed that they would be submitted at Deadline 9 and would take the approach of including all the land which HS2 Ltd could acquire because at present the Applicant did not know what parcels of land HS2 Ltd would ultimately acquire. NE explained that the plans would also show all the land which was incorrectly registered to the Secretary of State for Transport instead of SMBC, as it was not certain the registration process would be complete by the time a decision was made on the Order.

Taxi parking

- 2.2.21 The ExA noted that residents had been asked to identify their concerns and the relevant locations and submit this at Deadline 6. NE confirmed that the Applicant intended to respond at Deadline 7.
- 2.2.22 PO'R discussed his concerns regarding the impact of taxi parking at his property and requested further information about the measures the Applicant could take to mitigate the effect of this. NE noted that the detail of measures could not be given at this stage. However, the Applicant would provide PO'R with a letter setting out the parameters of potential landscaping and treatment around PO'R's property to help address his concerns.

2.3 Protective Provisions

- 2.3.1 The ExA noted that they had received submissions from National Grid and Severn Trent Water and asked the Applicant for an update on the status of negotiations. NE confirmed that protective provisions had been agreed with National Grid and Severn Trent Water, the Applicant was confident that agreement could be reached with HS2 Ltd and that a meeting was being held with Cadent Gas to discuss their concerns the next day.
- 2.3.2 The ExA asked whether there were any other agreements. NE noted that there were other agreements under discussion, but none which would affect the drafting of the dDCO.

2.4 Statements of Common Ground (SoCGs)

- 2.4.1 The ExA noted that final SoCGs had been expected by Deadline 6 but some of the SoCGs received noted that discussions were ongoing. NE confirmed that the Applicant would clarify the position by Deadline 7.
- 2.4.2 The ExA asked if the SoCG with the Woodland Trust would be updated. NE confirmed it would not.
- 2.4.3 The ExA asked if the SoCG with National Grid was superseded by the protective provisions agreement. NE confirmed that all issues would be wrapped up in the agreed protective provisions and side agreement.
- 2.4.4 The ExA asked for an update on the current position with BAL. RE noted that BAL and the Applicant were close to agreement but BAL wanted further information about the impact of the proposed project on BAL's runway extension project and the airport safety zone. The Applicant and BAL noted they were meeting the next day to discuss the remaining matters.

2.5 Other issues arising from Deadline 6 submissions

Issues raised by CB

- 2.5.1 CB noted that she and Steve Smith (SS) (also appearing on behalf of Church Farm Accommodation) had prepared plans showing alternative options for the works affecting her property, in particular the positioning of the attenuation tank and associated access.
- 2.5.2 The ExA queried whether CB had had any discussion with the owners of the residential property which CB proposed to move the attenuation tank closer towards. CB explained she had not but noted that she understood the tank would be underground and access to it would only be needed twice a year so disruption to the owners of the property would be low. CB noted that the benefit of moving the access track from behind her property would be that there would be more room for bunding and mitigation.
- 2.5.3 NE thanked CB and SS for preparing the plans and noted that they would inform the response the Applicant provided at Deadline 7.

Issues raised by JH

- 2.5.4 JH noted that the pedestrian footpath to the train station was circuitous and asked whether any further work had been done to make this route shorter. The ExA noted that this issue had also been raised by the Open Space Society but that there were difficulties in providing a more direct route including the impact on parking near the station. NE noted that the Applicant had already provided some information at Deadline 6 on the submissions made by the Open Spaces Society, but would be responding further to this point as part of its Deadline 7 submissions

Issues raised by PO'R

- 2.5.5 PO'R raised a number of concerns about the documents submitted by the Applicant and the effect the Applicant's proposals would have on his property, and the health of himself and his family. NE set out the Applicant's position in response to those concerns.

- 2.5.6 PO'R considered that the Applicant was incorrect to rely on the Sports England guidance on noise from sports pitches as this did not take into account the noise from matches but was based on training sessions. NE explained that the Applicant considered it was appropriate to use Sports England guidance when assessing the likely noise from the reconfigured WGAA pitches as the noise from Gaelic Football and hurling was commensurate with the noise from sports considered in the Sports England guidance such as hockey which has a similar percussive element to hurling. The ExA noted PO'R's concerns and requested that he provide a copy of the presentation given by Daniel Oldaker for them to consider.
- 2.5.7 PO'R asked if the Applicant could provide information about the cause of standstill traffic on Catherine-de-Barnes Lane. NE explained that the Applicant considered that most of the standstill traffic was caused by congestion on local roads not by issues on the M42 but confirmed the Applicant would provide further information on this point at Deadline 7.
- 2.5.8 PO'R asked what size the replacement WGAA pitches would be under the proposed dDCO Scheme. NE explained that the pitch sizes would be those set out in Volume 8.21 [**REP2-019/ Volume 8.21**].

Issues raised by the ExA

- 2.5.9 The ExA asked whether the power to lop and fell trees provided by Article 39 should be limited to exclude ancient woodland. NE explained that the Applicant would set out the measures it proposed to take to reduce the impact on ancient woodland but would still be likely to have some impact on it and so would require the powers in Article 39 to apply to ancient woodland.
- 2.5.10 The ExA queried whether the Applicant's proposals on ancient woodland would sit above the powers in Article 39 or whether the powers would override the proposals. NE explained that the Applicant would need to check previous submissions to make sure it was being consistent but the current intention was for the ancient woodland proposals to bind the Applicant over and above Article 39. However, the Applicant would still require the powers in Article 39 to apply.