

M54 to M6 Link Road

From: Clare Ford <cford@ctplanning.co.uk>
Sent: 17 November 2020 12:44
To: M54 to M6 Link Road
Cc: Philippa; plan@ctplanning.co.uk
Subject: SSW Responses to Highways England Answers to ExAs First Written Questions (ExQ1) : TR010054 M54 to M6 Link Road
Attachments: SSW Responses to Highways England Answers to ExAs First Written Questions (ExQ1).pdf
Categories: Deadline, AO

Sir

On behalf of our client, South Staffordshire Water plc (SSW) (reference : 20025357), please find attached the following response:

- SSW Responses to Highways England Answers to ExAs First Written Questions (ExQ1)

If you have any queries regarding these representations please contact Philippa Kreuser on telephone no. 01543 418779 or email : apps@ctplanning.co.uk.

Please acknowledge receipt of this email.

Regards
Clare

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Application By : **Highways England for M54 to M6 Link Road**

Responses : **South Staffordshire Water plc (SSW)**

SSW's Reference : **20025357**

Responses on behalf of South Staffordshire Water plc to Highways England Answers to Examining Authority's First Written Questions (ExQ1)

M54 to M6 Link Road - Development Consent Order

Extracted questions from the Examining Authority's written questions and requests for information (ExQ1) - Issued on 20 July 2020

EXQ1	Question to:	Question:	Response by SSW	Applicants response SSW comments in red
1.4.7.	The Applicant	Statutory Undertakers a) Can the latest position of the Utilities be updated and in particular with regard to the protective provisions? b) Could the Applicant also set out the current progress on Statements of Common Ground?		a) The Applicant is in dialogue with Severn Trent Water, South Staffordshire Water, Western Power Distribution (West Midlands) PLC, Cadent Gas, British Telecom, Vodafone, and Zayo. Draft protective provisions have been shared with each of them and comments are awaited. The Applicant will continue to have a dialogue with each company with a view to agreeing the wording of the protective provisions. b) A draft Statement of Common Ground has been prepared for each of the above-mentioned statutory undertakers. The latest position on Statements of Common Ground is presented in the Statement of Commonality submitted to the Planning Inspectorate on

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				<p>3 November 2020 [TR010054/APP/8.8]. SSW have provided its comments on the protective provisions and hopes to make progress on agreeing these in the next few weeks.</p>
1.5.9	The Applicant	<p>Article 8(4) This provision allows for a transfer of the benefit to certain third parties. However, the work numbers overlap. a) Could this lead to confusion as to who was to implement which parts of the Works? b) Could and should this be re-drafted to avoid any such confusion?</p>		<p>The Applicant does not consider that the wording of article 8(4) will lead to confusion. The persons listed in article 8(4) are all statutory undertakers who are specialised in and will only undertake works on their own apparatus. The reason the work numbers overlap is because the works to apparatus are described collectively. For example, Work No.67 includes "diversion of utilities and associated infrastructure (including electrical, telecommunications and potable water). Western Power Distribution may therefore undertake the works to its electrical apparatus but would not be the appropriate party to</p>

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				undertake works to telecommunications or potable water apparatus. SSW have no further comments
1.5.19	The Applicant Statutory undertakers SCC ShC WCC	Article 23(6) This provision allows the undertaker to create right for third parties. However, this appears to be very widely drawn and does not specify which third parties and thus could apply to any legal person. Could the parties consider whether this should be more tightly drawn to specify a limit and/or purpose for those third parties?	Perhaps it should be limited to a third party who needs a right to gain access to their properties, or for other utility companies, however any such right is subject to provisions which protect the assets belonging to the utility companies	The power is restricted by reference to Article 20 to the Order land and the authorised development so will in practice only be capable of being granted to those third parties who require rights as a consequence of the authorised development. The Applicant therefore considers that there is no need for this Article to be more tightly drawn. SSW requires the easements and rights that it currently has over land through which its pipes pass, whether as a result of statute or private agreements and its position cannot be weakened as a result of the Development Consent Order
1.5.25.	The Applicant Statutory Undertakers	Article 37 There appears to be a possible difference between the dDCO and the	I think that this is more of a matter of interpretation of S264, however is the EM saying that as the	Article 37 provides that the DCO will be treated as a specific planning permission. The effect of treating the DCO

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		<p>EM. The dDCO states that section 264(3) refers to cases in which land is to be treated as not being operational land for the purposes of that Act. However, the EM suggests that the land within the order limits is operational land. Can this be clarified.</p>	<p>land is treated as "operational land of a statutory undertaker" that the person responsible will benefit from permitted development rights, whereas the DCO is stating that the order will act as a specific planning permission? In essence I agree that it needs clarifying as to whether specific planning permission will exist or will the permitted development rights provide a level of consent. SSW plc's position is that strict interpretation of S264(3) is that it cannot be considered operational land because planning permission is being granted by the DCO.</p>	<p>as a specific planning permission is that the exemption at section 264(3) applies and land already held by the Applicant will be operational land, such that the Applicant will benefit from its usual permitted development rights in connection with the operation of the road.</p> <p>If the DCO was not a specific planning permission and the exemption was not applicable, the land would not be operational land and the permitted development rights would not apply.</p> <p>The title of section 264 is "Cases in which land is to be treated as not being operational land". This is cited in brackets after the reference in Article 37 in accordance with draft DCO drafting protocols but appears to have caused confusion. The Applicant trusts that this explanation clarifies the position.</p>

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				SSW have no further comments.
1.5.33.	The Applicant Telecommunication Statutory Undertakers	Schedule 1, Work 67 This refers, among other matters, to "BT". As this is company specific, should it be better referred to generically as "telecommunications"?	SSW agree that the term "telecommunications" should be used because of SSW's requirement for telemetry in the utilities corridor.	This change was incorporated into the revised draft DCO submitted to the Planning Inspectorate on 9 October 2020 [AS-075/3.1] SSW have no further comments.
1.5.52.	Severn Trent PLC Cadent Gas Limited Western Power Distribution (West Midlands) PLC Openreach Limited Virgin Media Limited Vodafone Limited South Staffordshire Water PLC Zayo Infrastructure (UK) Limited	Schedule 9 For each of the statutory undertakers, could they please confirm that they are content with the provisions set out in the draft DCO in relation to their apparatus, the latest situation in relation to resolving these matters, and if not, please explain fully your reasoning?	SSW are not content with the provisions as set out in the draft DCO and our concerns are covered in the amendments that have been made to schedule 9 and forwarded to the applicants legal team. SSW are committed to working towards an agreement with the applicant. In essence however, it should be appreciated that SSW is under an obligation to continue to supply clean water at all times, the apparatus in question serves a large area and many thousand homes and businesses and therefore its	SSW have no further comments

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			obligation should override the requirements of Highways England. The proposed route of the diversion of SSW apparatus has not been agreed, in particular the locations for connections into the SSW network have not yet been assessed due to no survey information being available. It is hoped that an agreed methodology for capturing this information can be agreed between the parties and incorporated into an agreement with the applicant.	
1.11.10.	The Applicant South Staffordshire Water Plc	Potable water Has the risk of flooding from potable water supplies been assessed? If not, could this be undertaken.	The risk of flooding as a consequence of the new 24" potable water main failing has not been formally assessed, primarily because the likelihood of a failure of a new main, constructed of modern durable materials, is extremely low.	The risk of flooding from potable water supplies has not been expressly assessed as part of the Flood Risk Assessment [APP-200/6.3]. However, utility diversions are being considered in detail as part of the design of the scheme. Water mains do cross the scheme area at two locations.

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			<p>If the main did fail, the consequence to the M54-M6 Link Road and the wider highway network would be significant. However, the impact on the highway network from a future failure of the main would be no different to a present day failure of the existing main. There is no mitigation available if the new main fails, the only option to avoid such a scenario would be to move the location of the M54-M6 Link Road.</p>	<p>The first is to the south of the scheme around the position of the new M54 Junction 1. The second is to the west of Hilton Park, across the A460 to Dark Lane. The receptors to flood risk in this area are agricultural land, park land, properties on Dark Lane, and the scheme itself. Each of these utility diversions are currently being agreed with Severn Trent Water and South Staffordshire Water as appropriate. During construction, appropriate isolation and diversion of the water supply will be undertaken as part of the utility diversion construction. Therefore, the flood risk from the potable water supply would be low. The flood risk after the construction of the Scheme is considered to be low, given the location and number of water mains crossing the scheme. The newly constructed watermain assets would be the responsibility of</p>

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				<p>the water company, including maintenance regimes. In the event of a watermain pipe burst, the scheme is mainly raised on an embankment at these crossing points, meaning a low risk of flooding the carriageway. Flood risk as a result of watermain failure for areas adjacent to the scheme would remain the same as baseline conditions – which is low risk.</p> <p>SSW have no further comments.</p>
1.11.11.	The Applicant	<p>Potable Water</p> <p>In its relevant representation [RR-015] South Staffordshire Water Plc raises concerns over a 24-inch potable water main. Could the Applicant please give its response to these concerns.</p>		<p>The Applicant is holding ongoing discussions with South Staffordshire Water in relation to the diversion of the 24-inch potable water main. A methodology for the diversion is currently in the process of being agreed to ensure the continuity of the service during the diversion works. All the issues that have been raised by South Staffordshire Water have been captured in a SoCG</p>

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				<p>[TR010054/APP/8.8LIU(P)] so that the Applicant can update the Examining Authority on the status of these discussions throughout the examination period.</p> <p>SSW hopes to make more progress on this in the next month or so.</p>