

M42 Junction 6
ImprovementDevelopment Consent
Order

Scheme Number TR010027

Volume 4

Statement of Reasons

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M42 Junction 6 Improvement Scheme Development Consent Order 201[x]

Statement of Reasons

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- B. Annex B Version 1 – ~~November~~[January](#) 2019. Schedule of progress of negotiations with parties affected by compulsory purchase

1 Introduction

1.1 Summary

- 1.1.1 This Statement of Reasons (the/this Statement) relates to the M42 Junction 6 Improvement (the Scheme), and has been submitted by Highways England (the Applicant) to the Planning Inspectorate (the Inspectorate) acting on behalf of the Secretary of State for Transport.
- 1.1.2 It relates to an application for a Development Consent Order (DCO) to permit and enable implementation of the Scheme made under s37 of the Planning Act 2008 (as amended) (the Act).
- 1.1.3 The Application is for the Scheme DCO which would grant powers to create a new junction (Junction 5A) approximately 1.8 kilometres south of the existing Junction 6 of the M42 and a new 2.4 kilometre-long dual carriageway link road between the new Junction 5A and Clock Interchange with a free flow slip road to the A45 Coventry Road (A45). There will be capacity and junction improvements at Clock Interchange.
- 1.1.4 The development will comprise the realignment and modification of the B4438 Catherine-de-Barnes Lane (Catherine-de-Barnes Lane), Clock Lane and St. Peters Lane located west of the M42, and East Way to the north east of M42 Junction 6. The Scheme will also include the modification and improvements to public rights of way, footbridges and private accesses, emergency refuge areas, overhead gantries and message signing along the M42.
- 1.1.5 The development also includes the provision of a reconfigured sports facility for the Warwickshire Gaelic Athletic Association (WGAA) at Páirc na hÉireann.
- 1.1.6 The National Policy Statement for National Networks (NPSNN) was designated by the Secretary of State for Transport on 14 January 2015. The designated NPSNN states that the Government's strategic policy objective is to deliver improvements in capacity, connectivity and resilience on the national road network to support a prosperous and competitive economy and to improve overall quality of life.
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1.3 Land interests

- 1.3.1 The extent of the land interests affected by the compulsory acquisition and temporary possession powers sought by the Applicant is described in Chapter 4 of this Statement.
- 1.3.2 The Applicant has carried out diligent inquiry to identify all persons with an interest in the “Land” (the land shown on the Land Plans [TR010027/APP/2.2] and within the Order Limits) and persons with a potential claim for compensation as a result of the Scheme. These persons have been consulted pursuant to s 42 of the Act.
- 1.3.3 The Applicant has entered into negotiations to acquire other parties’ interests voluntarily and is progressing those discussions. These negotiations are not yet complete. It is therefore necessary to acquire the land interests by compulsory acquisition in order to enable the Scheme to be delivered. The Applicant is satisfied that the acquisition of all of the land interests is necessary to enable the Scheme to proceed.

1.4 The case for compulsory acquisition

- 1.4.1 The Applicant is satisfied that the powers of compulsory acquisition and temporary possession sought in the DCO are necessary, proportionate and justified. The Applicant is further satisfied that the powers sought are in accordance with all relevant statutory and policy guidance.
- 1.4.2 The Applicant is firmly of the view that there is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought as set out in Chapter 5 of this Statement.

1.5 Human rights

- 1.5.1 In preparing the DCO, the Applicant has had regard to the European Convention for Human Rights and the Human Rights Act 1998. Chapter 8 of this Statement considers how the Scheme complies with this legislation notwithstanding any infringement of the private rights of those whose interests in the land may be affected by the exercise of powers of compulsory acquisition and temporary possession.

1.6 Special considerations

- 1.7.2 The Statement is required because the DCO, if made, would confer upon the Applicant compulsory acquisition powers described in this Statement, including the power to acquire land outright, the power to acquire rights over land, the power to extinguish rights over land, and the power to occupy land temporarily for construction and maintenance purposes.
- 1.7.3 This Statement forms part of a suite of documents accompanying the Application submitted in accordance with s 55 of the Act and regulations 5 and 6 of the Regulations and should be read in conjunction with those documents. In particular, the Applicant has submitted the following documents which relate to compulsory acquisition and temporary possession powers sought to enable delivery of the Scheme:
- this Statement;
 - the Draft DCO [TR010027/APP/3.1];
 - Explanatory Memorandum [TR010027/APP/3.2];
 - a statement to explain how the Scheme will be funded (“the Funding Statement”) [TR010027/APP/4.2];
 - Planning Statement [TR010027/APP/7.1];
 - plans showing the extent over which it is proposed to exercise compulsory powers (“the Land Plans”) [TR010027/APP/2.2];
 - a Book of Reference (“BOR”) containing details of the land subject to compulsory acquisition powers, including names and addresses of all known parties who may have an interest in the land and be affected by the proposed acquisition [TR010027/APP/4.3];
 - Works Plans [TR010027/APP/2.3]; and
 - Consents and agreements Position Statement [TR010027/APP/3.3].

1.8 Description of the scheme

- 1.8.1 The Scheme is a nationally significant infrastructure project (NSIP) within s14(1)(h) and s22(1)(a) of the Act. The Scheme is considered to be a “construction” scheme within the meaning of s22(b)(a).
- 1.8.2 As the Scheme is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Inspectorate,

road (mainline link road), and traffic travelling from the mainline link road to join the M42 motorway in a southbound direction.

- 1.8.7 The existing Solihull Road overbridge would be demolished and rebuilt on a slightly modified alignment to accommodate the new slip roads.

Mainline link road and local roads

- 1.8.8 The mainline link road will be a new 2.4km long dual carriageway link road connecting M42 Junction 5A with the A45 Coventry Road (A45) at Clock Interchange, replacing the existing connection between B4438 Catherine-de-Barnes Lane (Catherine-de-Barnes Lane) and Clock Interchange. The link would be predominately positioned in cutting to minimise visual and environmental impacts on Bickenhill and the surrounding countryside.
- 1.8.9 Catherine-de-Barnes Lane would be realigned between Birmingham Dogs Home and Clock Lane, and the existing connection to Clock Interchange would be closed.
- 1.8.10 A new roundabout (Barber's Coppice roundabout) to the east of Birmingham Dogs Home would provide access to the northbound carriageway of the mainline link road, nearby properties and the Warwickshire Gaelic Athletic Association (WGAA) sports facility (referred to by the users as Páirc na hÉireann). From Barber's Coppice roundabout, the realigned Catherine-de-Barnes Lane would pass over the mainline link road on a new bridge. The existing T-junction with Shadowbrook Lane would be realigned to the north of its current location.
- 1.8.11 North of Barber's Coppice roundabout; Catherine-de-Barnes Lane, St Peters Lane and Clock Lane would provide local access only, with no direct access onto the A45.
- 1.8.12 A new roundabout (Bickenhill roundabout) located to the west of Bickenhill village would connect Catherine-de-Barnes Lane to St Peters Lane, and the mainline link road southbound off-slip. From Bickenhill roundabout, Catherine-de-Barnes Lane would connect to Clock Lane via a new overbridge crossing the link road, and to a modified T-junction with St Peters Lane.

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M42 Junction 6 free flow links

- 1.8.15 A free flow link for A45 eastbound to M42 northbound traffic would be constructed on the north-west quadrant of Junction 6, with an underpass constructed beneath the existing NEC access. To facilitate construction of this link, a sloped abutment on the existing East Way overbridge would be replaced with a retaining wall.
- 1.8.16 A free flow link from the M42 southbound to A45 eastbound would be constructed on the north-eastern quadrant of the junction. The existing connection to East Way would be modified through the introduction of a new slip road and roundabout to maintain access from the M42 southbound to the NEC.
- 1.8.17 A45 diverge to East Way would be closed and Middle Bickenhill Lane modified to provide two-way access egress off East Way.
- 1.8.18 The existing M42 northbound to A45 westbound free flow link would be closed to traffic, and the M42 northbound off-slip road would be improved to accommodate four lanes of traffic and provide network resilience.

Modifications to the M42 motorway

- 1.8.19 Modifications would be undertaken to the M42 between Junctions 5 and 7 to alter the location and spacing of several emergency refuge areas (ERAs), and to accommodate the additional signing, gantries and road markings required by the new road layout.

Modifications to the Warwickshire Gaelic Athletic Association facility

- 1.8.20 The mainline link road would sever the existing access to the WGAA from Catherine-de-Barnes Lane, and would require land currently used for sports pitches. Modifications would be made to reconfigure the access and the

To drive maximum benefits, it is important that we give full and early consideration to how the SRN can dovetail with, and support, HS2. Connectivity to stations, particularly the new Parkway Stations, is vital. Access to HS2 stations will be assisted by the planned improvements to the M1 in Nottingham (Junctions 24 – 25), as well as schemes on the M1 in Yorkshire (Junctions 32 – 35A) and the M42 (Junction 6) near Birmingham Airport' (Part 1 - page 41).

- 1.9.4 In the Autumn Statement 2014, the Scheme was outlined as a, “comprehensive upgrade of the M42 Junction 6 near Birmingham Airport, allowing better movement of traffic on and off the A45, supporting access to the airport and preparing the capacity for the new HS2 station”.

Regional growth

- 1.9.5 The Scheme and surrounding roads are intrinsic to the movement of customers in and out of the area to enable the growth in the transport, manufacturing, technology, retail and the leisure and tourism sectors.
- 1.9.6 The SRN facilitates the existing links to all the other major modes of transport. Birmingham Airport currently employs more than 6,000 people and manages the flow of 13 million passengers per year and Birmingham International Railway station serves 4.5 million passengers per year. Both are looking at expanding their operations over the coming years as set out in their respective strategic plans; Birmingham Airport Draft Master plan 2018 outlining a growth of 18 million passengers and West Midlands and Chiltern Route Study setting out a growth of up to 6.7 million passengers. Both businesses would benefit from significant changes at Clock Interchange, creating additional capacity on the A45 and enabling alternate routes for traffic entering and leaving their facilities.
- 1.9.7 There are two large scale employment sites currently expanding their facilities. Birmingham Business Park is home to over 100 companies including Rolls Royce, Fujitsu, EE and IMI. Set within 148 acres of mature parkland, it has planning consent for a further 17 acres of development

- 1.9.10 All of the above developments are outlined in SMBC's draft local plan November 2016 Appendix 2. The various investments form an essential part of a larger £1.63 billion Government Growth Strategy which is being developed with local partners, through UK Central (UKC) and Solihull Urban Growth Company (UGC) as described in their master plan.
- 1.9.11 In combination all these developments in the area create a gateway to the Midlands as part of the Midlands Engine Growth Strategy.
- 1.9.12 In addition to the medium and long term growth in the area, Birmingham won the bid to host the Commonwealth Games in 2022. With seven of the 17 events being held at the NEC and the remaining in other venues in and around Birmingham, there is a requirement for free flowing traffic during the games to help the events run smoothly allowing competitors and spectators ease of access.
- 1.9.13 In addition to the developments outlined above that are in current operation, there are three existing large scale leisure sector businesses namely the National Exhibition Centre, National Motorcycle Museum and Resorts World.

The Scheme objectives

- 1.9.14 The strategic objectives for, and benefits of, the Scheme are:
- i. **Making the network safer: Promote reliable and safe operation of the road network.** The Scheme will improve the safety of the network by providing additional capacity, reducing driver stress and enabling safer access to and from the motorway.
 - ii. **Support the smooth flow of traffic: Increase the capacity of the junction supporting smoother flow of traffic around the M42 Junction 6.** The scheme will improve traffic flow by removing a significant amount of vehicles from the roundabout at junction 6. It will also provide improvements to Clock Interchange on the A45 to the west of junction 6 to increase its capacity and to ensure it can manage the increased traffic using it.
 - iii. **Encourage economic growth: To improve access to key businesses and support economic growth in the area from the new HS2 Birmingham interchange station and connectivity to Birmingham Airport.** Junction 6 provides a connection between the SRN, and the A45, providing strategic access to Birmingham (to the west) and Coventry (to the east). It provides the main access to an expanding Birmingham Airport

The need case

- 1.9.15 In line with the strategic context, regional growth and current conditions, the following strategic cases were considered to assess the requirement for an intervention comparing it with the scenarios of 'do nothing' and 'do minimum'.
- 1.9.16 The network has been modelled to show current network performance defined in Chapter 6 of the Transport Assessment Report [TR010027/APP/7.2]. With a 'do nothing' scenario, based on the network flows measured and modelled in the base year 2016, the assessment indicates that the existing network in the area already experiences capacity problems in the PM peak hour. The M42 Junction 6 is one of the busiest interchanges in the country. It currently operates close to capacity and is subject to variable traffic flows, particularly from the NEC.
- 1.9.17 If a scheme were not implemented, the exacerbation of the following issues for this part of the national road network would occur compared against the objectives.
- i. **Safety Network** - Further deterioration in safety is predicted in future years, resulting in increased accident rates in and around M42 Junction 6. Increasing congestion, coupled with the high level of drivers unfamiliar with the area (due to facilities such as the airport, NEC and HS2 traffic), are likely to have a detrimental impact on safety on this section of the SRN.
 - ii. **Relieve Congestion** - M42 Junction 6 is noted as already being at capacity, with current event demands contributing to significant congestion on the M42 mainline and local road network. The existing SRN does not have the capacity locally to accommodate the growth in the area. This leads to significant delays and congestion in comparison with the rest of the country. This is particularly pertinent as it is at a location where high reliability is particularly important due to the large and increasing volume of scheduled flights, events and trains that are accessed via Junction 6. At present, congestion levels severely affect the resilience of this section of the M42 and are becoming increasingly difficult to manage, particularly during high peak periods when events and flight flows reach their highest point. This is likely to worsen over time as future congestion is predicted to increase with no or little further infrastructure investment, and;
 - iii. **Economic Growth**

lengths until 2019 only. The improvement effects of this intervention have already passed.

- 1.9.19 Considering all factors above there is a need to 'do something'. An intervention is required to meet the objectives of; creation of additional capacity at Junction 6, alleviating congestion which would unlock additional investment and further economic growth; enhance accessibility between key assets in the area, including the new HS2 station; improve the operation of the strategic corridor; and improve journey time reliability.
- 1.9.20 Further details are set out in the Planning Statement [TR010027/APP/7.1].
- 1.9.21 A full description of the works and associated development, referred to in the DCO as "the authorised works" is set out in Schedule 1 of the DCO [TR010027/APP/3.1].
- 1.9.22 The works described above would be subject to specific mitigation requirements, for example, landscaping and environmental mitigation. These requirements are set out in Schedule 2 to the DCO.

1.10 Flexibility

- 1.10.1 Due to the nature of the design process and the timing of the consenting process, the Applicant requires a degree of flexibility as to where certain elements of the Scheme can be constructed within defined limits of deviation which are provided for in the draft Order.
- 1.10.2 At this stage, all the Land included in the Order Limits is considered to be necessary to enable the delivery of the Scheme. However, should it transpire that any part of the Land within the Order Limits is not required, for instance as a result of the detailed design process in due course or because a parcel of land has been acquired by agreement as a result of successful negotiations, in those circumstances powers of compulsory acquisition (or temporary possession) would not be exercised in respect of such land because such exercise would not be necessary or justified.

2 Scope of compulsory acquisition powers sought

2.1 Scope of compulsory acquisition powers sought

- 2.1.1 The scope of the compulsory acquisition powers sought by the Applicant is set out in full in Part 5 of the Draft DCO [TR010027/APP/3.1].
- 2.1.2 Section 122 of the Act provides that an order granting development consent may include provisions authorising compulsory acquisition of land. To the extent that this is sought, the decision maker (i.e. the Secretary of State for Transport) in respect of the Application must be satisfied that the land is:
- a. required for the development;
 - b. required to facilitate or is incidental to the development; or
 - c. the land is replacement land which is to be given in exchange for the order land under s 131 or 132;
- 2.1.3 In addition, s122(3) of the Act requires the decision maker to be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in a DCO. The way in which the Scheme meets these conditions is considered in Chapter 5 of this Statement.
- 2.1.4 In addition to powers of compulsory acquisition, s120 of the Act provides that a DCO may make provision relating to, or to matters ancillary to, the development in respect of which a DCO is sought. The matters in respect of which provision may be made includes (but is not expressly limited to) the matters listed in Schedule 5 to the Act, including:
- a. the acquisition of land, compulsorily or by agreement (paragraph 1);
 - b. the creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement (paragraph 2);
 - c. the abrogation or modification of agreements relating to land (paragraph 3); and
 - d. the payment of compensation (paragraph 36).

2.2 Main compulsory acquisition powers

- 2.2.1 The main powers authorising the compulsory acquisition of land, or interests in, or rights over land

2.3 Other compulsory acquisition powers

- 2.3.1 The other compulsory acquisition powers sought by the Applicant in the DCO include:

Article 28: Private rights over land

- 2.3.2 Article 28 provides for the extinguishment of all existing private rights over land from the earlier of the date of acquisition of the land or the date on which the Applicant enters the land.
- 2.3.3 The article further provides that, where new rights are being compulsorily acquired or restrictive covenants are being imposed on land then any existing private rights or restrictive covenants to which that land is subject shall be extinguished to the extent that continuing those private rights or restrictive covenants would be inconsistent with the new right acquired or restrictive covenant imposed.
- 2.3.4 With regard to land that the Applicant may take temporary possession of under the DCO, article 28(4) provides that all private rights over that land will be suspended and unenforceable for as long as the Applicant is in lawful possession of the land.
- 2.3.5 Article 28(5) provides that any persons who suffer loss caused by the extinguishment or suspension of rights (pursuant to the exercise of the power in article 28) is entitled to compensation.

Article 32: Rights over or under streets

- 2.3.6 Article 32 would authorise the Applicant to:
- enter on and appropriate and use so much of the subsoil underneath or airspace over any street within the Order limits as may be required to provide the Scheme; and
 - use that subsoil or airspace for the purposes of carrying out the Scheme or any purpose ancillary to it.
- 2.3.7 Save in the case of subways or underground buildings, or to cellars or similar structures forming part of a building fronting the street, the Applicant may exercise its powers under this article without having to acquire any part of the

- 2.4.3 In addition to taking possession of the land, the article would authorise the Applicant to:
- remove any electric line, electrical plant, structures, apparatus, buildings and vegetation from the land;
 - construct temporary works (including accesses) and buildings or structures on the land; and
 - construct any works on the land as specified in Schedule 1 to the DCO.
- 2.4.4 The power to take temporary possession of land would be subject to the time limits set out in article 33. The Applicant cannot remain in possession, unless the owner of the land agrees, after:
- as regards any land specified in columns 1 and 2 of Schedule 9 to the DCO, for more than a year after completing that part of the Scheme specified in relation to that land in column 1 and 2 of Schedule 9; and
 - as regards to any other land included in the DCO, for more than a year after completing the work for which temporary possession was taken (unless before the end of that period the Applicant has made a vesting declaration or served notice of entry in relation to that land).
- 2.4.5 Article 33(4) provides that before giving up possession of any land the Applicant is obliged to remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, save for the exceptions specified in the article.
- 2.4.6 Article 33(12) provides that the Applicant make take temporary possession more than once in relation to any land specified in paragraph (1).

Article 34: Temporary use of land for maintaining the authorised Development

- 2.4.7 Article 34 would empower the Applicant to take temporary possession of any land within the Order limits, if reasonably required for the purpose of maintaining the Scheme or gaining access, at any time during the maintenance period (i.e. five years from the date on which that part of the Scheme is first opened for use).
- 2.4.8 The article would allow the Applicant to construct temporary works and buildings on the land, so far as reasonably necessary for the purpose of carrying out the maintenance. The Applicant would not be able to take temporary possession of a house, or a garden belonging to a house, or any other occupied building under this article.
- 2.4.9 The Applicant would only be able to remain in possession of land under

- a. **Article 17: Permanent stopping up and restriction of use of streets and private means of access.** This article allows the streets and private means of access identified in Schedule 5 to be stopped up (i.e. the legal right of way along them is to be extinguished). Since the definition of a 'street' in s 48 of the New Roads and Street Works Act 1991 includes highways and footways such ways can be stopped up under this article as well as vehicular accesses. Paragraph (7) provides a right to compensation for any person suffering loss due to the suspension or extinguishment of a private right of way under this article;
- b. **Article 16: Temporary stopping up and restriction of use of streets.** This article allows for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the Scheme. Paragraph (2) provides that the Applicant may use any street temporarily stopped up as a temporary working site., The Applicant must ensure that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3). Paragraph (7) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article.;
- c. **Article 22: Protective works to buildings.** This article gives the Applicant the power to undertake protective works such as underpinning, subject to a requirement to give 14 days' notice of access except in an emergency. Compensation is payable for any loss or damage caused;
- d. **Article 23: Authority to survey and investigate the land.** This article gives the Applicant the power to enter land for the purpose of surveying and investigating. It provides that the Applicant must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused; and
- e. **Article 38: Felling or lopping of trees.** Authority to allow any tree or shrub that is overhanging the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. Compensation is payable for any loss or damage caused.

2.5 Conclusions

- 2.5.1 The Applicant considers that the powers sought in the Draft DCO as set out in this Chapter are reasonable, proportionate and necessary to deliver and thereafter maintain the Scheme.

persons identified and the methods used to identify the persons with an interest in the land are described below. Land referencing has been undertaken throughout the pre-application period to ensure that any changes in ownership or new interests have been identified, consulted and subject to engagement. Any changes in ownership that are identified during the DCO process will be recorded and updated in the BOR.

- 3.4.4 The categories of persons that are required to be identified for the purposes of consultation and notification under s42 and s56 of the Act are prescribed in s44 and s57 as Categories 1, 2 and 3. Under the Act, diligent inquiry must be undertaken to identify persons who, by virtue of the nature of the interest they have in land, and the location of that land in relation to the land to which the application relates, come within Categories 1, 2 and 3.

3.5 Category 1 and 2 persons

- 3.5.1 Category 1 comprises owners, lessees, tenants (whatever the tenancy period) and occupiers of the land.
- 3.5.2 Category 2 comprises persons who are interested in the land or have the power to sell and convey, or to release, the land.

3.6 Category 3 persons

- 3.6.1 Category 3, as prescribed by ss 44 and 57 of the Act, comprises persons who the applicant thinks would or might be entitled to make a "relevant claim" for compensation, if the order sought by the application were to be made and fully implemented. A "relevant claim" is defined in the Act as meaning a claim under s10 of the Compulsory Purchase Act 1965 ("CPA 1965"), or under Part 1 of the Land Compensation Act 1973, or under s 152(3) of the Act.

3.7 Category 3 persons

3.8 Assessment of Category 3 persons which fall under Part I of the Land Compensation Act 1973 (LCA 1973)

- 3.8.1 In identifying potential claimants under Part I of the LCA 1973, physical factors and impacts of the Scheme were considered, including:
- properties closest to the authorised development; and
 - properties identified as a receptor as a consequence of the property being located outside the Order limits but in the vicinity of the authorised development;
- 3.8.2 The Applicant's land referencing team was provided with guidance from environmental specialists to identify those receptors potentially impacted by physical factors (noise, vibration, smell, fumes, smoke, artificial lighting and discharge of solid/liquid substance onto land). This guidance was based on the topography of the land and the likely significant effects arising from the Scheme. For example, the noise assessments had regard to information available at that time regarding:
- background noise levels; and
 - distance to receptors
- 3.8.3 Based on the above information, professional judgement and valuation advice from the District Valuer was used to ascertain whether a person may have a relevant claim for compensation under s57(4) of the Act, based on a worst case assessment. Following guidance from environmental specialists and the District Valuer, a precautionary approach was adopted at s42 consultation whereby all properties within a 300m radius of the proposed mainline link road were identified as potential Category 3 interests.
- 3.8.4 Once noise modelling information was available, and using Valuer judgement, it was decided to include all those properties identified as potentially affected by a 1dB or greater increase in noise as a result of the Scheme as potential Category 3 parties. This process was undertaken for all physical factors set out in Part 1 of the LCA 1973, and in each case the parties and properties assessed in terms of potential relevant claims for that factor.
- 3.8.5 These findings were then reviewed as further assessments and information became available as the Scheme progressed until a final position was identified to inform the BOR [TR010027/APP/4.3] submitted with the DCO application. The same precautionary approach to include all properties with a 1dB or greater increase in noise as a result of the Scheme was adopted, incorporating updated environmental assessment work. Further details about the noise assessments and other environmental assessments undertaken can be found in Chapters 4 to 15 of the Environmental Statement [TR010027/APP/6.1]. A review of the physical factors was also undertaken again at this stage, which identified

possible to acquire the Land by agreement. The status of such negotiations is set out in Annex B to this Statement.

- 3.11.2 Whilst negotiations are ongoing, the Applicant is mindful that it is under a duty to acquire land at best value and that it is required to deliver the Scheme within a specified timescale. It has concluded that it may not be possible to acquire all land interests necessary to deliver the Scheme within this timescale. The Applicant has therefore included compulsory powers in the DCO from the outset. This is in line with the Guidance, which at paragraph 25 acknowledges that this is appropriate for long linear schemes like this one, because it is necessary to acquire a large number of plots and it is not always practical to acquire all of them by agreement.
- 3.11.3 Compulsory acquisition powers serve the important function of ensuring that the compensation paid to the land interests affected represents a fair, open market value. This benefits both the Applicant as the acquiring authority and all those to whom compensation may be payable. The rules governing compulsory acquisition require that compensation for acquisition of land or an interest in land must represent the market value as unaffected by the proposed development, together with further amounts such as occupier's loss payments in some cases. As a result, the Applicant will be required to pay a fair, open market price for the land and rights it acquires, without taking advantage of any reduction caused by the existence of the Scheme.
- 3.11.4 Land already owned by the Applicant is included in the DCO in order to ensure that no known or unknown third party rights, which might impede delivery of the Scheme, remain over the land.

3.12 [Warwickshire Gaelic Athletic Association](#)

- 3.12.1 Taking into account the impact on the WGAA facility, Highways England has sought to mitigate the impact on the club by identifying land within the Order Limits to reconfigure the facilities that will be impacted or lost by the Scheme. Work has been undertaken to identify the land take requirements to facilitate the reconfiguration of the club, and this has been shared with the WGAA and engagement with the WGAA is continuing.

3.13

alterations proposed to the network as part of the Scheme, are shown on the Streets, Rights of Way and Access Plans [TR010027/APP/2.5].

Name	Classification	Responsible Authority
Footpath M106	Public right of way	SMBC
Footpath M109	Public right of way	SMBC
Footpath M112	Public right of way	SMBC
Footpath M113	Public right of way	SMBC
Footpath M113a	Public right of way	SMBC
Footpath M122	Public right of way	SMBC
Footpath M123	Public right of way	SMBC

4 Purpose for which compulsory acquisition powers are sought

4.1 Purpose of compulsory purchase powers

- 4.1.1 The purpose of the compulsory acquisition powers in the DCO is to enable the Applicant to construct, operate, and maintain the Scheme.
- 4.1.2 The specific purposes for which each parcel of Land subject to compulsory purchase acquisition powers are set out in Table 1, 2 and 3 in Annex A.
- 4.1.3 The first column of these tables uses the parcel numbers as shown on the Land Plans [TR010027/APP/2.2] and used in the BOR [TR010027/APP/4.3]. The second column refers to the work numbers as shown on the Works Plans [TR010027/APP/2.3] and as described in Schedule 1 of the DCO. The third column confirms the purpose.
- 4.1.4 The tables should be read in conjunction with Schedule 1 of the draft DCO [TR010027/APP/3.1] which sets out the development which, if the DCO were made by the Secretary of State, would be the authorised by the DCO. As such, Schedule 1 provides detailed descriptions of each of the numbered works shown on the Works Plans [TR010027/APP/2.3].
- 4.1.5 Table 1 of Annex A lists all of the Land that is to be acquired outright. The purpose for acquiring this land is to enable the Applicant to construct the permanent works on the land and other elements described in Table 1.
- 4.1.6 Schedule 7 of the DCO lists the land over which specific rights are to be acquired or created. The rights to be acquired or created are necessary for the purposes of constructing the works and the maintenance of the works thereafter, ensuring the finished Scheme fulfils its highway functions. The land required for this purpose is set out in Table 2 of Annex A.
- 4.1.7 Schedule 9 of the DCO lists the land of which the Applicant would take temporary possession. The specific purposes for which this land will be used are stated in the schedule. The purpose of using such land is to provide essential works sites, compounds, storage areas, space to carry out utility diversions and access routes for site traffic. The temporary use of this land is essential to the construction works that form part of the Scheme. The land required for this purpose is set out in

5 Justification for powers of compulsory acquisition

5.1 The matters to which the decision maker must have regard

- 5.1.1 Section 122 of the Act provides that a DCO that includes compulsory acquisition powers may only be granted if the conditions in s122(2) and 122(3) of the Act are met. The conditions are:
- at s122(2), that the land is required for the development to which the DCO relates, or is required to facilitate or is incidental to the development, or is replacement land that is to be given in exchange under s131 and s132 of the Act; and
 - at s122(3), that there is a compelling case in the public interest for inclusion of powers of compulsory acquisition in the DCO.
- 5.1.2 In seeking compulsory acquisition and temporary possession powers in the DCO, the Applicant has had regard to the conditions in s122 of the Act and to the tests set out in the Guidance.
- 5.1.3 In respect of the s122(2) condition, the Guidance makes it clear (at paragraph 11 and following) that the decision maker must be in no doubt as to the purposes for which any land is to be compulsorily acquired, in particular:
- “in respect of whether the land is required for the development, the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development. The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development;*
 - in respect of whether the land is required to facilitate or is incidental to the proposed development, the Secretary of State will need to be satisfied that the development could only be carried out to a satisfactory standard if the land in question were to be compulsorily acquired and that the land to be taken is no more than is reasonably necessary for that purpose and that it is proportionate; and*
 - in respect of whether the land is replacement land, the Secretary of State will need to be satisfied that the compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose and that it is proportionate”.*
- 5.1.4 In respect of the s122(3), the Guidance states at paragraphs 12 and 13 that the Secretary of State must be satisfied that there is compelling

5.3 Compelling case in the public interest (Section 122(3))

- 5.3.1 The Applicant is satisfied that the condition in s122(3) of the Act is met and that there is a compelling case in the public interest for compulsory acquisition.
- 5.3.2 The need for and the benefits of the Scheme are set out in Chapter 2 of this Statement and in the other application documents, including the Planning Statement [TR010027/APP/7.1]. Together, they demonstrate that there is a very strong and compelling case in the public interest for the Scheme to be delivered.
- 5.3.3 In particular, as set out in the Planning Statement, paragraph 2.2 of the NPSNN identifies a "critical need" to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic Activity; and to provide a transport network that is capable of stimulating and supporting economic growth. It goes on to state that improvements may also be required to address the impact of the national networks on quality of life and environmental factors.
- 5.3.4 The way in which the strategic objectives of the Scheme are aligned with the NPSNN and general compliance with the NPSNN is set out in the Planning Statement [TR010027/APP/7.1]. This clearly demonstrates that there would be substantial public benefits arising from the implementation of the Scheme.
- 5.3.5 The government identified the need for this Scheme in the Road Investment Strategy. M42 Junction 6 lies on the eastern side of Birmingham. It is an important junction on the motorway network and lies at the heart of an area of dynamic growth, surrounded by a unique mix of major assets that serve both the local and wider economy.
- 5.3.6 It is located north of Solihull and provides the main access on the motorway for:
- Birmingham Airport;
 - the HS2 Interchange station;
 - the NEC;
 - National Motorcycle Museum/National Conference Centre;
 - Birmingham International Railway Station;
 - Jaguar Land Rover (JLR); and
 - Birmingham Business Park.
- 5.3.7 In addition to these major assets, the area adjacent to Junction 6 of the M42 (immediately to the north-east) is earmarked by SMBC for a proposed commercial and residential development.
- 5.3.8 The Scheme is required to accommodate planned developments in the area. The junction has almost reached capacity, causing

necessary to achieve the objectives of the Scheme. The extent of the Land sought is reasonable and proportionate.

- 5.8.3** Further there is a compelling case in the public interest to include the compulsory acquisition powers sought by the Applicant in the DCO. The exercise of the compulsory acquisition powers that are sought is shown throughout this Statement to be necessary and proportionate to the extent that interference with private land and rights is required. In the absence of compulsory powers, the Applicant considers that it would not be possible to proceed with the Scheme, therefore the public benefits of the Scheme would not be realised.

6 Human rights

- 6.1.1 The Human Rights Act 1998 incorporated into domestic law the provision of the European Convention on Human Rights ("ECHR"). The ECHR includes provisions in the form of Articles, which aim to protect the rights of the individual. The relevant Articles can be summarised as follows:
- a. Article 6 entitles those affected by the powers sought in a DCO to a fair and public hearing by an independent and impartial tribunal;
 - b. Article 8 protects the right of the individual to respect for his or her private and family life, his home and his correspondence. A public authority cannot interfere with these interests unless interference is in accordance with the law and is necessary in the interests of, inter alia, national security, public safety or the economic well-being of the country;
 - c. Article 1 of the First Protocol protects the right of everyone to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws. As with Article 8, any interference with possessions must be proportionate and in determining whether a particular measure is proportionate a fair balance must be struck between the public benefit sought and the interference with the rights in question.
- 6.1.2 The DCO has the potential to interfere with the human rights of persons who own property in the Land. Such interference is lawful provided:-
- a. the statutory procedures for obtaining the DCO are followed to ensure a fair hearing; and
 - b. there is a compelling case in the public interest for the inclusion of compulsory powers in the DCO to ensure that any interference is justified by the public benefit that would be delivered by the Scheme, taking the provisions for compensation into account.

6.2 Compliance with the Convention and the Human Rights Act 1998

- 6.2.1 The Applicant has considered the potential infringement of convention rights in consequence of the compulsory acquisition powers included with the DCO. The land to be acquired for the Scheme has been kept to a minimum and the Scheme is designed to minimise interference with the peaceful enjoyment of a person's possessions under Article 1 of the First Protocol of the Human Rights Act.
- 6.2.2 The Applicant

legitimate, would be in the public interest and would be in accordance with national and European law. The Applicant therefore considers that it would be appropriate and proportionate for the Secretary of State to make the DCO including the grant of compulsory acquisition powers.

6.6 Consideration of duties under the Equality Act 2010

- 6.6.1 The applicant has complied with its duties under s 149 of the Equality Act 2010 and has had due regard to the need to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by or under the Equality Act 2010; (ii) advance equality of opportunity between persons who share a protected characteristic and persons who do not share it; and (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

identified and that there is no reason why such consents should not be secured or granted.

8 Summary and conclusions

- 8.1.1 This Statement sets out why compulsory acquisition and temporary possession powers have been sought in the DCO application and explains why the Applicant considers such powers to be necessary, proportionate, and justified.
- 8.1.2 In determining the extent of the compulsory acquisition and temporary possession powers proposed in the DCO, the Applicant has had regard to the legislative tests set out in the Act and to the advice in the Guidance. The Applicant is content that the scope of the powers sought and the extent of the interests in the Land to be acquired by compulsory acquisition are required for the Scheme and are the minimum necessary that will allow the Applicant to construct, operate and maintain the Scheme. The purpose for which each part of the Land is required is set out in Annex A to this Statement.
- 8.1.3 The Applicant has consulted all persons affected by the compulsory acquisition and temporary possession powers and persons who may have a claim for compensation arising from the Scheme. It has consulted such persons during preparation of the DCO application and in the design of the Scheme to address their concerns and to ensure that any impacts are reduced or removed. The Applicant has further sought to acquire any interests in the Land by agreement wherever practicable. The status of negotiations with affected landowners for the acquisition of their land interest is set out in Annex B to this Statement.
- 8.1.4 The Applicant has considered the human rights of the individuals affected by the compulsory acquisition and temporary possession powers. It is satisfied that there is a compelling public interest case for compulsory acquisition and that the significant public benefits arising from the Scheme will outweigh the harm to those individuals.
- 8.1.5 Without the grant of compulsory acquisition and temporary possession powers, the Applicant considers that it will not be possible to construct the Scheme, or realise the public benefits arising from it.

Annexes

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| Annex A | Schedule detailing the specific purposes for which each plot of Land subject to compulsory acquisition powers is required |
| Annex B | Schedule of all interests in the Land and progress of negotiations with persons subject to compulsory acquisition and temporary possession powers |

Plot Number/Land Plan sheet:	DCO Work No.	Purpose for which the land is required:
3/4g	Work No. 7	Construction of a new mainline link road on both embankment and in cutting connecting Junction 5A (Work No. 6) to Clock Interchange (Work No. 20). The new mainline link to include the construction of earthwork retaining structures and to necessitate the demolition of the residential property known as “Heath End House”.
3/8a	Work No. 1	Improvement of the northbound and southbound carriageways of the M42 Motorway between Junctions 5 and 7
3/8b	Work No. 1	Improvement of the northbound and southbound carriageways of the M42 Motorway between Junctions 5 and 7

