

M54 to M6 Link Road TR010054

8.8 LIU(B) Statement of Common Ground with William Bibbey

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Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

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**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

M54 to M6 Link Road
Development Consent Order 202[]

**8.8 LIU(B) Statement of Common Ground with
William Bibbey**

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|---|---|
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| 2 (P03) | November 2020 | Revised draft |
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| 4 (P05) | February 2021 | For issue to ExA at Deadline 6 |
| 5 (P06) | April 2021 | Final version (Unsigned) |

STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) Highways England Company Limited and (2) William Bibbey.

Signed.....
Andrew Kelly
Project Manager
on behalf of Highways England
Date: [DATE]

Signed.....
[NAME]
[POSITION]
on behalf of William Bibbey
Date: [DATE]

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement of Common Ground ('SoCG') has been prepared in respect of an application for a Development Consent Order ('the Application') under section 37 of the Planning Act 2008 ('PA 2008') for the proposed M54 to M6 Link Road ('the Scheme') made by Highways England Company Limited ('Highways England' or 'HE') to the Secretary of State for Transport ('Secretary of State').
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application documents. All documents are available on the Planning Inspectorate website.
- 1.1.3 This SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.
- 1.1.4 **This SoCG has been drafted by Highways England based on correspondence with Mr Bibbey ('WB' or 'Landowner') during the development of the Scheme and records Highways England's current understanding of the matters agreed and not agreed.**
- 1.1.5 **The previous draft was submitted to the Planning Inspectorate on 03 November 2020 and was also provided to Mr Bibbey and his agent on 03 November 2020 in line with Deadline 1. Comments were received on 09 November 2020 and were incorporated. Further drafts were updated and issued to the landowner in line with Deadline 4 and Deadline 6 on 07 January 2021 and 9th March 2021. No comments were received from the landowner or his agent on the contents of the SoCG. The landowner and his agent have confirmed that no further progress will be made on the SoCG until Heads of Terms for an Option Agreement are issued. HoT have been prepared and are awaiting internal approval before they can be issued. Therefore, this version of the SoCG represents Highways' England's understanding of the respective positions but is not a signed or agreed SoCG.**

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared by (1) Highways England as the Applicant and (2) the Landowner.
- 1.2.2 Highways England became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing Highways England made provision for all legal rights and obligations of the Highways Agency, including in respect of the Application, to be conferred upon or assumed by Highways England.
- 1.2.3 The Landowner is the freehold owner of plots 3/2b, 3/2c, 3/2d, 3/6, 4/17a, 4/17b and 4/18 as identified on the Land Plans (Application documents reference 2.2) and in the Book of Reference (Application document reference 4.3).

1.3 Terminology

- 1.3.1 In the tables in the Issues chapter of this SoCG, 'Not Agreed' indicates a final position. 'Under discussion' indicates where points will be the subject of ongoing discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. 'Agreed' indicates where the issue has been resolved.

- 1.3.2 It can be taken that any matters not specifically referred to in the Issues chapter of this SoCG are not of material interest or relevance to the Landowner, and therefore have not been the subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to the Landowner.

2 Record of Engagement

2.1.1 A summary of the meetings and correspondence that has taken place between Highways England and the Landowner in relation to the Application is outlined in Table 2-1.

Table 2-1: Record of Engagement

| Date | Form of correspondence | Key topics discussed and key outcomes |
|------------|--|---|
| 12/04/2019 | Letter from Gateley Hamer to WB | Letter sent to WB requesting land access by agreement to complete ground investigation surveys. |
| 26/04/2019 | Letter from Gateley Hamer to WB | Follow up letter sent to WB regarding land access for ground investigation surveys. |
| 20/05/2019 | Email from PM to SB | Email confirming PM instruction. |
| 23/05/2019 | Letter from Gateley Hamer to Landowner; WB | S42 consultation pack. Included Land Interest Plans showing areas of land ownership, areas of land that may be required for the Scheme and the Order limits. The draft Environmental Masterplan was also made available online, indicating initial thoughts on areas required for environmental mitigation. |
| 30/05/2019 | Email from PM to SB | Fee request from PM. |
| 31/05/2019 | Email from SB to PM | Confirmation fees are under discussion with the project team. |
| 06/06/2019 | Email from SB to PM | Email requesting update regarding ground investigation surveys and query on landowner's representation. |
| 06/06/2019 | Email from PM to SB | PM advised he has instructions to deal with the land in question to review the impact of the scheme has on client's property. Undertaking of fees requested. |
| 07/06/2019 | Email from SB to PM | Correspondence regarding fee cap. |
| 11/06/2019 | Email from PM to SB | PM acceptance of fee cap. |
| 14/06/2019 | Email from SB to PM | Copy of ground investigation survey pack sent to PM requesting update and fee rate. |
| 11/07/2019 | Email from SB to PM | Correspondence regarding fee rates. |
| 12/08/2019 | Email from PM to SB | Completed LIQ received. |

| Date | Form of correspondence | Key topics discussed and key outcomes |
|------------|--|---|
| 28/08/2019 | Meeting with landowner's agent (TD), Amey (TB), AECOM (JH), District Valuer (SD), Gateley Hamer (TF) | <p>TD confirmed TDP are acting on behalf of WB.</p> <p>TB presented update on scheme.</p> <p>TD requested why plot 3/2e was required, as this is the access to the site used for circus storage.</p> <p>TD explained Persimmon Homes have an option on the land for housing development. The option agreement had been in place for circa 15 years. A planning application for the site was submitted but planning permission was refused at appeal by the Secretary of State. The Planning Inspector had recommended approval.</p> <p>TD stated that the current location of an attenuation pond would reduce the development potential of the land subject to the option agreement and requested that HE consider relocating the pond to the other side of M54 (National Trust land) or change the shape / drainage method to reduce impact on the land area. Alternatively, there would be potential to relocate the attenuation pond to the adjoining land to the west, which was proposed for planting in the residential masterplan so the attenuation pond would better fit with the overall plan for the site in that location.</p> <p>TD confirmed there is currently a tenant farmer on the land.</p> |
| 03/10/2019 | Letter from Gateley Hamer to landowner | Land by agreement letter. |
| 11/11/2019 | Letter sent from GH to WB & PM | Supplementary consultation documents arrived with the Landowner including revised plans showing areas proposed for permanent and temporary land acquisition. Also included links to revised Environmental Masterplan and General Arrangement Plan to help explain the reasons for land acquisition. |
| 02/12/2019 | Email from TG to HE | Supplementary consultation response received. |
| 24/01/2020 | SoCG introductory Letter sent | Introductory SoCG letter addressing concerns raised within latest supplementary consultation response. |

| Date | Form of correspondence | Key topics discussed and key outcomes |
|------------|--|---|
| 09/03/2020 | Letter sent from GH to WB & PM | Section 56 Notice - Notifying persons of accepted application. |
| 17/04/2020 | Letter and email sent from GH to WB & PM | Updated Section 56 Notice sent notifying landowners of the extension to the relevant representations period due to Covid-19. |
| 13/05/2020 | Call received from TD to JH | TD requested further information from engineering team regarding the proposed plot uses. JH confirmed he would email back and confirm in writing as soon as possible. |
| 13/05/2020 | Email sent from JH to TD | JH email follow up confirming plot requirements of 4/17a – required for the diversion of the high-pressure gas main at M54 Junction 1. 3/2d, required for the connection of a drainage discharge outfall to the existing ditch. |
| 13/05/2020 | Email from TD to JH | TD questioned why permanent rights were required over 4/17a if the gas main is to be diverted to 4/17a and asked if temporary rights would be sufficient. |
| 18/05/2020 | Email from JH to TD | JH confirmed the rights which are required are to enable the statutory undertaker the same easement rights they had previously (right to repair, maintain, renew). The Scheme will be providing a third party (Cadent Gas) a right to their asset in the landowner's land. |
| 18/05/2020 | Email from TD to JH | TD questioned if an easement is already in place, why will the scheme be involved in granting the same easement if the pipe is being relocated. |
| 18/05/2020 | Email from JH to TD | JH clarified previous response and stated that the high-pressure gas main is a proposed relocation, therefore, the permanent rights required are to grant the utility provider an easement to allow them to maintain and protect the newly diverted asset. |
| 18/05/2020 | Email from TD to JH | TD requested a plan detailing pipe diversion. |
| 18/05/2020 | Email from JH to TD | Plans sent including sheet 4 of works plans, detailing proposed diversion and full description as shown as work number 68 within Statement of Reasons. Explanation contained detailing proposed pipe route and outlining the limit of deviation within landowner's property. |
| 28/07/2020 | Letter from HE to WB, TD & PM | Notification of change request. |
| 21/08/2020 | Letter from HE to WB, TD & PM | Supplementary consultation letter sent. |

| Date | Form of correspondence | Key topics discussed and key outcomes |
|-------------------------|--|---|
| 03/11/2020 | Email from TF to TD | Draft SoCG issued. |
| 09/11/2020 | Email from TD to TF | Comments received concerning draft SoCG. |
| 24/11/2020 | Email from TF to TD | Response to SoCG comments received and update regarding draft Heads of Terms proposed. |
| 04/12/2020 | Email and letter issued by HE and SB to DL | Email and letter pack sent with updated survey schedule, plan and licence agreement for requested surveys. |
| 08/12/2020 | Email from TD to SB | TD advised he was not able to respond due to unresolved fee arrangements. |
| 21/08/2020 – 08/12/2020 | Emails between TD, SD, CG, PM and AK | Multiple emails discussing payment of agent and legal fees. |
| 07/01/2021 | Email from TF to TD | Updated draft SoCG, issued in line with Deadline 4 and submitted to landowner for comment. |
| 13/01/2021 | Email from AK to TD | Confirmation from Highways England Project Manager that payment mechanism has been set up to allow payment for the outstanding invoices. |
| 13/01/2021 | Email from SB to TD | Follow up from AK email confirming now fee arrangement was in order, if agreement could be reached for upcoming invasive surveys. |
| 13/01/2021 | Email from TD to SB | TD advised access would not be possible within the next week. |
| 20/01/2021 | Email from SB to TD | Follow up to confirm status of licence agreement. |
| 20/01/2021 | Email from TD to SB | TD advised that fees were outstanding, and no further work could be undertaken until fees were resolved. |
| 25/01/2021 | Email from SB to TD | SB advised TD that Highways England paid outstanding fees on 19/01/2021. |
| 02/02/2021 | Email from SB to TD | Request for response to licence agreement and update regarding reduced amount of survey points required on the landowner's property. |
| 02/02/2021 | Email from TF to TD | Request for response relating to SoCG issued to landowner on 07/01/2021. |
| 03/02/2021 | Call from TF to TD | Voice mail left on TD phone to call back and discuss SoCG and licence agreement. |
| 04/02/2021 | Call from TD to TF | TD explained that his client would not be facilitating access for ecology surveys, signing of the licence agreement for the upcoming surveys and will not provide a response to the Statement of Common Ground. |

| Date | Form of correspondence | Key topics discussed and key outcomes |
|------------|------------------------|--|
| 09/03/2021 | Email from TF to TD | Updated draft SoCG, issued in line with Deadline 6 and submitted to landowner for comment. |
| 09/03/2021 | Email from TD to TF | Comments received explaining that no further progress would be made on the SoCG until a Heads of Terms for an Option Agreement are issued. |

- 2.1.2 It is agreed that this is an accurate record of the key meetings and consultation undertaken between (1) Highways England and (2) the Landowner in relation to the issues addressed in this SoCG.

3 Issues

3.1 Introduction and General Matters

3.1.1 This chapter sets out the 'issues' which are agreed, not agreed, or are under discussion between the Landowner and Highways England.

3.2 Issues

3.2.1 The table below shows those matters which have been agreed or yet to be agreed by the parties and the date and method by which it was agreed (if relevant). Whilst no comments have been received from the Landowner or their agent and it is unlikely that the issues below will be resolved before the end of the Examination, Highways England has retained the 'agreement likely' column to present Highways England's view on whether it may be possible to resolve issues in the future based on conversations to date.

Table 3-1: Issues

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|-----------------------|--|--|------------------|-------------------------------------|-----------------------|
| Requirement for plots | What purpose are the temporary rights needed for (parcels 4/18;4/17b) and why the parcel 4/17a is needed please? | A high-pressure gas main running through the area needs to be diverted as part of the Scheme. The proposed diversion point is anticipated to be immediately east of the A460, however due to the congested nature of the area and the possibility of multiple joints in the pipe at this location, there is the possibility that the diversion will have to be made to the west of the A460. An easement will be required over the gas main as per the current scenario. Parcel 4/17a is required for the diversion of the gas main and associated infrastructure, as detailed above (approximately 1,000 metres in length). | Under discussion | Medium | |

¹ Indication on likelihood that the matter will be agreed by the close of the Examination period as rated by the applicant (app) and the Interested Party (IP). Dark green = agreed, light green = high likelihood of agreement, orange = medium likelihood of agreement, pink = low likelihood of agreement, red = not agreed.

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|---|--|--|-------------------------------|-------------------------------------|-----------------------|
| | | Temporary rights are required for parcels 4/17b & 4/18 to allow temporary access from the A460 to undertake the works outlined above. | | | |
| Position of balancing pond | Could the position of the balancing pond, shown during the S42 consultation be relocated to reduce the impact on the proposed residential development on the site? | In response to the Landowner's representative's request, the pond has been relocated west of the previously proposed location. | Agreed (Landowner to confirm) | High | |
| Relevant representation received from WB agent – RR-024 | We recognise the importance of this scheme to relieve local congestion and connectivity, so in principle this scheme is supported. | Highways England welcomes the support in principle for the Scheme by the Landowner. | Agreed | Agreed | Agreed |
| Comments received from SoCG issued on 03/11/2020 Relevant representation received from | We have concerns that the amount of land and permanent rights to be acquired is excessive for what is needed to | Plot 4/17a is proposed for temporary possession and the permanent acquisition of rights over some 4,086sqm of currently agricultural land. The rights are required for the diversion of a high-pressure gas main operated by Cadent Gas. The gas main is already on this plot of land so the rights are required to divert it within the plot, rather than to move the gas main onto the plot. Flexibility is required in this | Under discussion | Low | |

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|-------------------|----------------------|--|--------|-------------------------------------|-----------------------|
| WB agent – RR-024 | complete the scheme. | <p>area to enable detailed design of the diversion route with Cadent Gas, with this flexibility being essential to ensure the Scheme is deliverable. Temporary possession and use of plots 4/17b and 4/18 is required for access and temporary working areas for the diversion.</p> <p>The area identified and indicated on the Land Plans also includes the standard offset required for such diversion works.</p> <p>The other main parcel of land to be acquired from the Landowner is parcel 3/2b, which is primarily required for development of a drainage pond (Pond 1 in the Drainage Strategy [APP-201/6.3]. This lined attenuation pond would perform a water quality function treating highway runoff in a Sustainable Urban Drainage System, providing storage up to and including the 100 year + 40% climate change, as required by the Lead Local Flood Authority (LLFA), Staffordshire County Council. The location of the pond was amended as a result of consultation with the Landowner to move it into the most peripheral area of his land. Access would be required to this pond over this plot.</p> <p>The buffer of species-rich grassland around the pond would provide a link to the woodland on the northern side of the M54 to the benefit of birds, terrestrial invertebrates and potentially linking bats to an additional food source. The species-rich grassland would also provide a wider connectivity to the</p> | | | |

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|---|--|--|------------|-------------------------------------|-----------------------|
| | | <p>watercourse on the eastern boundary of this field and provide stronger ecological links to the rough grassland and woodland blocks to the west of the Scheme. A hedgerow (native species-rich) is proposed adjacent to the eastern side of Brookhouse Lane (EH13) to mitigate for the loss of hedgerow at this location and for other hedgerow lost across the Scheme. This would provide a nature conservation and biodiversity function in support of the new pond and for birds, and a landscape integration function to strengthen the character by reinstating the currently gappy hedgerow. Field 3/2b is anticipated to be unviable for the Landowner to return to agricultural purposes following construction of the pond and access even if it were not required for environmental mitigation purposes. The small parcels 3/2d, 3/6 and 3/2c are required to develop and maintain the drainage outfall connection from the attenuation basin located on 3/2b.</p> <p>Consequently, the land to be acquired permanently and rights sought are essential for the development of the Scheme and Highways England disagrees that the land or rights sought are excessive.</p> | | | |
| Relevant representation received from WB agent – RR-024 | Parcel [4/17a] covers land that has development potential so any permanent rights acquired need to | The development potential of the land could be a relevant consideration during the compulsory purchase process. However, at present the land in question, whilst the subject of developer interest via an option agreement, does not currently benefit from planning permission or an allocation in the Local | Not agreed | Not agreed | Not agreed |

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|--|--|--|------------|-------------------------------------|-----------------------|
| | be kept to a minimum in order to minimise any sterilisation of that land. | <p>Plan. It is noted that there was an appeal dismissed for up to 360 residential dwellings (06/00638/OUT) on 30th October 2008 following a Public Inquiry and a subsequent planning application was withdrawn following the dismissal. No planning application has been submitted since 2008.</p> <p>Highways England also notes that the site is located within the South Staffordshire Green Belt and South Staffordshire District Council's most recent SHLAA noted that the site, like many within the Green Belt, was only potentially suitable. Accordingly, there is significant doubt and uncertainty as to whether this land will ever gain planning permission for residential development.</p> <p>Notwithstanding the above, compulsory acquisition is only permitted where the land is required and Highways England is therefore only purchasing the minimum area of land required for the Scheme. The location of the balancing pond was also altered to move it into the corner of the area being promoted for residential development to minimise the impact on the site.</p> | | | |
| Comments received from SoCG issued on 03/11/2020 | The development potential of the land are not agreed. In particular, they ignore the presumption already made by | <p>HE remains of view that the development potential of the land is extremely limited by virtue of its location within the West Midlands Green Belt.</p> <p>South Staffordshire Council has commenced a Local Plan Review. However, at present that Review is at an early stage with Preferred Options Consultation now delayed until Summer 2021 and adoption of the</p> | Not Agreed | Not Agreed | Not Agreed |

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|-------|--|---|--------|-------------------------------------|-----------------------|
| | South Staffordshire Council that Green Belt land will need to be used to accommodate their housing requirements in their next Development Plan. This parcel of land stands a good chance of being allocated for development in the next Development Plan | <p>Local Plan expected in Winter 2023 (Local Development Scheme June 2020).</p> <p>The only consultation undertaken to date in respect of the Local Plan Review is limited to the Issues and Options Consultation (October-November 2018) and the Spatial Housing Strategy & Infrastructure Delivery Consultation (October – December 2019).</p> <p>The Issues & Options consultation set out a range of potential growth scenarios and a range of strategies to meet housing need. Such consultation is designed to seek opinion on a range of options and nothing can be inferred as to a preferred option or likely policy position from such a consultation document. It is however noted that the consultation document cites the Rural Services and Facilities Audit (2018) which proposed a revised settlement hierarchy which would see Featherstone slip down a level within the settlement hierarchy from the Core Strategy position.</p> <p>The more recent Spatial Housing Strategy and Infrastructure Delivery Consultation is based on needing to meet a plan target of 8,845 dwellings. Such a figure would meet South Staffordshire's needs as well as a proportion of the Greater Birmingham Housing Market Area (HMA). The document recognises that this figure may reduce if the extent of any shortfall across the HMA is reduced by the time the Local Plan Review is submitted for Examination.</p> | | | |

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|-------|-------------------|---|--------|-------------------------------------|-----------------------|
| | | <p>Whilst it is true that the Council is unable to identify sufficient land outside of the Green Belt to meet the untested target of 8,845 dwellings it is not yet clear how the Council intends to do so. Indeed the Spatial Housing Strategy consultation sought views on seven housing options. Depending on which Option is considered has a direct implication on what % of housing might need to be allocated at either individual settlement or as is the case for Featherstone, across Tier 3 settlements.</p> <p>It is impossible to conclude that this parcel of land has any significant development potential as at present there is no preferred spatial strategy option selected within the Local Plan Review and even if there was such a strategy has not been tested at Examination and found to be sound.</p> <p>In addition, there is no detail within any of the consulted options which suggests that this land is preferable to be allocated over and above that which may also be within the Green Belt but at inherently more sustainable locations than at Featherstone.</p> <p>Whilst we agree that the Council itself recognises that Green Belt releases will be needed to meet the identified housing target, there is no evidence to suggest that this land has any more development potential than other currently identified Green Belt land.</p> | | | |

| Issue | Landowner comment | Highways England Response | Status | Agreement likely (app) ¹ | Agreement likely (IP) |
|--|---|--|------------------|-------------------------------------|-----------------------|
| | | The Site has already been the subject of a dismissed appeal which was recovered by the Secretary of State. We see no evidence to suggest that there is any increased likelihood of an allocation being secured or planning permission granted. | | | |
| Comments received from SoCG issued on 03/11/2020 | Mr Bibbey is unable to unilaterally agree anything relating to the title without the consent of Persimmon Homes | Highways England remains committed to attempting to acquire land by agreement but acknowledges the landowner's ability to enter into an agreement is constrained by the Persimmon option agreement. Highways England has prepared draft HoTs setting out the basis on which Highways England would be prepared to acquire the land. Highways England are preparing updated triparty HoT with a view to issue imminently. | Under discussion | Low | |
| Articles and Requirements | N/A | Highways England has not received any comments on the Articles or Requirements on the draft DCO from the Landowner. | Under discussion | High | |

Appendix A - Initials and details of individuals involved

| Initials | Name | Role or Discipline | Organisation |
|----------|----------------|--|---------------------------------|
| GH | Gateley Hamer | Land referencing and Stakeholder Liaison | Gateley Hamer Ltd |
| JH | Jon Harvey | Stakeholder manager | AECOM |
| SB | Sam Blaize | Principal Surveyor | Gateley Hamer Ltd |
| SD | Simon Davis | District Valuer | Valuation Office Agency |
| PM | Paul Mourton | Solicitor on behalf of landowner | Lodders Solicitors |
| TB | Tom Bennett | Previous stakeholder manager | Amey |
| TD | Terry Dinham | Land agent on behalf of landowner | TDP (Property Developments) Ltd |
| TF | Toby Feirn | Principal Surveyor | Gateley Hamer Ltd |
| WB | William Bibbey | Landowner | N/A |