

The Planning Act 2008

**A46 Coventry Junctions (Walsgrave) Project**

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Transport

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Examining Authority

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7 November 2025

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# OVERVIEW

**File Ref:** TR010066

The application, dated 14 November 2024, was made under section 31 of the Planning Act 2008 and was received by the Planning Inspectorate on 14 November 2024.

The applicant is National Highways.

The application was accepted for examination on 12 December 2024 under the reference number TR010066.

The examination of the application began on 07 May 2025 and was completed on 12 September 2025.

The proposed development of the A46 at Walsgrave (east of Coventry) comprises a grade separated junction located to the north of the existing Walsgrave roundabout with the B4082 extending to the new junction.

## **Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State for Transport should make the Order in the form attached.

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## ERRATA SHEET – A46 Coventry Junctions (Walsgrave) DCO

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 7 November 2025.

Page No.	Paragraph	Error	Correction
1	1.1.1	Incorrect text: "The application was accepted for examination under s55 of the PA2008 on 12 December 2025"	Should read: "The application was accepted for examination under s55 of the PA2008 on 12 December <b>2024</b> "
12	2.3.3	Incorrect text: "The NNNPS was designated on 06 March 2025"	Should read: "The NNNPS was published on 06 March <b>2024 and was designated 24 May 2024.</b> "
23 23 29 29 34	3.3.14 3.3.16 3.5.18 3.5.20 Heading below 3.6.32	Typographical error: Combe Pool	Should read: Coombe Pool
64	5.2.17	Incorrect or missing text: "...this is considered in paragraph 5.3.9 below."	There is no paragraph 5.3.9. This should read 5.3.5
67	5.2.48	The ExA has proposed amending the original text. The amended text reads, "The ExA considers that there is sufficient information before the Secretary of State for Transport to enable them to determine whether an appropriate assessment is required."	The following text is proposed to provide more clarity, "The ExA considers that there is sufficient information before the Secretary of State for Transport to enable them to determine whether an appropriate assessment is required. The ExA is of the view that appropriate assessment is not necessary."
68	5.3.6	The ExA has proposed amending the original text. The amended text reads, "The Secretary of State for Transport is the Competent Authority, and the ExA considers	

Page No.	Paragraph	Error	Correction
		that there is sufficient information before the Secretary of State for Transport to enable them to determine whether an appropriate assessment is required.”	
86	8.1.5	Potential Incorrect text: “... and subject to the mitigation measures secured in the rDCO”	There are no HRA specific mitigation measures set out in the rDCO, should this text be removed?

# **1. INTRODUCTION**

## **1.1. BACKGROUND TO THE EXAMINATION**

- 1.1.1. An application for development consent for the A46 Coventry Junctions (Walsgrave) (the proposed development) was submitted by National Highways to the Planning Inspectorate (the Inspectorate) on 14 November 2024 under section(s) 31 of the Planning Act 2008 (PA2008). The application was accepted for examination under s55 of the PA2008 on 12 December 2025 under the reference number TR010066. This report sets out the Examining Authority (ExA)'s findings, conclusions and recommendations to the Secretary of State for Transport.
- 1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Housing, Communities and Local Government in its decision to accept the application for examination in accordance with s55 of the PA2008.
- 1.1.3. The proposed development comprises a grade separated junction on the A46 at Walsgrave, Coventry located to the north of the existing Walsgrave roundabout with the B4082 extending to the new junction. The proposed development falls within s104 of the PA2008 and meets the definition of an NSIP set out in s14(1)(h) and s22 of the PA2008. As such, the proposed development requires development consent in accordance with s31 of the PA2008.
- 1.1.4. The examination library ([EL](#)) provides a record of all application documents and submissions to the examination, each of which is given a unique reference number e.g. [\[APP-001\]](#). The reference numbers are used throughout this report, and hyperlinks are included to allow the reader to access them directly.
- 1.1.5. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this report.

## **1.2 APPOINTMENT OF THE EXAMINING AUTHORITY**

- 1.2.1. On 30 January 2025 [\[PD-004\]](#), Neil Humphrey and John McEvoy were appointed as the ExA for the application under s65 of the PA2008. Neil Humphrey was appointed as the lead member.

## **1.3 THE APPLICATION**

### **LOCATION OF THE PROPOSED DEVELOPMENT**

- 1.3.1. The location of the proposed development is shown in the applicant's location plan document [\[APP-011\]](#) (an extract from which is reproduced below as Figure 1.3.1 of this report) and land plans [\[APP-012\]](#).
- 1.3.2. The site lies within the administrative areas of Coventry City Council and Rugby Borough Council and is wholly in England.



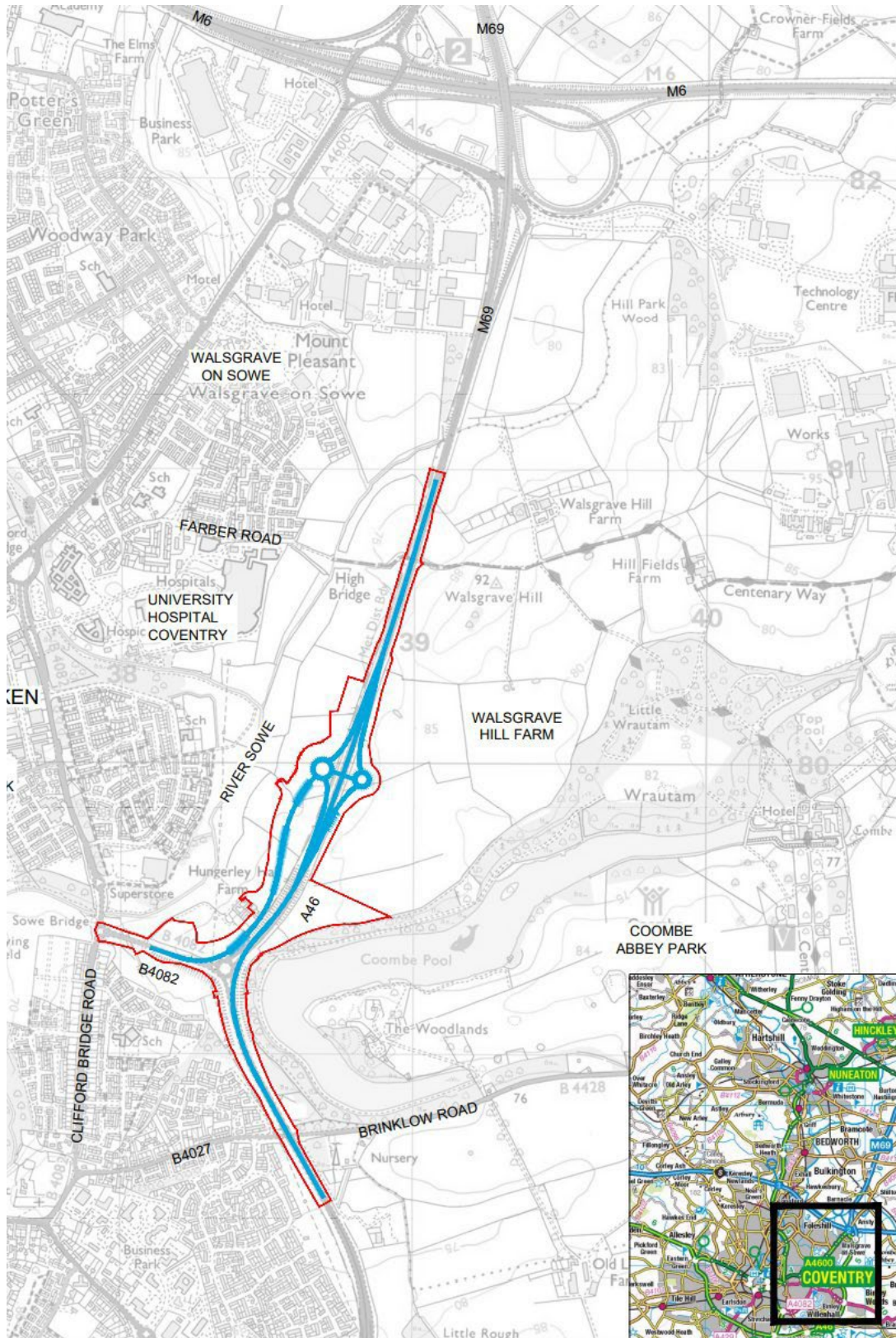
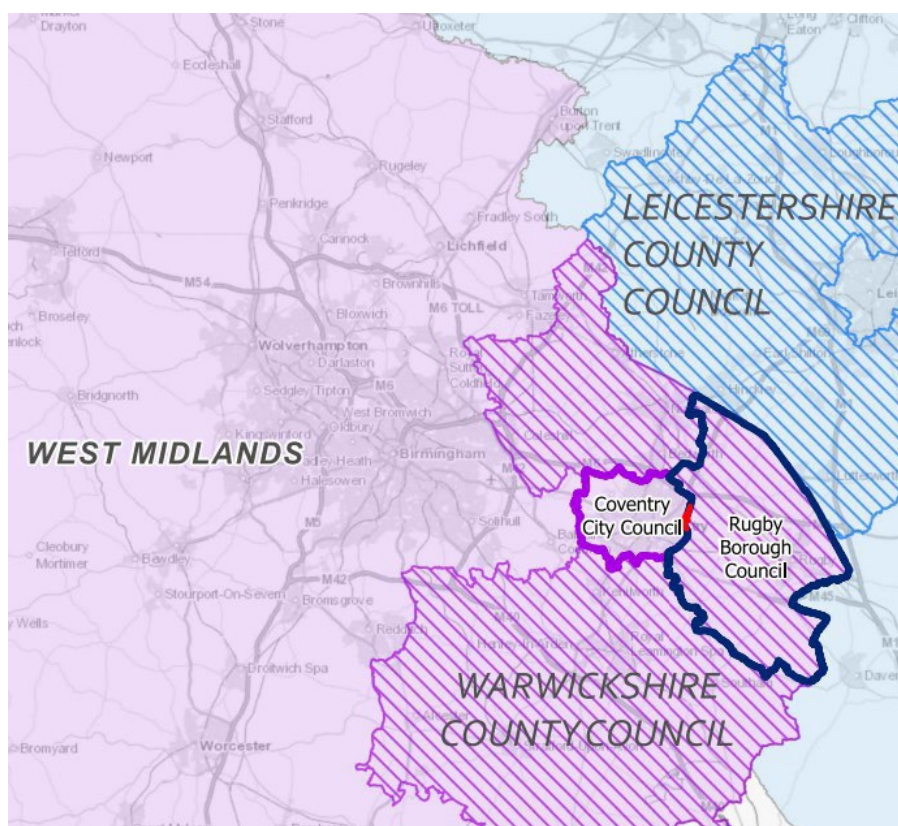








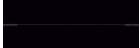
Figure 1.3.1: Location plan (extracted from ES Figure 2.1 (Location Plan) [APP-011])

1.3.3. Chapter (Ch.) 2 (The Scheme) of the Environmental Statement (ES) [APP-024] provides a description of the surrounding area. In summary, and as can be seen in Figure 1.3.2 below:

- the proposed development is in the West Midlands, approximately 5km to the east of Coventry city centre, and crosses the boundary between Coventry City Council, a unitary authority, and Rugby Borough Council
- it is situated in two local planning authority areas: the eastern part lies in the City of Coventry and the western part in Rugby Borough Council
- the boundary between these two administrative areas is along the western side of the A46
- Rugby Borough Council's administrative area also forms part of Warwickshire County Council's administrative area, which shares the same border with Coventry City Council
- the Leicestershire County Council boundary is approximately 12.5km north and east of the existing Walsgrave junction.



### Legend

	West Midlands Region		East Midlands Region
	Order limits		
	Coventry City Council		Rugby Borough Council
	Leicestershire County Council		Warwickshire County Council

**Figure 1.3.2: Surrounding areas (with key added) (extracts from ES Figure 10.1 (Regional Plan) [APP-054])**

1.3.4. Ch. 2 of the ES [\[APP-024\]](#) also provides a detailed description of the existing site and surroundings. In summary the site is characterised by:

- a densely populated area to the west of the existing Walsgrave junction with seven schools within 2km of the junction
- University Hospital Coventry, located approximately 1.2km to the north of the existing A46 Walsgrave junction
- the A46 serving as a blue light (for example emergency services) route to the hospital
- agricultural land, to the immediate north-west of the existing Walsgrave junction, associated with Hungerley Hall Farm and further north with Walsgrave Hill Farm
- agricultural land, to the immediate south-west of the existing Walsgrave junction, also associated with Hungerley Hall Farm
- areas of public open space, south of Smite Brook, beyond which are residential areas
- areas of agricultural land, to the north-east of the existing Walsgrave junction and northwards along the eastern side of the A46, associated with Walsgrave Hill Farm
- isolated properties at Coombe Warren, located to the south-east of the proposed development
- an overhead high voltage electricity line running north-south on the western side of the A46, crossing the B4082 immediately west of the existing Walsgrave junction
- Coombe Abbey Park, immediately adjacent to the east side of the existing Walsgrave junction. Part of Coombe Abbey Park includes Coombe Pool Site of Special Scientific Interest (SSSI) and Coombe Abbey Grade II\* Registered Park and Garden
- an area to the east of the A46 designated as green belt
- nearby junctions, including Binley junction (on the A46), approximately 1.7km south of the existing Walsgrave junction, and the M6 and M69 junctions, which both lie approximately 2.5km north of the existing Walsgrave junction

## **DESCRIPTION OF THE PROPOSED DEVELOPMENT**

1.3.5. The proposed development would involve the realignment of approximately 880 metres of the A46 dual carriageway [\[APP-024\]](#) and would generally follow the route of the existing A46 which runs north-south to the east of Coventry. A new grade separated junction would be constructed over the A46 mainline, approximately 800m north of the existing Walsgrave junction to connect the B4082 with the A46. A new overbridge structure across the existing A46, between new dumbbell roundabouts, would form the grade separated junction. The B4082 running eastwards from Clifford Bridge Road to the existing Walsgrave junction would be realigned to form a single carriageway link road, for approximately 900m. The realigned B4082 would connect the local road network to the new A46 grade separated junction. The existing Walsgrave junction roundabout on the A46 would be removed.

1.3.6. The proposed development works comprise:

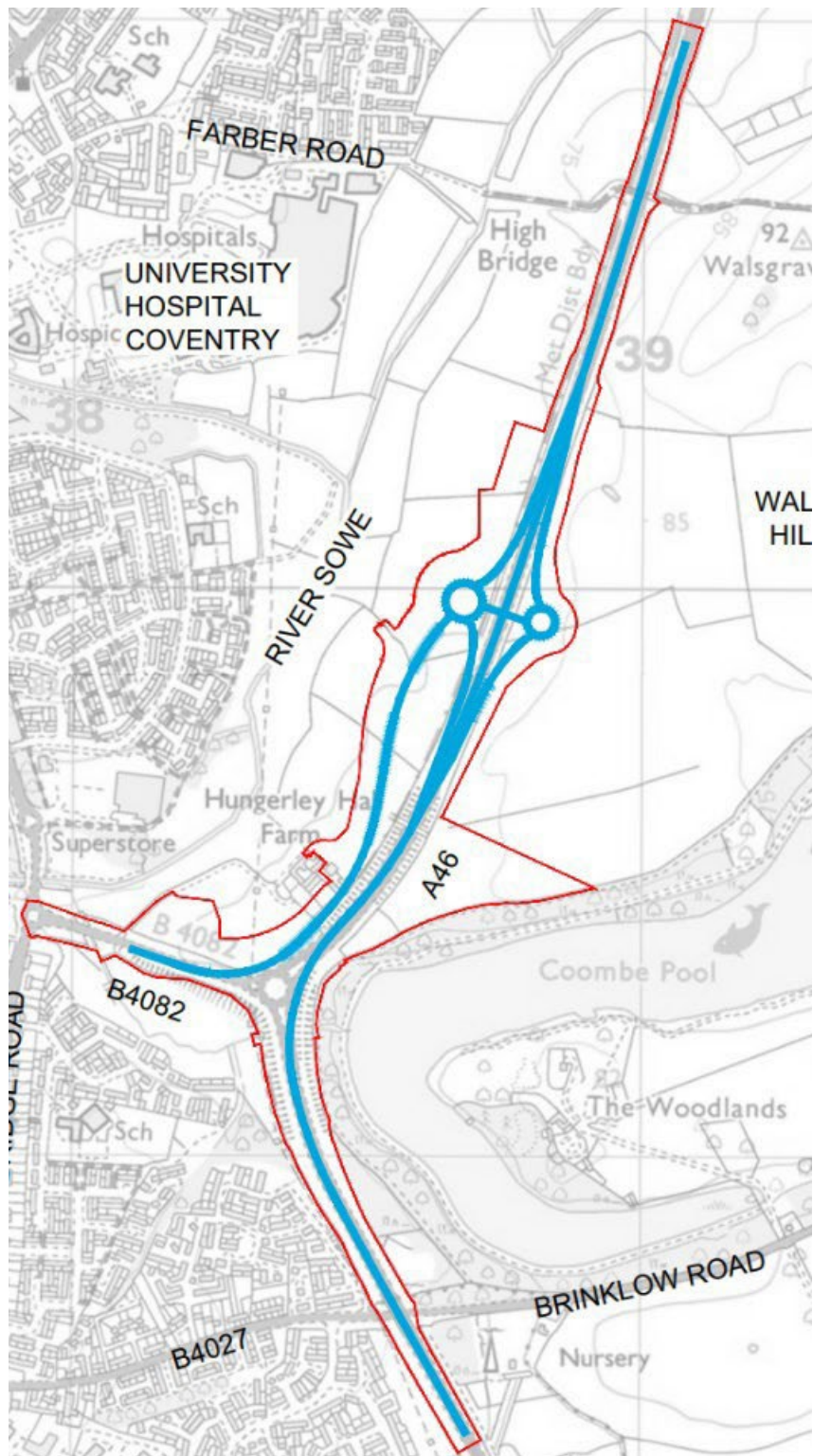
- Works No. 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, 1L, 1M – including:





- Improvement and realignment of the existing A46 northbound and southbound carriageway with realignment and new construction along a length of 880 metres, cross-section widening along the A46 and provision of connection to new slip roads, and placement of 50mph speed limit terminal signs.
- A new A46 Walsgrave overbridge comprising of single span, 30 metres in length, carrying the new dumb-bell link road connecting the two new roundabouts,
- A new northbound off-slip, 264 metres in length.
- A new northbound on-slip, 290 metres in length.
- A new southbound off-slip, 294 metres in length.
- A new southbound on-slip, 274 metres in length.
- A new roundabout to the west of the A46.
- A new roundabout to the east of the A46.
- A new maintenance layby, 110 metres in length.
- A new gantry, or similar signage, over the A46 northbound carriageway.
- Removal and reinstatement of existing environmental bund situated southeast of the realigned A46.
- A new northern pond, and a new northern pond access, 810 metres in length.
- Works No. 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I – including:
  - realignment, improvement and new construction of the B4082 road
  - new private means of access
  - a new central pond
  - a new southern detention basin
  - a new central pond access, 393 metres in length
  - a new southern detention basin access, 283 metres in length
  - a new signalised pedestrian crossing situated 20 metres east of the existing Clifford Bridge Road roundabout
- Works No. 3A, 3B, 3C – including habitat creation, woodland planting of native species, and a new badger crossing.
- Work No. 4A – A temporary construction compound.

1.3.7. Further details of the proposal for each Work No. referenced above can be found in schedule 1 of the recommended draft Development Consent Order in [appendix C](#).

1.3.8. The illustrative layout of the proposed realignment of the A46 and the B4082 is shown below in Figure 1.3.3.



#### KEY TO SYMBOLS

	Order Limits
	Indicative Highway Layout

**Figure 1.3.3: Illustrative plan of the proposed development (with key added) (extract from ES Figure 2.1 (Location Plan) [[APP-011](#)])**

## RELEVANT PLANNING HISTORY

- 1.3.9. The applicant undertook a search of relevant planning history for:
- planned development within and around the order limits (identification of a long list and short list of other developments [[APP-037](#)])
  - NSIPs within 1km of the order limits [[APP-037](#)]
  - developments within 1km of the proposed development that have either been consented within the last five years, or currently have an environmental impact assessment (EIA) screening opinion or environmental statement on the planning portal that are pending determination [[APP-037](#)]
  - committed developments and land allocations within 1km of the proposed development
- 1.3.10. In response to question CC.1.5 in ExQ1 [[PD-008](#)], both Coventry City Council [[REP3-047](#)] and Rugby Borough Council [[REP3-049](#)] were content with the applicant's analysis of committed developments overlapping with the order limits for the proposed development.
- 1.3.11. The applicant confirmed ([[APP-037](#)] at page 8) that no other NSIPs have been identified within 1km of the proposed development.
- 1.3.12. In September 2020, the applicant obtained planning permission (Rugby Borough Council planning ref. R20/0462) for a construction compound to the south of the proposed development at Binley Woods on Brinklow Road ([[APP-132](#)] at page 47). This compound was used as the main compound for the A46 Binley Junction Improvement Scheme. The A46 Binley junction improvement scheme was completed in 2023.
- 1.3.13. The planning application for the construction compound was progressed under the Town and Country Planning Act 1990 and originally had planning permission until 31 December 2026 at which time the compound was to be removed from the site and the land reinstated. The permission was altered via a non-material amendment application to extend the timescale of the planning permission (until 31 December 2029), so it could be used for the proposed development (should consent be granted).
- 1.3.14. The construction compound site that is the subject of these planning consents lies within the order limits of the proposed development.

## 1.4 PRE-EXAMINATION

### PERSONS INVOLVED

- 1.4.1. Those participating in the examination included.
- Persons entitled to become an interested party by making a relevant representation or were a statutory party who requested to become an interested party.
  - Affected persons are individuals or groups impacted by a proposed compulsory acquisition or temporary possession that is part of an application and who have raised objections at any point during the examination process.

### RELEVANT REPRESENTATIONS

- 1.4.2. On 28 February 2025, the applicant submitted a notice under s56 of the PA2008 that the deadline for submission of relevant representations was 27 February 2025.
- 1.4.3. However, in the case of one interested party, the relevant representation period had to be extended to 8 March 2025 due to them receiving a late notice, and for seven interested parties, this had to be extended to 28 March 2025.
- 1.4.4. In total, thirteen relevant representations were received by the Inspectorate. Discussion of the relevant representations can be found in section 3 of this report.

## **RULE 6**

- 1.4.5. On 9 April 2025, the ExA wrote to all interested parties and statutory parties under rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR). This rule 6 letter [\[PD-006\]](#) invited these parties to the preliminary meeting.

## **1.5 THE EXAMINATION**

### **START OF THE EXAMINATION**

- 1.5.1 The preliminary meeting took place on 07 May 2025. The ExA's procedural decisions and the examination timetable took full account of matters raised at the preliminary meeting. Details were provided in the letter issued under rule 8 of the EPR on 14 May 2025 [\[PD-007\]](#).
- 1.5.2. The examination began on 07 May 2025 and concluded on 12 September 2025. The principal components of and events within the examination can be seen in the rule 6 [\[PD-006\]](#) letter and are summarised below.

### **PROCEDURAL DECISIONS**

- 1.5.3. The procedural decisions taken by the ExA are recorded in the EL referenced [PD-]. They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of the planning merits of the proposed development. All were broadly discharged as intended.
- 1.5.4. No formal change requests were made by the applicant.

### **STATEMENTS OF COMMON GROUND**

- 1.5.5. By the end of the examination, the following bodies had concluded and signed statements of common ground (SoCGs) with the applicant:

- Warwickshire County Council [\[REP5-013\]](#)
- Historic England [\[REP5-015\]](#)
- Environment Agency [\[REP5-016\]](#)
- Coventry City Council [\[REP6-019\]](#)
- Rugby Borough Council [\[REP6-020\]](#)
- Natural England [\[REP6-021\]](#)

- 1.5.6. At the end of the examination no SoCGs remained unsigned.
- 1.5.7. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report.

## WRITTEN QUESTIONS

- 1.5.8. The ExA asked one round of written questions, issued on 10 June 2025 [\[PD-008\]](#). Responses were received at deadline(D) 3 on 24 June 2025.
- 1.5.9. The ExA made a follow up request for further information and comments under rule 17 of the EPR [\[PD-009\]](#). Responses were received by D5 on 22 August 2025.

## SITE INSPECTIONS

- 1.5.10. The ExA carried out the following site inspections:
- Unaccompanied site inspection - 19 and 20 March 2025 [\[EV2-001\]](#); and
  - Access required site inspection - 09 and 10 July 2025 [\[EV2-002\]](#).

## HEARINGS

- 1.5.11. An issue specific hearing was held under s91 of the PA2008 on 08 May 2025 ([\[EV4-001\]](#) to [\[EV4-005\]](#)). The hearing covered issues arising from the application documents and initial submissions.
- 1.5.12. An open floor hearing was held under s93 of the PA2008 on 07 May 2025 ([\[EV3-001\]](#) and [\[EV3-002\]](#)). No representations were made at this hearing.
- 1.5.13. We did not hold a compulsory acquisition hearing under s 92 of the PA2008 as we did not receive any requests to be heard on the matter of compulsory acquisition. Additionally, we considered we had comprehensive written information to draw our conclusion from the applicant's submissions.

## 1.6 CHANGES TO THE APPLICATION

- 1.6.1. No formal change requests were made by the applicant.
- 1.6.2. During the examination, the applicant updated key application documents to correct minor errors and respond to issues raised by interested parties and the ExA. The Application Document Tracker was updated after each deadline, summarising changes up to the final version submitted at D7 [\[REP7-002\]](#).

## 1.7 OTHER UNDERTAKINGS, AGREEMENTS AND CONSENTS

### Protective Provisions

- 1.7.1. In its closing statement ([\[REP6-025\]](#) at page 8) the applicant provided a summary of the protective provisions contained in schedule 9 of the final version of its draft Development Consent Order (dDCO). The closing statement signposted the negotiations the applicant held with other parties identifying the protective provision details and their status at the close of the examination.

### Section 106 agreements

- 1.7.2. No agreements under s106 of the Town and Country Planning Act 1990 were presented at the examination.

### Other undertakings



- 1.7.3. Additional consents that would be required to implement the proposed development were identified during the examination. The applicant listed these in the Consents and Agreements Position Statement [[REP6-004](#)].

## **1.8. STRUCTURE OF THIS REPORT**

- 1.8.1. The structure of the remainder of this report is as follows:

- [Section 2](#) identifies how the application is to be assessed and summarises the key legislation and policy context that applies to the decision.
- [Section 3](#) sets out the findings and conclusions in relation to the individual planning issues that arose from the application and during the examination.
- [Section 4](#) summarises considerations arising from the Habitats Regulations Assessment.
- [Section 5](#) sets out the balance of planning considerations arising from chapters 2, 3 and 4 in the light of important and relevant factual, legal and policy considerations.
- [Section 6](#) sets out the ExA's examination of land rights and related matters.
- [Section 7](#) considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- [Section 8](#) summarises all relevant considerations and sets out the ExA's recommendation to the Secretary of State for Transport.

- 1.8.2. This report is supported by the following appendices:

- [Appendix A](#) – Reference tables.
- [Appendix B](#) – List of abbreviations.
- [Appendix C](#) – The recommended draft DCO.

## **2. HOW THE APPLICATION IS ASSESSED**

### **2.1. INTRODUCTION**

- 2.1.1. This chapter identifies the key legislation, policy and local impact reports (LIRs) that the Examining Authority's (ExA's) recommendations have considered.

### **2.2. LEGISLATION AND POLICY**

- 2.2.1. This section identifies the key legislation and policy and any other matters that the ExA considers to be important and relevant to its findings and recommendations to the Secretary of State for Transport. More detail is provided in [appendix A](#) to this report.

#### **PLANNING ACT 2008**

- 2.2.2. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) (section 104) has effect from that where no NPS has effect (section 105). This is an application in respect of which there is an NPS in effect.
- 2.2.3. The ExA has considered the statutory basis for examination, reporting and decision-making [\[PD-006\]](#) and has concluded that these must proceed under the PA2008 section (s)104 (decisions in cases where NPSs have effect). There are no substantial elements of the proposed development that fall outside the remit of relevant NPS policies and so the PA2008 s105 (decisions in cases where no NPSs have effect) is not relevant.
- 2.2.4. Section 104(2) of the PA2008 sets out the matters to which the Secretary of State for Transport must have regard when making its decision. These include:
- any relevant NPS
  - any duly submitted local impact report (LIR)
  - any matters prescribed in relation to the development
  - any other matters the Secretary of State thinks are both important and relevant to the decision
- 2.2.5. Section 104(3) of the PA2008 requires the Secretary of State for Transport to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:
- Where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations.
  - Where deciding the application in accordance with any relevant NPS would lead to the Secretary of State being in breach of any duty imposed on her or him by or under any enactment.
  - Where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment.
  - Where the adverse impact of the proposed development would outweigh its benefits, and /or

- Where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.6. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

## OTHER LEGISLATION

2.2.7. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in [Table A1](#) of appendix A of this report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this report are framed so as to identify and enable the Secretary of State for Transport to discharge all applicable statutory considerations or duties.

## 2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs set out Government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that the National Networks NPS (NNNPS) (March 2024) is relevant to the application.

2.3.2. The NNNPS forms the primary policy context for this examination. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of the NNNPS is summarised here.

### National Networks National Policy Statement summary

2.3.3. The NNNPS was designated on 06 March 2025 and continues to have effect. It sets out the national policy concerning development related to national networks.

2.3.4. The NNNPS sets out the need for the development of the national road network in England. It notes that the Government has determined there is a 'compelling need for development' of the national road network. It also states that there is a 'presumption in favour of granting development consent' for the types of infrastructure covered by the NNNPS. This therefore applies to the application for the A46 Coventry Junctions (Walsgrave) improvement works.

2.3.5. The NNNPS provides detailed policies, protections, and planning guidance for such projects. It also provides the basis for the examination by the ExA and decision making by the Secretary of State for Transport, covering the following topics:

- accessibility – paragraphs 4.73 to 4.78
- alternatives – paragraphs 4.20 to 4.22
- air quality – paragraphs 5.7 to 5.25
- biodiversity and nature conservation – paragraphs 5.43 to 5.69
- climate change adaptation – paragraphs 4.33 to 4.44
- criteria for good design for national network infrastructure – paragraphs 4.27 to 4.32
- dust, odour, artificial light smoke, – paragraphs 5.117 to 5.125

steam

- environmental assessment – paragraphs 4.12 to 4.13
- flood risk – paragraphs 5.126 to 5.151
- greenhouse gas emissions – paragraphs 5.26 to 5.42
- Habitats Regulations Assessments – paragraphs 4.14. to 4.19
- health – paragraphs 4.71 to 4.72
- historic environment – paragraphs 5.204 to 5.226
- impacts on transport networks – paragraphs 5.269 to 5.291
- land contamination and instability – paragraphs 5.152 to 5.159
- land use including open space, green infrastructure and Green Belt – paragraphs 5.179 to 5.203
- landscape and visual effects – paragraphs 5.160 to 5.178
- noise and vibration – paragraphs 5.227 to 5.242
- pollution control and other environmental regulatory regimes – paragraphs 4.45 to 4.52
- resource and waste management – paragraphs 5.70 to 5.78
- road safety – paragraphs 4.57 to 4.61
- socio-economic effects – paragraphs 5.243 to 5.251
- water quality and resources – paragraphs 5.252 to 5.268

## **2.4. OTHER NATIONAL POLICY**

2.4.1. Other important and relevant Government policy referenced in the Environmental Statement (ES) has been considered by the ExA, including the following:

- Design Manual for Roads and Bridges (DMRB)
- Environmental Improvement Plan (2023)
- Green Infrastructure Planning and Design Guide (2023)
- National Infrastructure Strategy (2020)
- Road Investment Strategy 2 (2020)
- The National Planning Policy Framework
- 25 Year Environment Plan (2018)

2.4.2. [Table A2](#) of appendix A provides further detail on the relevance of each of the above policies to the proposed development.

## **2.5. LOCAL IMPACT REPORTS**

2.5.1. Three LIRs were submitted into the examination at D1 by the following local authorities:

- Coventry City Council [\[REP1-036\]](#)

- Rugby Borough Council [\[REP1-039\]](#)
- Warwickshire County Council [\[REP1-040\]](#)

- 2.5.2. LIR content has been considered throughout the examination and in this report. It must be considered during the decision by the Secretary of State for Transport pursuant to the PA2008 s104(2)(b).
- 2.5.3. The issues raised are considered in further detail in relation to relevant planning issues in [section 3](#) of this report. [Table A4](#) of appendix A sets out a list of the issues raised in each LIR.
- 2.5.4. Amongst other matters, LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. [Table A3](#) of appendix A lists the individual local policies that are relevant to the proposed development. For an application proceeding under s104 of the PA2008, subsection (3) requires that the Secretary of State for Transport must decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions set out in subsections (4) to (8) applies. Where a relevant local policy and designated NPS policy are in conflict, the effect of this duty (subject to any applicable exception) is to establish a presumption in favour of NPS policy in the Secretary of State's decision-making.

## **2.6. ENVIRONMENTAL IMPACT ASSESSMENT**

- 2.6.1. The applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 of its intention to provide an environmental statement. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the proposed development was EIA development.
- 2.6.2. On 30 June 2023, the applicant submitted a scoping report to the Secretary of State under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion).
- 2.6.3. On 10 August 2023 the Planning Inspectorate provided a scoping opinion [\[APP-114\]](#).
- 2.6.4. Overall, the ExA considers that the ES, as supplemented with additional information during the examination, is sufficient to enable the Secretary of State for Transport to take a decision in compliance with the EIA Regulations.
- 2.6.5. The ExA considered that changes to the documentation, comprising the ES during the examination did not individually or cumulatively undermine the scope and assessment of the ES. [Section 3](#) of this report will summarise the environmental effects under each topic section.

## **2.7. HABITATS REGULATIONS ASSESSMENT**

- 2.7.1. The Secretary of State for Transport is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.7.2. The proposed development is one that has been identified as not giving rise to the potential for likely significant effects (LSE) on European sites. A No Significant Effects Report (NSER) [\[APP-087\]](#) was submitted with the application.

- 2.7.3. As is the convention and to inform Secretary of State decisions prepared under the PA2008, a separate record of considerations relevant to the Habitats Regulations Assessment (HRA) has been set out in section 4 of this report.

## **2.8. TRANSBOUNDARY EFFECTS**

- 2.8.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the Secretary of State on 10 August 2023 following the applicant's request for an EIA Scoping Opinion. This was later updated on receipt of the application on 15 January 2025 [OD-001]. No significant effects were identified (ID 2.2.7, [\[APP-114\]](#)) on the environment in a European Economic Area (EEA) member state.
- 2.8.2. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination.
- 2.8.3. The ExA is satisfied, on the basis of the information provided by the applicant and Natural England's agreement that the correct sites had been considered in the HRA [\[RR-010\]](#), that the proposed development would not have an LSE on European sites in any EEA States.

### **3. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES**

#### **3.1. INTRODUCTION**

- 3.1.1. This section sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The section is structured to firstly examine matters of principle, including the case for the proposed development and alternatives. It then addresses specific planning issues, set out in individual sections. The order in which these section headings are presented should not be taken to imply any order of merit.
- 3.1.2. Rather than outline the policy background for each topic section; the previous chapter and associated appendices outline the relevant policy background underpinning all of the ExA's consideration in relation to the application.
- 3.1.3. In each section, the ExA details the application as made, then reports on the main issues during examination for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects carry little weight, moderate weight, great weight, or very great weight for or against the making of the Development Consent Order (DCO).

#### **INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)**

- 3.1.4. As required by section (s) 88 of the Planning Act 2008 (the PA2008) and rule 5 of the Infrastructure Planning (Examination Procedure) rules 2010 (EPR), the ExA made an IAPI arising from the application in advance of the preliminary meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted relevant representations (RR). The list of issues relates to all phases of the proposed development. The IAPI can be found in annex C of the rule 6 letter [\[PD-006\]](#).

#### **THE PLANNING ISSUES IN THIS REPORT**

- 3.1.5. The ExA considers that the issues raised by interested parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the examination. These are the issues that the ExA has used to structure most of the following sections in this report, which address each issue in turn. The ExA has nevertheless had regard to all important and relevant matters arising from submissions from IPs and has reported on these, if required, within each section below.
- 3.1.6. The planning issues considered in this report are as follows:
- section 3.2 - The case for the proposed development and consideration of alternatives
  - section 3.3 – Air quality
  - section 3.4 – Climate
  - section 3.5 – Road drainage and the water environment
  - section 3.6 – Biodiversity
  - section 3.7 – Cultural heritage
  - section 3.8 – Landscape and visual effects
  - section 3.9 – Noise and vibration
  - section 3.10 – Traffic and Transport

- section 3.11 – Geology and soils
- section 3.12 – Material assets and waste
- section 3.13 – Population and human health
- section 3.14 – Combined and cumulative effects

## 3.2. THE CASE FOR THE PROPOSED DEVELOPMENT AND CONSIDERATION OF ALTERNATIVES

3.2.1. In addition to the issues arising from the IAPI, the ExA has also given consideration on an overarching basis to the principle of the development in terms of:

- case for the proposed development, including conformity with designated NPS policy, applicability of legislation and other policy
- consideration of alternatives

### CASE FOR THE PROPOSED DEVELOPMENT

3.2.2. The applicant submitted the document “Case for the Scheme” [\[REP3-036\]](#) which set out the policy context for the proposed development. It considered the following:

- need and objectives
- alternatives and benefits
- compatibility with National Networks National Policy Statement (NNNPS) and other policy. The applicant also submitted “National Networks National Policy Statement Accordance Tables” [\[APP-133\]](#)
- delivery of government policy and programmes
- delivery of local planning and transport policy
- the Planning Act 2008

3.2.3. Paragraph 2.6.2 of the Case for the Scheme [\[REP3-036\]](#) sets out the proposed development objectives, these are:

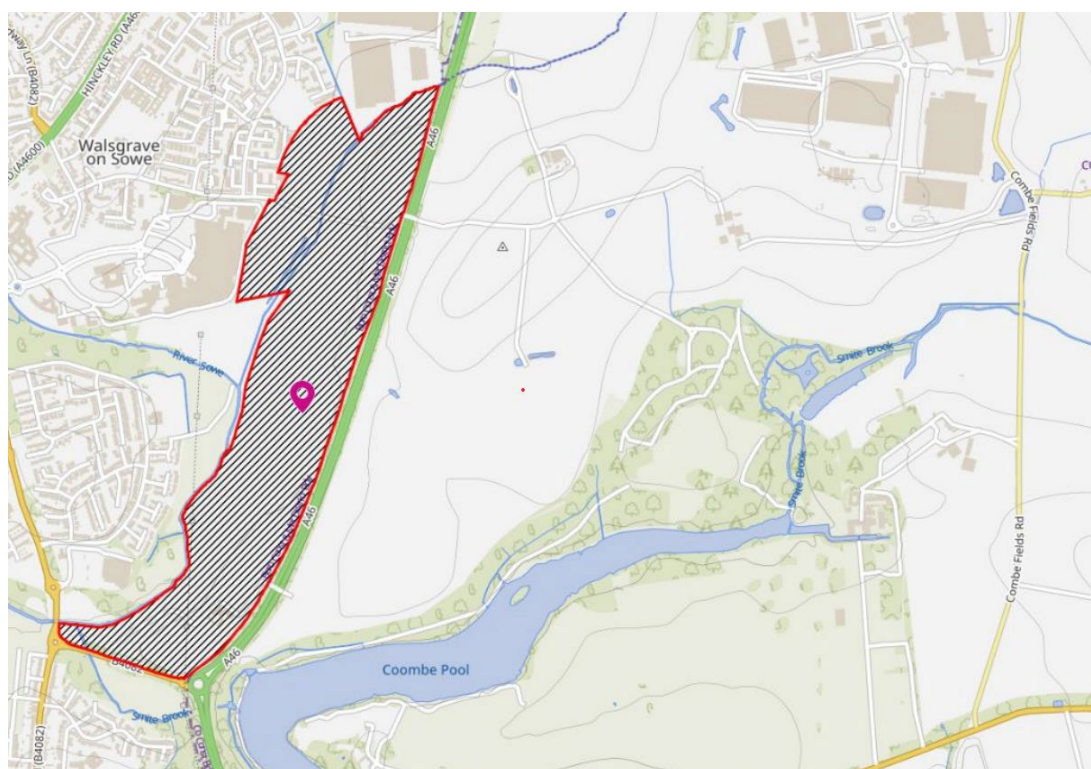
- A Strategic Road Network (SRN) that supports and facilitates economic growth, supporting employment and residential development opportunities.
- An SRN that is maintained to safe and serviceable condition.
- Improve the operation and efficiency of the existing transport network, delivering capacity enhancements to the SRN.
- An SRN that minimises its negative impacts on users, local communities and the environment.
- An SRN that balances the need of individuals and businesses that use and rely upon it.
- Reducing/ minimising the impact on the wider environment, whilst seeking to bring enhancement.
- Operational maintenance to be considered holistically.

3.2.4. Paragraph 2.7.2 of the Case for the Scheme [\[REP3-036\]](#) sets out that the A46 forms part of the “Trans-Midlands Trade Corridor” between the M5 and the Humber Ports. It is part of the SRN, connecting the M1, M6 and the M69 with the M5, providing links to the rest of the country. An investigation conducted by the Highways Agency (2014) indicated that parts of the A46 near Coventry suffered from congestion and unreliability



concerning journey times, issues which would be exacerbated by future housing growth. The A46 also had safety performance issues, in comparison with the rest of the SRN.

- 3.2.5. Since the investigation in 2014, many sections of the A46 near Coventry have been, or are in the process of being, upgraded under the DfT's second Road Investment Strategy (RIS2). However, the existing Walsgrave junction on the A46 still remains a particular pinch point for traffic. The concern is that without improvements to the existing Walsgrave junction, the delay caused by this junction could undermine the existing investment and upgrades that have already been made on the A46. Population growth in Coventry is high, and a significant programme of housebuilding is planned. This is boosting economic development in the area where growth is currently outstripping the UK average.
- 3.2.6. The Coventry and Rugby Local Plans both recognise the economic and population growth in the area and support the need for improved infrastructure and transport networks.
- 3.2.7. Immediately adjacent to the east of the proposed development the land around Hungerley Hall Farm, shown hatched in Figure 3.2.1 below, is allocated as housing land in the Coventry Local Plan. The table in paragraph 4.6 of Coventry City Council Local Impact Report (LIR) [\[REP1-036\]](#) provides the following clarification of Policy H2; "Housing allocation H2:3 Walsgrave Hill Farm, for up to 900 dwellings, sits adjacent to the A46 and covers the area to which part of the junction works sit. These works although will not physically provide access into the allocation will potentially provide the infrastructure and means of access to unlock the allocation."



**Figure 3.2.1 – Coventry City Council housing land allocation (shown hatched).**  
(Extract taken from Coventry City Council LIR [\[REP1-036\]](#))

- 3.2.8. Additionally, Rugby Borough Council in its letter forming its LIR [\[REP1-039\]](#) set out that it had just granted full planning permission for a large mixed use development

(just under 400,000m<sup>2</sup>) just to the north of the A46/ M69/ M6 junction. Rugby Borough Council confirmed that Condition 97 of the full planning permission requires that: “No part of the development hereby approved shall be occupied until the improvement works at the A46 Walsgrave Junction (B4082 / Coventry Eastern Bypass (A46) roundabout) are completed and fully operational.”

- 3.2.9. The combined Coventry Junctions Scheme involves the upgrade of two at-grade junctions (Binley and Walsgrave) to provide relief from traffic congestion and to improve journey times by increasing the capacity on the A46 between the M6 and the M40. The applicant contends that this would benefit both the strategic and local traffic needs and support future growth forecasts from Coventry City Council.
- 3.2.10. The Binley roundabout is approximately 1.7km to the south of the Walsgrave junction. The A46 Binley Junction Improvement Scheme was opened to traffic in November 2022, converting the junction from an at-grade signalised roundabout to a grade separated junction. The Walsgrave junction is the last remaining roundabout east of Coventry and north of Tollbar End Junction that is at-grade, and as such it is a pinch point for traffic.
- 3.2.11. The solution defined in the DfT’s RIS2 is “A46 Coventry Junctions – grade separation of the Binley and Walsgrave roundabouts on the A46 near Coventry.”
- 3.2.12. The RIS2 also sets out a commitment for “Improving the A46 ‘Trans-Midlands Trade Corridor’ between the M5 and the Humber Ports. Work in Road Period (RP)2 will create a continuous dual carriageway from Lincoln to Warwick, delivering one of Midlands Connect’s key priorities.” RIS2 (page 98) also identifies the commitment, “A46 Coventry Junctions – grade separation of the Binley and Walsgrave roundabouts on the A46 near Coventry, upgrading the trunk sections of the A45/A46 between the M6 and M40 to a consistent standard.”
- 3.2.13. The proposed development forms part of the Government’s vision and strategic objectives for improving the UK’s transport infrastructure. The proposed development would meet the identified need to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that can stimulate and support economic growth as set out in paragraph 3.33 of the NNNPS.
- 3.2.14. The applicant has also provided NNNPS Accordance Tables [\[APP-133\]](#) to further evidence the alignment between the proposed development and the NNNPS identification of need for the development of the national road network and the policy for addressing such need set out in section 3 of the NNNPS.
- 3.2.15. Coventry City Council LIR [\[REP1-036\]](#) in paragraph 12.1 “welcome this development as it will significantly improve traffic flows at this key junction on the A46 relieving congestion and improving accessibility from Junction 2 of the M6 along the A46 to the M5, M40 and M42.”
- 3.2.16. Warwickshire County Council LIR [\[REP1-040\]](#) sets out the broader benefits of the proposed development. It mentions specifically the following four key outcomes:
- improvement to route consistency and performance
  - support for economic growth
  - improved network resilience
  - reducing severance and accessibility

- 3.2.17. Taking all of the above factors into account the ExA considers that there is a compelling case for the proposed development.

## **CONSIDERATION OF ALTERNATIVES**

- 3.2.18. In 2014, Highways England published a Route Strategy Evidence Report, which identified four opportunities for the improvement of the Binley and Walsgrave Junctions along the A46, which would help to alleviate congestion and unreliable journey times; these included:
- option 1: Improvements to the Binley Junction
  - option 2: Improvements to, and the relocation of, the existing Walsgrave Junction
  - option 3: Improvements to, or upgrade of, the M6 Junction 2 and the links between the M6 and M69
  - option 4: Improvements to both Binley and Walsgrave Junctions
- 3.2.19. Option 4 was progressed, and design development was undertaken between mid-March to October 2016 in several phases.
- 3.2.20. Several design options for each of the two junctions were developed and evaluated against a number of metrics, such as impacts on safety, traffic, the environment, economic growth, stakeholders, as well as the cost of the development. Traffic modelling was also undertaken for these options.
- 3.2.21. The decision was taken in 2016 to take a phased approach to delivery, and Option 4 became two separate schemes for the two junctions. The first, the Binley junction upgrade, was consented by a Highways Act Order on 8 August 2019 and opened for traffic in November 2022.
- 3.2.22. Chapter (Ch.) 3 of the Environmental Statement (ES) [APP-025] presented the applicant's assessment of alternatives for the Walsgrave junction. This was a four-stage process:
- strategy, shaping and prioritisation stage
  - options identification stage
  - option selection stage
  - preliminary design stage
- 3.2.23. A total of eleven options were considered through this process. The process also included non-statutory consultation to assist in the option selection. As a result of this process option 11 was selected as the preferred option and is now the proposed development.
- 3.2.24. The ExA asked in question AS.1.1 in ExQ1 [PD-008] whether all local authorities and statutory parties agreed with the applicant's assessment of alternatives set out in ES Ch. 3 [APP-025]. Coventry City Council [REP3-047], Rugby Borough Council [REP3-049], Warwickshire County Council [REP3-050] and Natural England [REP3-052] all agreed with the selection of the chosen option that was progressed to this application. The Environment Agency [REP3-051] had no comments to make on the option selection.

## **ExA conclusion on the case for development and consideration of alternatives.**

- 3.2.25. Both Coventry City Council and Warwickshire County Council recognise that the proposed development would benefit economic development in the area. Paragraph 3.33 of the NNNPS highlights the importance of the SRN in facilitating economic growth. It is our view that the proposed development would assist in facilitating such economic growth by improving traffic conditions in this part of the SRN.
- 3.2.26. The ExA having considered the applicant's submissions and those from other parties considers that the case has been made for the need for the proposed development. In addition, we are satisfied that the applicant has fully considered alternatives for the proposed development.
- 3.2.27. Taking these factors into account the ExA considers there is very great weight in favour of making the DCO, when considering the case for the development.

### **3.3. AIR QUALITY**

#### **INTRODUCTION**

- 3.3.1. The section considers the effects of the proposed development in relation to air quality. The policy considerations relevant to the ExA's consideration of air quality issues are set out in section 2 of this report.

#### **APPLICANT'S SUBMISSION**

- 3.3.2. The applicant's submission in relation to air quality effects was primarily provided in ES Ch.5 [\[REP3-010\]](#). In addition, the applicant supported this by submitting the following:
- ES Ch.5 Figures 5.1 to 5.3 [\[APP-045\]](#)
  - ES Ch.5 Figures 5.4 to 5.8 [\[APP-046\]](#)
  - ES Ch.5 Figures 5.9 to 5.11 [\[REP3-020\]](#)
  - ES Ch.5 appendix 5.1 - Air Quality Modelling Process [\[APP-063\]](#)
  - ES Ch.5 appendix 5.2 - Air Quality Verification and Model Adjustment [\[APP-064\]](#)
  - ES Ch.5 appendix 5.3 - Air Quality Receptor Results [\[REP3-024\]](#)
- 3.3.3. ES Ch.5 concluded that:
- There would be no residual significant effects to air quality during construction, on the basis of the best practice dust mitigation measure used during construction, which would be implemented through the Environmental Management Plan (EMP),
  - There would be no residual significant effects to air quality during operation, and no specific mitigation would be required during the operation phase of the proposed development.

#### **ISSUES CONSIDERED DURING THE EXAMINATION**

- 3.3.4. The impacts of the proposed development on emissions to the air had been modelled and assessed in the ES. Changes in emissions cause changes in air quality, which can impact the health of human and ecological receptors. Assessing impacts to air quality involves the consideration of current pollutant concentrations in the air, and the projection of future pollutant concentrations using computer models. The key pollutants that are assessed originate from vehicle emissions: Nitrogen Dioxide

(NO<sub>2</sub>), Nitrogen Oxides (NO<sub>x</sub>), Ammonia (NH<sub>3</sub>) and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>).

- 3.3.5. The application site is located immediately adjacent to Coventry City Council's Air Quality Management Area (AQMA). This citywide AQMA was designated due to its high levels of NO<sub>2</sub>. No other AQMAs are located within the study areas for the proposed development.

### **Interim Planning Guidance relating to PM<sub>2.5</sub>**

- 3.3.6. "Interim Planning Guidance (IPG) on the consideration of the Environment Act PM<sub>2.5</sub> targets in planning decisions" was published by the Department for Environment Food and Rural Affairs on 04 October 2024, just prior to the submission of the application for the proposed development on 14 November 2024.
- 3.3.7. Consequently, we asked the applicant in a rule 9 letter [\[PD-005\]](#) for its understanding of the implications of this new guidance for the proposed development.
- 3.3.8. The applicant responded at procedural deadline A [\[PD1-016\]](#), 25 April 2025. The applicant considered both the construction and operational phases of the proposed development. In the construction phases the applicant concluded that the application of best practice construction mitigation measures, as defined in the First Iteration Environment Management Plan (EMP) [\[REP6-010\]](#), would mean there would be no likely significant air quality effect on local air quality associated with construction dust. Consequently, there would be no additional implications for PM<sub>2.5</sub> concentrations.
- 3.3.9. Operationally, the applicant accepted that ES Ch.5 had assessed PM<sub>2.5</sub> in line with the requirements of Design Manual for Roads and Bridges (DMRB) LA 105. It went on to acknowledge that LA 105 has not yet been updated to account for the new targets and associated interim planning guidance.
- 3.3.10. The IPG only provides information on how to qualitatively assess developments. Based on embedded design measures including the removal of the Walsgrave roundabout reducing congestion and break wear, it would be likely that PM<sub>2.5</sub> emissions would be reduced despite the increase in traffic through increased capacity. As the proposed development is also a road upgrade in a semi-rural area, there will be no new emission sources within major population sources as well as no increases in exposure. Therefore, even though PM<sub>2.5</sub> has not been explicitly modelled, the applicant concluded that all impacts from the proposed development on PM<sub>2.5</sub> would be considered negligible and not significant.
- 3.3.11. Based on the above investigations and baseline monitoring, the applicant concluded that if the interim planning guidance had been in place at the time of the original air quality assessment, there would be no material changes to the assessment outcomes. Therefore, the conclusions of ES Ch.5 remain the same.
- 3.3.12. We asked in ExQ1 [\[PD-008\]](#) AQ.1.3 the local councils and Natural England if they agreed with the applicant's conclusion about the implications of the IPG. No IP's had any disagreement with the applicant's submission relating to the IPG.

### **ExA consideration of the implications of the IPG**

- 3.3.13. Given the evidence submitted, the ExA considers that the publication of the IPG does not alter the applicant's assessment of air quality impacts presented in the ES Ch.5.

### **Other air quality issues raised in the examination**



- 3.3.14. Natural England [\[REP1-035\]](#) in its written representation, issue NE6, advised that “additional clarification was required regarding potential impacts of air quality on Combe Pool Site of Special Scientific Interest (SSSI) and Heard Way Marsh SSSI.” Natural England’s concern was related to the potential effects on ecological receptors in the SSSIs.
- 3.3.15. The applicant continued dialogue with Natural England and at deadline (D) 3 submitted an amended ES Ch.5 [\[REP3-010\]](#), an updated appendix 5.3 (Air quality receptor results) [\[REP3-024\]](#) and in addition a revised appendix 8.15 (Assessment of air quality impacts on ecological features) [\[REP3-026\]](#).
- 3.3.16. Natural England [\[REP4-027\]](#) concurred with the applicant’s assessment and conclusions that there would be no significant effect on Combe Pool SSSI and Herald Way Marsh SSSI in regard to ammonia, oxides of nitrogen and nitrogen deposition.
- 3.3.17. Coventry City Council in its LIR [\[REP1-036\]](#) commented that although the dust created during the construction process would not be a significant effect when the mitigation of the EMP is taken into account, there would be a construction dust issue and this would be a negative impact.
- 3.3.18. The applicant [\[REP2-005\]](#) reiterated that any residual impact should be neutral due to the implementation of the measures contained in the Outline Air Quality and Dust Management Plan that forms appendix B.1 of the First Iteration of the EMP [\[REP6-010\]](#). This would be developed during detailed design into a final Air Quality and Dust Management Plan and form part of the second iteration of the EMP.
- 3.3.19. We asked in ExQ1 [\[PD-008\]](#) in question AQ.1.2 whether any IPs disagreed with the applicant’s contention that there would be no significant effects on air quality. Coventry City Council [\[REP3-047\]](#) responded it was “of the opinion there would be no noticeable change in AQ as a result of the scheme. If anything, it should improve as the A46, and Clifford Bridge Road link will be more free flowing.”
- 3.3.20. No other issues relating to air quality were raised by other parties during the examination and all signed statements of common ground (SoCG) do not record any issues relating to air quality.

## **CONCLUSIONS ON AIR QUALITY**

- 3.3.21. The ExA have considered all the submitted air quality evidence. As a consequence, we are satisfied that the air quality assessment has adhered to the requirements set out in paragraphs 5.12, 5.13 and 5.14 of the NNNPS and has concluded there will be no significant effects in terms of air quality on human and ecological receptors as a result of the proposed development.
- 3.3.22. To ensure that the air quality effects relating to the dust created during construction would be properly mitigated. The second iteration of the EMP would employ best practice techniques to reduce dust levels. The second iteration of the EMP would be substantially in accordance with the First Iteration of the EMP [\[REP6-010\]](#) and its production and implementation would be secured by requirement 4 of the recommended draft Development Consent Order (rDCO).
- 3.3.23. On this basis we consider in terms of the effects on air quality the proposed development should be considered neutral in the planning balance.

## **3.4. CLIMATE**

## INTRODUCTION

- 3.4.1. This section considers the assessment of the likely significant effects of the proposed development on climate. The policy considerations relevant to the ExA's consideration of climate issues are set out in section 2.

## APPLICANT'S SUBMISSION

- 3.4.2. Ch. 14 of the ES [APP-036] reports on the applicant's Environmental Impact Assessment (EIA) focused on climate. It presents the applicants' evaluation of the effects of greenhouse gas emissions resulting from the proposed development. The chapter also includes an analysis of whether the proposed development could influence the UK Government's capacity to achieve its carbon reduction objectives.
- 3.4.3. The chapter concluded that while the proposed development will increase carbon emissions, this increase is not deemed significant enough to materially impact the UK's carbon reduction targets, and the proposed development is considered resilient to projected climate changes.

## EXAMINATION ISSUES

### Adequacy of management measures related to climate

- 3.4.4. The ExA explored the robustness of the applicant's management measures on reducing carbon emissions through written question at ExQ1, (question CE.1.14 listed in [PD-008]). Coventry County Council considered [REP3-047] the applicant's climate-related management measures to be appropriate and acceptable.
- 3.4.5. Rugby Borough Council [REP3-049] was broadly supportive of the applicant's carbon management process, however the borough council gave a qualified response to the management measure aimed at reducing carbon emissions (C1, [REP6-012]) and the management measure aimed at evaluating changes in climate change projections (C3, [REP6-012]).
- 3.4.6. In relation to management measure C1 Rugby Borough Council was unclear whether any of the applicant's proposed strategies for reducing emissions were commitments as opposed to options to be explored. The borough council also questioned which options could produce significant reductions in emissions and might therefore be prioritised.
- 3.4.7. In response, the applicant explained ([REP4-025] at pages 24 and 25) that the Carbon Opportunities Register (set out in the appendix A of the First Iteration of the EMP, [REP6-010]) highlights only those carbon reduction opportunities implemented at preliminary design stage. The applicant noted that further consideration of opportunities to reduce the carbon impact of the proposed development would be undertaken at the detailed design stage and would feature in the Carbon Management Plan as part of the second Iteration of the EMP [REP6-010]. The relevant planning authorities would be consulted as part of the process to have the second Iteration of the EMP approved by the Secretary of State.
- 3.4.8. In connection with management measure C3, Rugby Borough Council questioned the deliverability of mitigation measures noted that several mitigation strategies are qualified with the remark "there is an opportunity". The borough council contended that this qualifying remark raised uncertainty around the applicant's commitment to

these strategies and noted the potential for actual mitigation actions delivered being significantly less than initially identified.

- 3.4.9. In reference to the applicant's commitment to review updates to climate change modelling, the borough council suggested it would be better to restart the evaluation of climate change models for the operation phase as it could impact maintenance and usage of the proposed development.
- 3.4.10. Rugby Borough Council also commented that the applicant had put forward few strategies for mitigating operational emissions, outside of extending the life of constructed components.
- 3.4.11. In response, the applicant ([\[REP4-025\]](#) at pages 25 to 28) defended its design approach to ensure resilience of the proposed development to future climate impacts, citing its adherence to pertinent national standards and committing to further review potential design opportunities at detailed design stage.
- 3.4.12. The applicant also noted that Rugby Borough Council would be consulted at the detailed design stage of the proposed development, as set out in requirement 3 of the rDCO, and would also be consulted on the Carbon Management Plan in line with requirement 4 of the rDCO.

#### **Vulnerability and resilience to climate change**

- 3.4.13. Ch. 14 of the ES [\[APP-036\]](#) considered the proposed development's vulnerability and resilience to climate change. UK climate projections were used to establish future baseline climate conditions up to 2099. Section 14.10 of ES Ch. 14 set out the mitigation that has been incorporated into the design of the proposed development. The ES concluded that with this mitigation in place, the impact of climate change on the proposed development would not be significant.
- 3.4.14. These mitigation measures were referenced in the applicant's response [\[REP3-044\]](#) to our written question CE.1.2. at ExQ1 [\[PD-008\]](#). The applicant noted that the mitigation measures had been applied in accordance with the carbon emissions reduction hierarchy of PAS 2080:2023, which specifies the requirements for the management of whole-life carbon in buildings and infrastructure.
- 3.4.15. The applicant's response [\[REP3-044\]](#) to our written question CE.1.9 at ExQ1 [\[PD-008\]](#) also provided further information as to why no key infrastructural features of the proposed development would be expected to be seriously affected by changes to the climate. In its response to question CE.1.9, the applicant explained the impacts of climate change on key infrastructure and outlined the design approach to ensure resilience.

#### **Indirect environmental effects**

- 3.4.16. At D5, the applicant submitted [\[REP5-022\]](#) its response to the Supreme Court judgment (R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] to demonstrate that the potential for indirect environmental effects from the proposed development had been addressed.
- 3.4.17. In paragraphs 1.1.7. and 1.1.8. of its D5 submission the applicant provided a useful overview of its methodology to review all likely indirect effects from the proposed development to ensure that all likely significant indirect effects were documented, and



that none were excluded during the EIA Scoping phase or from the ES. It went on to report the findings of the review in Table 1-1 of [\[REP5-022\]](#). The applicant concluded that there were no likely indirect effects deemed significant that had not already been accounted for in the current EIA for the proposed development.

- 3.4.18. The applicant's position as set out in [\[REP5-022\]](#) in response to this legal judgement was not contested up to the point of close of the examination.

#### **Statements of Common Ground**

- 3.4.19. The applicant's Statement of Commonality for Statements of Common Ground ([\[REP6-022\]](#) at Table 5-1) reported that no position was presented on climate in the final, signed statements of common ground from Natural England, the Environment Agency, Rugby Borough Council, Coventry City Council and Warwickshire County Council.

#### **CONCLUSIONS ON CLIMATE**

- 3.4.20. In accordance with NNNPS paragraph 5.31, the ES (Ch. 14 [\[APP-036\]](#)) provided a whole life carbon assessment detailing the total estimated greenhouse gas emissions resulting from the proposed development throughout its construction, operation and the entire lifecycle. Ch. 14 of the ES also presented an assessment against the Government's carbon budgets.
- 3.4.21. We conclude that the rise in carbon emissions caused by the proposed development would not be substantial enough to materially affect the Government's capacity to achieve its carbon reduction targets.
- 3.4.22. In accordance with NNNPS paragraph 5.35, an Outline Carbon Management Plan (appendix B.8 of the First Iteration of the EMP [\[REP6-010\]](#)) has been produced for the proposed development. The applicant (paragraph 3.4.3. of appendix B.8 of [\[REP6-010\]](#)) noted that opportunities would be explored to include the embedding of nature-based solutions and technological solutions to mitigate, capture or offset the emissions of construction. This would accord with NNNPS paragraph 5.36.
- 3.4.23. We find therefore that the Outline Carbon Management Plan meets the requirements of NNNPS 5.35.
- 3.4.24. We find that the mitigation measures relating to design and construction are adequate, would be secured within the rDCO, and would effectively ensure that construction and operational emissions would be reduced as much as possible. This accords with the requirements of the first part of NNNPS paragraph 5.37.
- 3.4.25. ES Ch. 14 concludes at section 14.13. [\[APP-036\]](#) that the proposed development, during its operation, would be resilient to current projected changes in climate, with no anticipated significant effects because of climate change. We note that this position was unchallenged by any party.
- 3.4.26. We find that the applicant has undertaken an assessment of the potential direct and indirect impacts of climate change using the latest UK Climate Projections available in accordance with the requirements of the NNNPS paragraph 4.40. Furthermore, we consider that the secured EMP contains provisions to address environmental risks during construction.

- 3.4.27. The ExA is satisfied that the proposed development is in accordance with the NNNPS and, where important and relevant, local policies and strategies and all other legislation.
- 3.4.28. On this basis we consider in terms of the effects on climate the proposed development should be considered neutral in the planning balance.

## **3.5. ROAD DRAINAGE AND THE WATER ENVIRONMENT**

### **INTRODUCTION**

- 3.5.1. This section examines the proposed development's effects on road drainage and the water environment. The policy framework relevant to the ExA is detailed in section 2 of this report.

### **APPLICANT'S SUBMISSION**

- 3.5.2. The principal application document dealing with matters relating to road drainage and water environment is Ch. 13 of the ES [[APP-035](#)]. This was supplemented by six appendices, ([APP-101](#) to [APP-106](#)) and a series of figures [[APP-059](#)].
- 3.5.3. Ch. 13 of the ES outlines the assessment of the proposed development's effects on surface water and groundwater, including considerations for flood risk, water quality, and hydromorphology. It also details mitigation strategies.
- 3.5.4. The chapter concluded that the proposed development would not give rise to significant adverse (for example, moderate or greater) residual effects during the construction and operational phases and would comply with Water Framework Directive objectives.

### **EXAMINATION ISSUES**

#### **Water Framework Directive**

- 3.5.5. No concerns were raised by the Environment Agency or any other interested parties about the Water Framework Directive (WFD) Compliance Assessment [[APP-102](#)] or compliance with WFD objectives.

#### **Flood Risk Assessment sequential test**

- 3.5.6. In response to our written question at ExQ1 (RW.1.5, [[PD-008](#)]) neither the Environment Agency [[REP3-051](#)] nor Warwickshire County Council [[REP3-050](#)] nor Coventry City Council [[REP3-047](#)] raised concerns about the applicant's application of the sequential and exception tests outlined in the Flood Risk Assessment (ES appendix 13.1, [[AS-012](#)]).

#### **Adequacy of Flood Risk Assessment generally**

- 3.5.7. With mitigation, the proposed development is not expected to give rise to significant adverse (moderate or greater) residual effects during the construction or operational phases (Ch. 13 [[APP-035](#)] of the ES).
- 3.5.8. In response to the ExA's written question (at ExQ1, RW.1.2 listed in [[PD-008](#)]), the Environment Agency [[REP3-051](#)] considered the applicant's approach to the Flood Risk Assessment and associated modelling to be appropriate for the scale of the

development proposed and to comply with the requirements of the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG) and the NNNPS.

- 3.5.9. Warwickshire County Council [\[REP3-050\]](#) considered the assessments as proportionate to the scale and nature of the development and saw no obvious gaps in the assessment or its compliance against the NNNPS, NPPF and PPG.
- 3.5.10. Coventry City Council [\[REP3-047\]](#) gave a qualified response to the applicant's coverage of PPG requirements but were satisfied with the findings of the Flood Risk Assessment and all elements other than Coombe Pool reservoir flood risk.
- 3.5.11. Both Lead Local Flood Authorities concluded (response to ExQ1 RW.1.3 in [\[REP3-047\]](#) and [\[REP3-050\]](#)) that the Flood Risk Assessment adequately covered their specific areas of concern.
- 3.5.12. The Environment Agency [\[REP3-051\]](#), Warwickshire County Council [\[REP3-050\]](#), and Coventry City Council [\[REP3-047\]](#) raised no concerns with the control measures set out in the First Iteration EMP [\[REP6-010\]](#) and the Register of Environmental Actions and Commitments (REAC) [\[REP6-012\]](#) to manage flood risk.

### **ExA's consideration of the Flood Risk Assessment**

- 3.5.13. The ExA concludes that the applicant has fully addressed the flood risk associated with construction and operation of the proposed development. In accordance with NNNPS paragraph 5.133, we consider the applicant has demonstrated fulfilment of the requirements for submission and guidance regarding the Flood Risk Assessment. We also consider that the applicant's assessment of flood risk complies with the relevant policy requirements in relation to alternatives. We understand and accept that the location of the proposed development has been set to improve the existing A46 strategic road network.

### **Water resources and water quality**

- 3.5.14. The ExA sought views (written question RW.1.14, ExQ1, [\[PD-008\]](#)) on the applicant's proposed measures to manage water resources and to prevent pollution that had been set out in Table 1 of the REAC [\[REP6-012\]](#). The Environment Agency [\[REP3-051\]](#) gave a favourable response to the inclusion of actions RD4 (control of dewatering activities) and RD9 (road drainage design) and provided supplemental advice on action RD5 (piling risk assessment). The Environment Agency also stated its agreement with the applicant's approach to manage potential risks posed to groundwater receptors by contaminated road runoff.

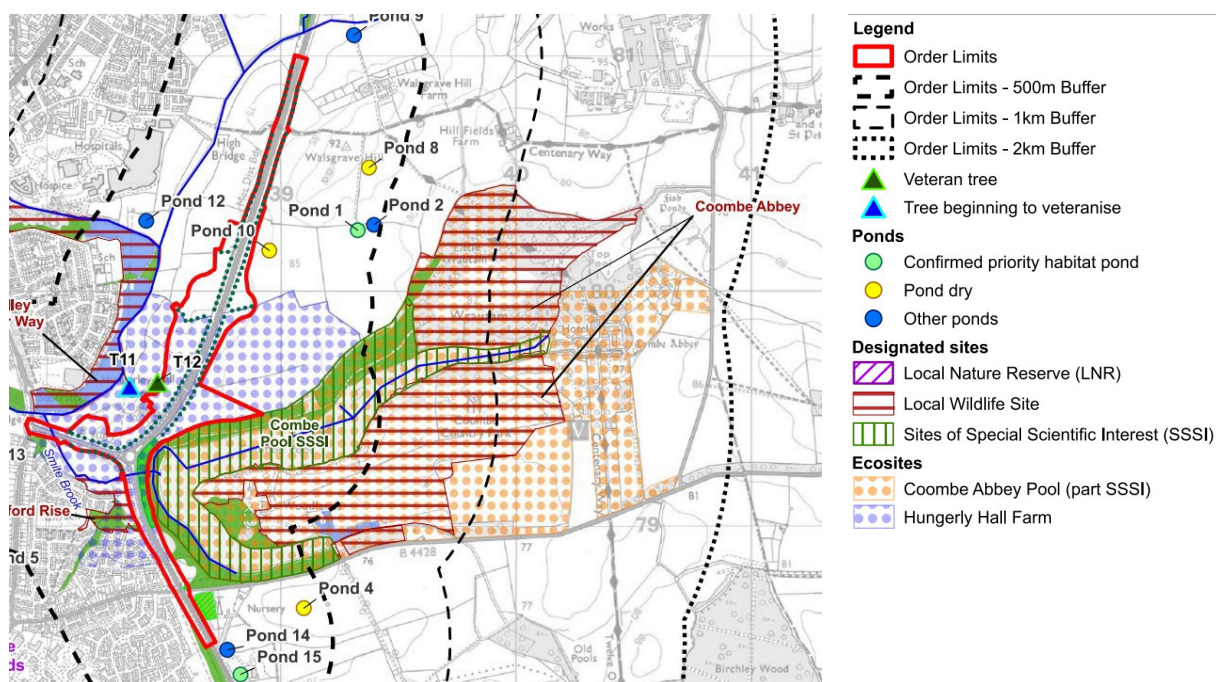
### **ExA's consideration of water resources and water quality**

- 3.5.15. The applicant's assessment and development proposals satisfy paragraph 5.267 of the NNNPS, while the Environment Agency has confirmed no water quality or resource concerns which would present a conflict with paragraph 5.268.

### **Statements of Common Ground**

- 3.5.16. By the close of the examination, the final, signed SoCG between the applicant and the Environment Agency [\[REP5-016\]](#) noted no outstanding matters related to road drainage and the water environment, with agreement on the fluvial flood risk, flood risk associated with Coombe Pool reservoir, Smite Brook and River Sowe hydraulic model, flood risk activity permits, flood plain compensation, and temporary culverting.

- 3.5.17. The applicant's final, signed SoCG [\[REP5-013\]](#) with Warwickshire County Council recorded that there were no matters related to road drainage and the water environment that were outstanding or still under discussion between the parties, with agreement reached on the Flood Risk Assessment, the Drainage Strategy Report, and the balancing pond proposals.
- 3.5.18. The applicant's final, signed SoCG with Coventry City Council [\[REP6-019\]](#) recognised agreement on all matters related to road drainage and the water environment, specifically:
- location of proposed balancing ponds
  - Combe Pool Flood Mitigation Scheme
  - findings of the Flood Risk Assessment including the assessment of residual risk associated with failure of Combe Pool reservoir
- 3.5.19. Natural England was concerned with water pollution risk and the risk of silt pollution from bund works adjacent to the Coombe Pool SSSI. The location and extent of Coombe Pool SSSI, as shown in figure 8.1 of ES chapter 8 [\[APP-052\]](#), is copied below.



**Figure 3.5.1: Illustrative plan of Coombe Pool SSSI (extract from ES figure 8.1 [\[APP-052\]](#))**

- 3.5.20. By the end of the examination the applicant's proposals to prevent sediment, silt and pollution from entering any part of Combe Pool SSSI during construction had been agreed by Natural England (final, signed SoCG [\[REP6-021\]](#)) subject to the submission of a revised REAC at D6.
- 3.5.21. At D6, the applicant submitted a revised REAC [\[REP6-012\]](#) that included amendments to actions G5 and RD13. Commitment RD13 sets out procedures to monitor surface water and groundwater features at risk from pollution while

commitment G5 would require the applicant to consult with utility company Severn Trent Water in relation to potential impacts on nitrate investigation work.

### **Matters raised in relevant representations**

- 3.5.22. Warwickshire County Council [[RR-006](#)], Natural England [[RR-010](#)], the Environment Agency [[RR-012](#)], and Coventry City Council [[RR-013](#)], raised issues with respect to various matters in their relevant representations. They principally related to the water environment, modelling, drainage and flood storage proposals. These issues were addressed as part of the examination.

### **Flood Risk and Coastal Change PPG**

- 3.5.23. After the close of the examination, during the preparation of the ExA's recommendation, the government updated the Flood Risk and Coastal Change PPG, 17 September 2025. As this was not available to the ExA or IPs during the examination period, it has not formed part of the ExA's consideration. The September 2025 update to the PPG for flood risk and coastal change introduces flexibility by exempting sites from the sequential test if a flood risk assessment demonstrates that surface water flooding can be managed safely without increasing flood risk elsewhere. We consider that the applicant has applied the sequential test proportionately, and the changes to the PPG, which post-date the close of the examination, would not alter our conclusions.

### **CONCLUSIONS ON ROAD DRAINAGE AND THE WATER ENVIRONMENT**

- 3.5.24. The ExA is satisfied that the proposed development accords with the requirements of the Water Framework Directive.
- 3.5.25. We are content that, subject to the implementation of the identified mitigation measures, there should be no adverse effects on road drainage and water resources from the proposed development during construction and operation.
- 3.5.26. The conclusions of this section confirm that the applicant's assessment of flood risk, drainage, and water is consistent with the NNNPS aims.
- 3.5.27. The ExA is satisfied that the proposed development is in accordance with the NNNPS and, where relevant, local policies and strategies, as well as all other applicable legislation.
- 3.5.28. From the above points, we conclude that the impact of the proposed development on road drainage and the water environment would be neutral and does not affect the planning balance.

## **3.6. BIODIVERSITY**

### **INTRODUCTION**

- 3.6.1. This section considers the effects of the proposed development on biodiversity. Section 4 of this report addresses Habitats Regulations Assessment matters.
- 3.6.2. Linkages to noise and vibration (section 3.9) are addressed within this section.
- 3.6.3. Section 2 of this report sets out the policy considerations for the ExA's assessment of these issues.



## **APPLICANT'S SUBMISSION**

- 3.6.4. Many biodiversity documents were included in the application. The principal document was Ch. 8 of the ES [\[APP-030\]](#). This was supplemented by sixteen appendices ([\[APP-076\]](#) to [\[APP-091\]](#)) and a series of figures [\[APP-052\]](#).

### **Biodiversity net gain**

- 3.6.5. ES appendix 8.1 (Biodiversity Net Gain Report) of the ES [\[APP-076\]](#) detailed the biodiversity net gain assessment undertaken for the proposed development and identified a post-construction net gain for area-based and linear hedgerow habitats.
- 3.6.6. The key measures to mitigate and compensate any effects of the proposed development on habitats and the species they support were contained in the Outline Landscape and Ecology Management Plan (Appendix B.4 of the First Iteration of the EMP, [\[APP-109\]](#)) and the REAC (Appendix A of the First Iteration of the EMP, [\[APP-110\]](#)) which outlined a series of actions and commitments to protect, create and enhance biodiversity habitats.
- 3.6.7. The ES Figure 2.4 Environmental Masterplan ([\[APP-043\]](#), Sheet 2 of 5) showed a proposed woodland planting area for habitat creation and offsetting biodiversity losses.
- 3.6.8. The applicant explained [\[APP-030\]](#) that the Environmental Masterplan had been developed with ecologists to detail proposed habitat creation works including connecting new habitat creation with existing habitats, such as Coombe Pool SSSI. The applicant also explained [\[APP-030\]](#) that habitats created would be managed in accordance with the Outline Landscape and Ecology Management Plan to deliver mitigation measures embedded within the Environmental Masterplan.
- 3.6.9. Requirement 4 of the draft Development Consent Order [\[APP-005\]](#) stated that the second Iteration of the EMP, which would be substantially in accordance with the First Iteration of the EMP, would secure the Landscape and Ecology Management Plan.
- 3.6.10. In its conclusions, Ch. 8 of the ES [\[APP-030\]](#) found:
- Construction activities are expected to cause a moderate adverse effect on breeding waterbirds and a large adverse effect on wintering waterbirds at the Coombe Pool SSSI.
  - No residual significant effects were anticipated during the operational phase.

## **EXAMINATION ISSUES**

### **Relevant representations**

- 3.6.11. In their relevant representations, Natural England [\[RR-010\]](#) and the Environment Agency [\[RR-012\]](#) had concerns with many aspects of the applicant's proposals in relation to biodiversity and ecology.
- 3.6.12. Warwickshire County Council, in its relevant representation [\[RR-006\]](#), brought up a single issue related to biodiversity, specifically the assessment of ecosites. Coventry City Council's relevant representation [\[RR-013\]](#) noted ecology and biodiversity impacts related to the preliminary ecological appraisal and the potential for improving the local landscape.

### **Biodiversity net gain**

- 3.6.13. At ISH1 the applicant [\[EV4-003\]](#) expressed its confidence that a 10% biodiversity net gain would be achieved by the proposed development. The applicant's written summary of ISH1 ([\[REP1-031\]](#), under agenda item 9.1) noted the proposed development could achieve 10% biodiversity net gain, as set out in its Biodiversity Net Gain Report [\[APP-076\]](#).
- 3.6.14. The final, signed SoCG between the EA and the applicant [\[REP5-016\]](#) noted agreement on the:
- biodiversity net gain (BNG) metric used
  - the applicant's assessment of impacts on watercourses
  - the applicant's assessment of the potential increase to otter road mortality
  - the need for a management plan to prevent the spread of invasive non-native species
- 3.6.15. The final signed SoCG between Natural England and the applicant [\[REP6-021\]](#) noted agreement on the BNG metric used. The SoCG also noted that BNG was not yet mandatory for Nationally Significant Infrastructure Projects.
- 3.6.16. In its relevant representation (ref. NE10, [\[RR-010\]](#)) Natural England sought from the applicant a commitment via a requirement in the dDCO to deliver a minimum of 10% BNG. The applicant, in its response ([\[REP1-021\]](#), [\[REP2-006\]](#)), noted the proposed development was not subject to mandatory BNG under the Environment Act 2021. The applicant went on to say its Biodiversity Net Gain Report [\[APP-076\]](#) identified a +11.87% net gain for area-based habitats and a +15.38% net gain for linear hedgerow habitats. Finally, the applicant stated its opinion that a requirement to secure a minimum BNG of 10% would not be appropriate as there was no basis for this in legislation.

### **Statements of Common Ground**

- 3.6.17. By the close of examination, the final signed SoCG between the applicant and the Environment Agency [\[REP5-016\]](#) confirmed agreement over all matters raised by the Environment Agency related to biodiversity.
- 3.6.18. The final signed SoCG between the applicant and Warwickshire County Council [\[REP5-013\]](#) confirmed agreement on the sole biodiversity topic raised by the county council.
- 3.6.19. The SoCG [\[REP1-023\]](#) between the applicant and Coventry City Council had categorised the various ecology and biodiversity impacts raised by Coventry City Council into three topic headings concerning biodiversity mitigation, enhancement and maintenance aspects. The final signed version of the SoCG [\[REP6-019\]](#) confirmed the parties' agreed position on these matters.
- 3.6.20. Biodiversity matters not agreed between Natural England and the applicant [\[REP6-021\]](#) at the end of the examination were:
- noise impacts on the Coombe Pool SSSI
  - consent from Natural England to carry out operations in Coombe Pool SSSI
- 3.6.21. The points of disagreement are discussed further below.

## Noise impacts on the Coombe Pool SSSI

- 3.6.22. In its relevant representation [\[RR-010\]](#) Natural England expressed concern about the potential impacts on the Coombe Pool SSSI from noise both during construction and operation, and mitigation options. Natural England's Written Representation [\[REP1-035\]](#), though welcoming of the commitment within the applicant's second iteration of the EMP to include a Construction Noise and Vibration Management Plan (paragraph 1.2.13. of [\[REP6-010\]](#)), also noted that Natural England had provided advice to the applicant on the assessment of noise impacts to Coombe Pool SSSI.
- 3.6.23. At issue specific hearing 1 ([\[EV4-003\]](#) at Agenda Item 6.1), we asked a question regarding the effectiveness of the proposed temporary noise barrier (referred to on page 28 of the Scheme Design Report [\[APP-135\]](#)) and other mitigations to reduce noise levels across Coombe Poole SSSI during construction. The applicant [\[REP1-031\]](#) confirmed the instalment of the temporary acoustic barrier would be technically feasible and expressed its intention to reduce noise levels at source during construction, by bringing forward its detailed consideration of construction processes, including programme timings and plant lists.
- 3.6.24. At D3 the applicant submitted an update to Ch. 8 (Biodiversity) of the ES [\[REP3-012\]](#) to further assess the impacts of its proposed noise minimisation and mitigation methods during construction and provide an updated conclusion on the predicted level of impact. At the same deadline the applicant also submitted a revised version of appendix 8.16 (Assessment of Noise Impacts on Ecological Features) of the ES [\[REP3-028\]](#) and an ES Addendum - Construction Noise Impacts at Coombe Pool SSSI [\[REP3-045\]](#).
- 3.6.25. Natural England was not content [\[REP4-027\]](#) with the updated position and requested the provision of a permanent noise barrier to mitigate for residual operational noise impacts on breeding and wintering birds within Coombe Pool SSSI. Natural England also highlighted that even with a 2-metre noise barrier construction noise would increase by more than 3 dB for a portion of the SSSI, affecting breeding and wintering waterbirds.
- 3.6.26. The applicant [\[REP5-020\]](#) did not propose to provide a permanent noise barrier for reasons that included additional construction noise impacts, excavations within root protection zones, a requirement for flood compensation and a revision to the order limits.
- 3.6.27. The applicant also noted [\[REP5-020\]](#) that the provision of a temporary noise barrier during construction coupled with the provision of ornithological noise monitoring would result in a slight adverse (not significant) residual effect. The applicant also observed there would be no significant impacts on the Coombe Pool SSSI due to operational noise.
- 3.6.28. At D6, Natural England [\[REP6-027\]](#) stated its agreement with the applicant's conclusion that operational noise impacts would not be significant. In the same submission however, Natural England found the additional provided information [\[REP5-020\]](#) insufficient to prove that the construction impacts on the Coombe Pool SSSI would not be significant. Natural England was of the view that the applicant's planned monthly monitoring was not a form of mitigation and would not reduce the impact and went on to suggest alternative measures it considered could ameliorate the construction impact. The measures suggested by Natural England were:
- to reduce any existing disturbance in other areas of the SSSI



- to create a refuge zone with no access (if practicable) so that overall levels of disturbance at the site would be reduced

3.6.29. The applicant's assessment of the significance of construction noise impacts on the SSSI remained a matter of disagreement between the applicant and Natural England in their final, signed SoCG [REP6-021]. This SoCG included reference to the alternative control measures put forward by Natural England at deadline 6 [REP6-027]. The applicant, however, did not comment on these alternative control measures and instead referred to information put forward in its deadline 5 submission [REP5-020] which it asserted evidenced that the proposed development would have no significant residual effects on the SSSI during construction.

#### **ExA consideration of construction noise impacts on the Coombe Pool SSSI**

3.6.30. Whilst we note the submissions of Natural England in relation to the applicant's proposed mitigation to reduce construction noise impacts on the SSSI, and Natural England's suggested alternative measures to mitigate construction impacts, we are satisfied that the applicant's proposed monitoring and reporting procedures to determine the effectiveness of the construction noise mitigation barrier (as explained in paragraphs 8.10.14. to 8.10.20. of Ch. 8 of the ES [REP5-002]) would respond appropriately to any observed disturbances to water birds in the SSSI.

3.6.31. We are content that Natural England's various representations, the discussions held at issue specific hearing 1 [EV4-003] and the amendments made by the applicant to Ch. 8 of the ES ([REP3-012] are sufficient to demonstrate that the potential impacts of noise within Coombe Pool SSSI during the construction and operational phases were properly considered during the examination, and that no significant effects were identified.

3.6.32. We consider the procedures proposed by the applicant [REP5-002] to monitor the effectiveness of the construction noise mitigation barrier have been adequately secured in its REAC [REP6-012] as commitment BD10.

#### **Consent from Natural England to carry out operations in Combe Pool Site of Special Scientific Interest**

3.6.33. The Scheme Design Report [APP-135] at paragraph 7.4.12. notes that some works to repair the boundary fence of the Coombe Pool SSSI would take place within the SSSI itself. This is consistent with the detail shown on the works plans (Sheet 2 of [APP-013]) under the reference 'Work No. 3C'.

3.6.34. At D4, Natural England stated [REP4-027] that they required further information to show that the proposed works could proceed without affecting the notified features within Coombe Pool SSSI. In the absence of this information, Natural England could not definitively say whether further consent would be required for future activities on the SSSI should the DCO be approved.

3.6.35. At D5, the unsigned SoCG with Natural England [REP5-017] clarified that article 52 of the dDCO [REP6-002] disapplied sections 28E and 28H of the Wildlife and Countryside Act, which are the obligations to obtain consent from Natural England to carry out operations in a SSSI.

3.6.36. In the final, signed SoCG between the parties [REP6-021] the applicant explained the geographic extent of the proposed works within the Coombe Pool SSSI while Natural England made clear its disagreement with the wording in article 52 of the dDCO

relating to the disapplication of its powers under sections 28E and H of the Wildlife and Countryside Act.

- 3.6.37. This matter of the disapplication of these sections of the Wildlife and Countryside Act is addressed further in section 7 of this report.

## **CONCLUSIONS ON BIODIVERSITY**

- 3.6.38. The ExA is satisfied that the assessment reported in Ch. 8 of the ES [[APP-030](#)], as supplemented and updated during the examination ([[REP3-012](#)], [[REP5-002](#)]), provides a satisfactory assessment of the likely significant effects of the proposed development on biodiversity receptors as required by the EIA Regulations, and the NNNPS.
- 3.6.39. The ExA is also satisfied that the proposed development is in accordance with the NNNPS and, where important and relevant, local policies and strategies and all other legislation.
- 3.6.40. The ExA accepts the assessment's conclusion that, with mitigation secured through the rDCO, there would be no significant residual effects on biodiversity or ecology receptors as a result of the proposed development.
- 3.6.41. While BNG was not mandatory for this application, the ExA notes that it has been offered by the applicant. The applicant made clear (page 14 of [[EV4-003](#)], page 13 of [[REP1-031](#)], and [[APP-076](#)] which presents BNG calculations) that the potential for the proposed development to deliver biodiversity net gains had been considered as part of the design development and assessment processes.
- 3.6.42. Noting the applicant ([[REP1-021](#)], [[REP2-006](#)]) declined Natural England's suggestion ([[RR-010](#)] at ref. NE10) to include a requirement in the Development Consent Order to demonstrate how at least ten per cent in biodiversity gain is to be delivered, we are satisfied that a significant biodiversity enhancement could be secured locally.
- 3.6.43. The applicant's submissions do, however, recognise that there would be potential for slight adverse effects on designated sites of national and local importance and on several protected and notable species associated with construction activities and with the operation of the proposed development.
- 3.6.44. Taking account of the factors set out above including long-term biodiversity improvements as well as the temporary and long-term adverse effects, we conclude that the adverse effects of the proposed development on biodiversity carry a little weight against the Order being made.

## **3.7. CULTURAL HERITAGE**

### **INTRODUCTION**

- 3.7.1. This section considers the effects of the proposed development in relation to cultural heritage. The policy considerations relevant to the ExA's consideration of cultural heritage issues are set out in section 2.
- 3.7.2. The Infrastructure Planning (Decisions) Regulations 2010 state that when deciding an application which affects:
- a listed building or its setting

- a conservation area
- or a scheduled monument or its setting

The relevant Secretary of State must have regard to the desirability: of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses; of preserving or enhancing the character or appearance of the conservation area; or of preserving the scheduled monument or its setting respectively.

## APPLICANT'S SUBMISSION

- 3.7.3. The applicant's submission in relation to cultural heritage effects was primarily provided in ES Ch.6 [\[REP4-006\]](#). In addition, the applicant supported this by submitting the following:
- ES Ch.6 Figures 6.1 to 6.4 [\[APP-048\]](#)
  - ES Ch.6 appendix 6.1 – Cultural Heritage Information [\[APP-066\]](#)
  - ES Ch.6 appendix 6.2 - Geophysical Survey Report [\[APP-067\]](#)
  - ES Ch.6 appendix 6.3 - Assessment Report for Archaeological Watching Brief [\[APP-068\]](#)
  - ES Ch.6 appendix 6.4 - Archaeological Trial Trenching Survey Report [\[APP-069\]](#)
- 3.7.4. ES Ch.6 concluded that the order land has a very low archaeological potential. Any potential effects on further unexpected archaeological remains would be mitigated through the Unexpected Archaeological Finds Protocol identified as action CH2 in the REAC [\[REP6-012\]](#). It identified no significant adverse effects following mitigation.
- 3.7.5. It concluded that there would be three slight adverse (not significant) effects:
- An effect as a result of a physical impact, relating to the removal of some of the farmyard wall, was identified at the listed Hungerley Hall Farm. A programme of Historic Building Recording was proposed to mitigate this effect.
  - An effect as a result of changes to setting was identified at Hungerley Hall Farm. Landscape planting was proposed to soften this impact.
  - An effect as a result of changes to setting was identified at the registered park and garden, Coombe Abbey. Detailed design of the landscape mitigation would seek to further reduce the impact from the proposed development.

## EXAMINATION ISSUES

- 3.7.6. During the examination the ExA's consideration focused on two issues relating to cultural heritage. We considered the impact on the following:
- Hungerley Hall Farm – Grade II\* listed farm and outbuildings
  - Coombe Abbey Park – Grade II\* listed registered park and gardens (RPG)
- Hungerley Hall Farm**
- 3.7.7. Historic England (HE) stated in the signed SoCG [\[REP5-015\]](#) that they had deferred consultation on any impact on Hungerley Hall Farm to Coventry City Council.
- 3.7.8. Coventry City Council [\[RR-013\]](#) set out that it considered that there would be a total loss of the south portions of the historic farmyard wall resulting in a substantial level of harm to the curtilage listed wall. In addition, there would be a significant reduction

in the size of the existing garden space resulting in a moderate level of less than substantial harm to the setting of the farmhouse and outbuildings and a minor level of less than substantial harm to the historic barn to the right-hand side of the site.

- 3.7.9. Coventry City Council acknowledged the mitigation measures proposed, and it therefore considered that the level of harm to the setting of the farm complex would be reduced to a minor level of less than substantial harm. It also concluded that the level of public benefit associated with the proposed development would serve to offset the remaining level of harm. It concluded that it had no objections to the proposed development in terms of its impact on Hungerley Hall Farm listing and the matter is shown as agreed in the signed SoCG [\[REP6-019\]](#).
- 3.7.10. In terms of the impact on the farmyard wall the applicant proposed to prepare a level 3 standard Historic Building Record, which would seek to preserve the historic asset by recording. This asset recording is listed as item CH1 in the REAC [\[REP6-012\]](#), which would be secured by requirement 4 of the rDCO in accordance with the second iteration of the EMP.
- 3.7.11. In terms of the impact of the proposed development on the setting of the farmhouse and barn, the proposed landscaping mitigation would be delivered as part of items LV1,2 and 3 of the REAC and would be secured by requirement 6 of the rDCO as part of the second iteration of the EMP.

#### **ExA Consideration of heritage impact on Hungerley Hall Farm**

- 3.7.12. The new B4082 link road to the proposed A46 grade separated junction would result in the carriageway being closer to the listed farm complex than the existing carriageway alignment. Part of the existing garden wall which forms part of the curtilage of the Grade II\* listing would be removed along with some of the existing planting along the A46.
- 3.7.13. Both the applicant and Coventry City Council agree that with the mitigation proposed that there would be a slight adverse (not significant) effect on the Hungerley Hall Farm asset. The ExA has seen no evidence that would make us disagree with this position and considers that this impact constitutes minor less than substantial harm to the listed building complex taking account of the mitigation proposed.

#### **Coombe Abbey Park**

- 3.7.14. HE [\[RR-011\]](#) expressed concern regarding the removal of the landscaped bund to facilitate the new alignment of the A46. Its concern was that as a result of the bund removal and its associated planting, the landscaped boundary around the RPG would be reduced, potentially having an effect on the setting of the park.
- 3.7.15. The applicant [\[REP1-021\]](#) responded that it would continue to engage with HE to ensure that concerns could be addressed through the detailed landscaping design process. In the signed SoCG [\[REP5-015\]](#) in the agreed item 3, the applicant confirmed that it had amended landscaping commitment LV1 in the REAC [\[REP6-012\]](#) to reflect the points raised by HE.

#### **ExA consideration of heritage impact on Coombe Abbey RPG.**

- 3.7.16. We are satisfied that these mitigation measures included in the second iteration of the EMP secured by requirement 6 of the rDCO would ensure that any harm to the setting of the Coombe Abbey RPG will be a slight adverse (not significant) effect.

## CONCLUSIONS ON CULTURAL HERITAGE

- 3.7.17. The ExA has considered all of the submitted evidence relating to the effects created by the proposed development on cultural heritage. We consider that the applicant's assessment has been undertaken in compliance with paragraphs 5.210 and 5.211 of the NNNPS. In addition, we conclude that the mitigation proposed and secured in the rDCO complies with the approach set out in paragraphs 5.212 to 5.215 of the national policy statement. We have also been mindful of the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010.
- 3.7.18. The ExA agrees with the applicant's assessment that there will be no significant effects on archaeology taking account of the secured mitigation
- 3.7.19. The ExA concludes that the proposed development, taking account of the secured mitigation, would lead to a slight adverse (not significant) effect on the farm wall, the setting of Hungerley Hall Farm and the setting of Coombe Abbey RPG. We also consider that the impact on these three assets would be a minor level of less than substantial harm. On that basis, in terms of the effects on cultural heritage, we consider the proposed development to have a little weight against making the order in the planning balance.
- 3.7.20. Any harm requires clear and convincing justification and is weighed against the public benefits in the planning balance of the proposed development in section 5 of this report.

## 3.8. LANDSCAPE AND VISUAL EFFECTS

### INTRODUCTION

- 3.8.1. This section focuses on the assessment of potential changes to landscape character and visual amenity. Section 2 of this report details the policy issues the ExA considered regarding landscape and visual effects.

### APPLICANT'S SUBMISSION

- 3.8.2. The principal application document dealing with matters relating to landscape and visual effects was ES Ch. 7, Landscape and Visual Effects [\[APP-029\]](#). This was supplemented by six appendices, ([\[APP-070\]](#) to [\[APP-075\]](#)) and a series of figures ([\[APP-049\]](#) to [\[APP-051\]](#)).
- 3.8.3. The landscape baseline was set out in section 7.8 of ES chapter 7.2 [\[APP-029\]](#). The proposed development would be situated within and coincide with Project Landscape Character Areas (PLCAs) which are shown in ES figure 7.2 (Landscape Character Context) [\[APP-049\]](#). These are:
- PLCA 1 - Walsgrave Hill and Valley including Hungerley Hall Farm
  - PLCA 2 - Coombe Country Park and Old Lodge Farm
  - PLCA 3 - Gainford Rise open space (Smite Brook) and Binley
  - PLCA 4 - Sowe Valley/ Dorchester Way
- 3.8.4. Ch. 7 of the ES concluded that:
- During construction, the area most significantly affected would be Project Landscape Character Area 1 (PLCA 1) – Walsgrave Hill and Valley including

Hungerley Hall Farm – which would experience large adverse (significant) effects on its landscape character.

- Locations closest to construction activities would see the most significant visual changes ranging from large adverse to moderate adverse, specifically recreational path users near Coombe Country Park and Public Right of Way R75x and residents of Farber Road / Barrow Close in Walsgrave.
- In Year 1 of operation, before mitigation planting has established, changes and feature loss would be most evident. PLCA 1 would experience moderate adverse (significant) effects on landscape character.
- Similarly, at Year 1, some visual receptors would experience moderate to large adverse (significant) effects due to the influence of the A46 highway corridor on views.
- By Year 15 of operation, as mitigation planting matures and reinstates key characteristics lost in PLCA 1, landscape changes due to the proposed development would have lessened, leading to an overall neutral significance of effect on landscape character.
- The proposed development is not anticipated to result in a significant long-term adverse residual effect on overall landscape and visual amenity.
- There would be slight beneficial effects from the increase woodland blocks and hedgerows with tree planting along the embankment slopes of the A46 and B4082 link road.

## **EXAMINATION ISSUES**

- 3.8.5. As outlined in our rule 6 letter [\[PD-006\]](#) and to guide our examination, the Initial Assessment of Principal Issues included an assessment of the impact of the proposed development on landscape and visual effects.

### **Nationally designated landscapes**

- 3.8.6. The landscape implications of the proposed development on nationally designated landscapes were articulated in the relevant representation from Natural England [\[RR-010\]](#). Natural England stated it had no comments, as the proposed development is not in or near a nationally designated landscape.

### **Local Impact Report**

- 3.8.7. The Coventry City Council LIR [\[REP1-036\]](#) at paragraph 4.6 identified the policies pertinent to landscape and visual effects.
- 3.8.8. It recognised that the introduction of the new access road alongside the A46 via the new grade separated junction towards the B4082 would have a negative impact on the visual outlook from the Grade II listed setting of Hungerley Hall Farm particularly in the early stages of the new road coming into use.
- 3.8.9. The LIR noted that mitigation in the form of mixed woodland between Hungerley Hall Farm and the proposed access road would introduce a view of a landscape buffer, which Coventry City Council considered would lead to an improvement in visual outlook. Their LIR also commented that the proposed landscape buffer, once matured, would result in a reduced adverse visual impact.



- 3.8.10. At paragraph 5.6 of its LIR, Coventry City Council broadly agreed with the conclusions reached in the applicant's assessment.

### **Statements of Common Ground**

- 3.8.11. The applicant's final, signed SoCG with Coventry City Council [\[REP6-019\]](#) confirmed no disagreement between the parties about the proposed landscape mitigation to minimise the impact of the new road upon the setting of Hungerley Hall Farm.
- 3.8.12. The final, signed SoCG between the applicant and Rugby Borough Council [\[REP6-020\]](#) did not record any disagreement on the effects of the proposed development on landscape character and visual receptors, both during construction and operation.

### **CONCLUSIONS ON LANDSCAPE AND VISUAL EFFECTS**

- 3.8.13. The ExA concludes that the applicant's assessment of effects on landscape character as set out within the ES meets the tests set out in paragraphs 5.161 and 5.162 of the NNNPS.
- 3.8.14. We are also content that the ES correctly addressed relevant local landscape policies from the Development Plans, in line with NNNPS paragraph 5.161.
- 3.8.15. Paragraph 5.166 of NNNPS states that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure, design (including choice of materials), and landscaping schemes, depending on the size and type of the proposed project. We are content that with the mitigation secured via the REAC [\[REP6-012\]](#), the landscape planting proposed and secured through requirement 6 of the rDCO the proposed development would accord with this policy test.
- 3.8.16. We are content that effects on the four landscape character areas and their settings were properly considered and assessed. We recognise that there would be short-term significant adverse landscape and visual impacts resulting from construction activities.
- 3.8.17. While there would be long-term benefits associated with the recovery and maturation of replacement and mitigation planting, there would also be long-term moderate adverse (significant) effects on views from Hungerley Hall Farm.
- 3.8.18. Overall, we conclude that impacts on the landscape and views carry a moderate weight against the making of the Order.

## **3.9. NOISE AND VIBRATION**

### **INTRODUCTION**

- 3.9.1. This section examines the noise and vibration effects associated with the proposed development. Section 2 of this report details the policy issues the ExA considered regarding the effects of noise and vibration.

### **APPLICANT'S SUBMISSION**

- 3.9.2. The applicant evaluated these issues in Ch. 11 of the ES [\[APP-033\]](#). This was supplemented by appendices ([\[APP-096\]](#) to [\[APP-100\]](#)) and figures ([\[APP-055\]](#) to [\[APP-057\]](#)).
- 3.9.3. Ch. 11, Noise and Vibration, of the ES concludes:

- Significant residual construction noise effects may occur, particularly from night-time or weekend works, which require further consideration once their scope and duration are finalised.
- Significant effects from construction vibration are not expected.
- Potential significant effects from construction traffic are unlikely.
- Diverted traffic is highly likely to cause disturbance at receptors within 25m of the road and would be managed using mitigation strategies.
- No significant adverse operational noise effects are expected.

3.9.4. Ch. 8, Biodiversity, of the ES [\[APP-030\]](#) considered noise and vibration effects on ecological receptors. Appendix 8.16 [\[APP-091\]](#) to the ES details the applicant's assessment of noise impacts on ecological features.

## **EXAMINATION ISSUES**

### **Statements of Common Ground**

- 3.9.5. Confirmation that Rugby Borough Council found Ch. 11, Noise and Vibration, of the ES [\[APP-033\]](#) to be acceptable, including the proposed mitigation of noise impacts from construction, was presented in the applicant's final, signed SoCG with Rugby Borough Council [\[REP6-020\]](#).
- 3.9.6. Natural England sought [\[REP1-028\]](#) further assessment of the potential impact of noise on the bird interest at Coombe Pool SSSI. At the end of the examination, the applicant's proposed mitigation of construction phase noise effects on the Coombe Pool SSSI was not agreed with Natural England, as recorded in the final, signed SoCG between the parties [\[REP6-021\]](#). This is explored further in this section.
- 3.9.7. Coventry City Council considered that noise mitigation was required at Hungerley Hall Farm to minimise the impact of the new road (B4082 link road) upon the setting of the Grade II listed building. While the applicant's final, signed SoCG with Coventry City Council [\[REP6-019\]](#) confirmed an agreed position between the parties on matters linked to noise and vibration, the design of noise mitigation at Hungerley Hall Farm is addressed later in this section.

### **Noise and Vibration Management Plan**

- 3.9.8. The applicant's Outline Noise and Vibration Management Plan is presented in appendix B.2, of the ES [\[REP6-010\]](#). The management plan would be secured by requirement 4 of the rDCO in accordance with the First Iteration of the EMP [\[REP6-010\]](#).
- 3.9.9. In response to the first part of our question at ExQ1 (NV.1.8, [\[PD-008\]](#)) related to the proposed means of controlling noise and vibration effects, Rugby Borough Council [\[REP3-049\]](#) was satisfied with the range of noise and vibration protective measures set out in the management plan. Coventry City Council [\[REP3-047\]](#) noted its agreement and provided supplementary commentary related to Hungerley Hall Farm.

### **Construction noise at Hungerley Hall Farm**

- 3.9.10. In its LIR [\[REP1-036\]](#), Coventry City Council concluded that operational noise impacts would be neutral, though commented that “There are no acoustic barriers recommended or identified as part of the scheme although the access slip road will be moved closer to a residential receptor of Hungerley Hall Farm”.
- 3.9.11. At D3, Coventry City Council [\[REP3-047\]](#) in reply to our written question NV.1.8 recommended the applicant consider the provision of acoustic barriers to protect the amenity of Hungerley Hall Farm. The City Council clarified ([\[REP5-028\]](#) at R17.6) that they were referring to the provision of permanent barriers.
- 3.9.12. In response, the applicant stated that a long-term noise barrier would be provided only for the duration of the construction programme and confirmed that a permanent noise barrier was not required. The applicant's reasoning is set out in [\[REP5-021\]](#) at page 10 in reply to the ExA's request for further information (R17.6, [\[PD-009\]](#)).

### **Construction noise at Coombe Pool SSSI**

- 3.9.13. Ch. 8, Biodiversity, of the ES [\[APP-030\]](#) concluded that the noise impacts on wintering and breeding waterbirds would result in significant adverse residual effects. In its relevant representation ([\[RR-010\]](#), ref. NE4) Natural England highlighted its concerns related to construction and operational noise impacts at the Coombe Pool SSSI (SSSI) and the need to provide further information on different mitigation options and how these different options would affect noise levels within the SSSI both during the construction and operation stages.
- 3.9.14. Following discussions at issue specific hearing 1 ([\[REP1-031\]](#), Agenda Item 6.1), the applicant updated Ch. 8, Biodiversity, of the ES [\[REP3-012\]](#) to include a revised assessment of the noise impacts on Coombe Pool SSSI during construction, and to consider reducing noise at source. The applicant also committed to implement noise mitigation measures during the construction of the proposed development.
- 3.9.15. At the end of the examination the potential impact of noise on the Coombe Pool SSSI during construction remained as not agreed between the parties. The final signed SoCG between the applicant and Natural England ([\[REP6-021\]](#) at pages 28 to 30) provides further details.
- 3.9.16. This matter is considered in section 3.6 of this report and has not been included in the conclusions to this section.

### **Other interested parties' concerns/ matters raised in relevant representations**

- 3.9.17. Mr Kingswell [\[PD1-021\]](#) expressed his concerns about noise and pollution and said that works carried out at the junction (Brandon Road/ Binley Woods) had increased the average speed of traffic flow. Mr Kingswell requested that a slower permanent speed limit be considered for the benefit of residents and the environment.
- 3.9.18. In response to Mr Kingswell's representation, the applicant [\[REP1-021\]](#) gave a brief description of the A46 Binley Junction Scheme and cited the potential effects that the change from congested roads to free flowing could have on local noise levels. Specifically in respect of the proposed development the applicant explained why the speed limit along the A46 would be reduced to 50mph.
- 3.9.19. Mr Nick Walton [\[REP5-027\]](#) emphasised that the proposed junction changes would exacerbate the noise and environmental consequences of the A46 bridge at Binley Woods and would also give rise to higher traffic speeds. In response, the applicant

[REP6-024] explained that the EIA identified both the potential positive and negative significant effects of the proposed development on the environment and referenced the findings reported in the ES Noise and Vibration chapter.

## **CONCLUSIONS ON NOISE AND VIBRATION**

- 3.9.20. The ExA is satisfied that the assessment reported in Ch. 11, Noise and Vibration, of the ES [APP-033], as supplemented and updated during the examination [REP3-014], provides a satisfactory assessment of the likely significant noise and vibration effects of the proposed development as required by the EIA Regulations, and the NNNPS.
- 3.9.21. The ExA is satisfied that the proposed development aligns with the NNNPS's noise and vibration requirements and does not conflict with the tests specified in paragraph 5.241. We also find that the proposed development aligns with relevant local policies and strategies and all other legislation.
- 3.9.22. We conclude that the potential negative impacts from the proposed development's noise and vibration during construction would carry a little weight against the making of the Order.

## **3.10. TRAFFIC AND TRANSPORT**

### **INTRODUCTION**

- 3.10.1. This section considers the effects of the proposed development in relation to traffic and transport. The policy considerations relevant to the ExA consideration of traffic and transport are set out in section 2 of this report.

### **APPLICANT'S SUBMISSION**

- 3.10.2. The applicant's submission in relation to traffic and transport was primarily provided in the Transport Assessment (TA) [APP-134]. In addition, the applicant submitted the Outline Traffic Management Plan (OTMP) [REP1-014] to set out the traffic management approach during the construction of the proposed development.

### **Transport Assessment**

- 3.10.3. The TA summarised the proposed development's impact on the strategic and local highway network with respect to traffic congestion and road safety for motorised transport. The scope of the TA covered the assessment of the proposed development's operation in the opening and design year forecast scenarios.
- 3.10.4. The traffic modelling assessment comprised a strategic multi-modal model which covered Coventry as well as the wider Warwickshire area. The strategic modelling assessment is used as the basis to derive forecasted traffic impacts of the proposed development's performance across the wider area. The strategic model utilised for the proposed development was developed in line with the Department for Transport's (DfT) Transport Analysis Guidance (TAG). A local traffic operational (micro-simulation) model of the existing Walsgrave Junction had also been developed to assess the proposed development's operational performance in the forecast year scenarios.
- 3.10.5. The framework of the modelling assessment was developed to enable the comparative analysis of the operation of the existing Walsgrave junction layout against the proposed development design. This comparative assessment was used

to evaluate the performance of the proposed development against the scheme's objectives. The TA modelling therefore summarised the proposed development's impacts with respect to congestion relief, journey time savings, reliability improvements and accident reductions.

3.10.6. Additionally, the TA examined the impact of the proposed development on public transport, pedestrians, cyclists and horse riders.

3.10.7. Paragraph 1.3.2 reiterated the proposed development objectives to provide the following:

- an SRN that supports and facilitates economic growth, supporting employment and residential development opportunities
- an SRN that is maintained to safe and serviceable condition
- improve the operation and efficiency of the existing transport network, delivering capacity enhancements to the SRN
- an SRN that minimises its negative impacts on users, local communities and the environment
- an SRN that balances the need of individuals and businesses that use and rely upon it
- reducing/ minimising the impact on the wider environment, whilst seeking to bring enhancement
- operational maintenance to be considered holistically

#### **Outline Traffic Management Plan**

3.10.8. The OTMP describes the traffic management processes that would be followed to ensure the construction phases of the proposed development are completed safely and efficiently, while minimising the impact on road users and stakeholders.

3.10.9. The development of the OTMP would continue to evolve post submission of the DCO application through discussions with relevant local authorities and other key stakeholders. The development of the OTMP into a Traffic Management Plan (TMP) would be secured by requirement 11 of the rDCO. The TMP must be substantially in accordance with the OTMP and reflect the relevant mitigation measures set out in the REAC [[REP6-012](#)]

#### **EXAMINATION ISSUES**

3.10.10. Understanding the nature of the proposed development and in consideration of the applicant's submission we included traffic and transport in our Initial Assessment of Principal Issues.

3.10.11. We also received three relevant representations (RR) [[RR-001](#)], [[RR-004](#)] and [[RR-005](#)] from interested parties (IP) concerning traffic and transport. These were concerned about the effects on the local road network and in particular the access arrangements for the University Hospital Coventry that is adjacent to the A46. The hospital is currently accessed from the B4082 Clifford Bridge Road on the local road network.

3.10.12. Taking the submissions documents and the RR into account, we considered that the main traffic and transport issues for the examination were:

- traffic modelling and the consequential impact on the local road network
- impact on active travel
- local access issues
- road safety
- construction traffic issues

### **Traffic modelling**

- 3.10.13. Operational modelling was undertaken without information relating to the recently implemented first phase of the cycle route along Clifford Bridge Road/ Brinklow Road and Brinklow Road/ Brandon Road. A second phase further along Clifford Bridge Road is not yet implemented. Paragraph 4.13.1 of the TA states that, “These changes were not raised by Coventry City Council as part of the uncertainty log and as such were not included in the traffic modelling.” However, it is confirmed in paragraph 4.13.3 of the TA that sensitivity testing was undertaken for the 2043 operational assessment of the with and without the proposed development scenarios, taking into account the cycle route changes and their possible effects on traffic conditions.
- 3.10.14. We asked about the sensitivity testing undertaken in item 4.1 of issue specific hearing (ISH) 1 [\[EV4-001\]](#) and the implications on the local road network in particular. The applicant [\[REP1-031\]](#) confirmed as part of the design process modelling updates were underway that would include these cycling schemes, but the results will not be available until after the completion of the DCO process. At ISH1 Coventry City Council stated it had some ongoing concerns about congestion as a result of the cycling scheme ongoing implementation on the Clifford Bridge Road corridor but confirmed that it did not consider this was an impact of the proposed development.
- 3.10.15. Rugby Borough Council in its LIR [\[REP1-039\]](#) set out that it had just granted full planning permission for an employment-led headquarters campus development (just under 400,000m<sup>2</sup>) just to the north of the A46/ M69/ M6 junction. Rugby Borough Council confirmed that Condition 97 of the full planning permission requires that: “No part of the development hereby approved shall be occupied until the improvement works at the A46 Walsgrave Junction (B4082 / Coventry Eastern Bypass (A46) roundabout) are completed and fully operational.”
- 3.10.16. Additionally, at D4 [\[REP4-018\]](#) Coventry City Council raised the issue of the modelling not including the proposed business campus in Ansty.
- 3.10.17. Discussions with Coventry City Council continued and the final signed SoCG [\[REP6-019\]](#) confirms that the applicant will take account of the business campus as part of the model updates taking place both during and post examination. The SoCG also records that Coventry City Council were content with that approach.

### **ExA’s consideration of traffic modelling**

- 3.10.18. In terms of operational traffic impacts on the highway network, the local junction modelling assessment demonstrated that the proposed development would be operating in almost free-flow conditions with 2043 forecasted demand. It would provide additional capacity and improved journey times which may encourage housing and economic growth in the local area as well as across the A46 corridor. The modelling also showed that it will reduce traffic flows on many local roads and lead to an overall journey time reliability.



- 3.10.19. We therefore consider that the applicant has undertaken a robust modelling assessment of the traffic effects of the proposed development in compliance with paragraph 4.10 of the NNNPS. In reaching this conclusion we have also taken into account both the views expressed in the RR and the LIRs.

### **Impact on active travel**

- 3.10.20. The proposed development's active travel improvement would be to provide a new pedestrian crossing across the B4082 link road just east of the Clifford Bridge Road roundabout to provide safe north/ south crossing of this busy link road.
- 3.10.21. However, in addition the applicant during the proposed development's evolution has taken into consideration the local councils' wider ambitions to improve accessibility across the A46 and improve links to Coombe Abbey Park and beyond. As the proposed development does not remove the Hungerley Hall farm accommodation bridge over the A46 any future new active travel route could utilise the bridge. The applicant also acknowledges that the B4082 northbound slip road verges would be wide enough to accommodate an active travel route leading towards the accommodation bridge.
- 3.10.22. Coventry City Council in paragraphs 10.5 and 10.6 of its LIR [\[REP1-036\]](#) set out that they saw the retention of the farm accommodation bridge and the facilitation of the future active travel route provision as a positive impact of the proposed development.
- 3.10.23. At ISH1 [\[EV4-001\]](#) we asked for a plan showing a future connection across the A46 and how it would connect to existing networks. This was provided by Coventry City Council [\[REP1-038\]](#). As a consequence, we are satisfied that there is an emerging plan for the future provision of a new walking and cycling route across the A46, that will be delivered by the highway authorities. There was no committed scheme to provide this link at the close of the examination, but we consider that the applicant has demonstrated how the proposed development would be able to facilitate any future new link.
- 3.10.24. Warwickshire County Council in paragraph (d) of its LIR [\[REP1-040\]](#) acknowledged that the proposed development would allow for improved pedestrian and cycle infrastructure in the future.
- 3.10.25. Rugby Borough Council in its LIR [\[REP1-039\]](#) also acknowledged the opportunity presented by the proposed development in promoting better active travel connections. However, it also stated that it was seeking improvements to the Faber Road bridleway that becomes bridleway R75x/R75b, within the Rugby Borough Council boundary, together with improved links between Coventry and Coombe Abbey. In lieu of the applicant providing this infrastructure, Rugby Borough Council was seeking a development consent obligation agreement to secure funds to enable these upgrades and connections.
- 3.10.26. This matter was under discussion during the examination, and we asked for further information in our rule 17 letter (R17.10, [\[PD-009\]](#)) for the parties' final position on the matter of developer funding for public rights of way improvements to Rugby Borough Council.
- 3.10.27. This matter remained under discussion and was indicated as, not agreed, in the final signed SoCG with Rugby Borough Council [\[REP6-020\]](#). However, it was accepted by Rugby Borough Council in the SoCG if the applicant makes available the necessary land and affords access across the A46 via the farm accommodation bridge, as

described above, to enable delivery of the new active travel route then no further contribution would be necessary.

#### **ExA's consideration of active travel**

- 3.10.28. Work No. 21 of the rDCO secures the new signalised pedestrian crossing of the B4082 link road in compliance with paragraph 5.273 of the NNNPS with regard to improving local connectivity and accessibility.
- 3.10.29. The applicant has had cognisance of paragraph 5.273, and the vision led approach set out in paragraph 2.6 of the NNNPS in as much it has also sought to support the improvement to local connectivity and accessibility by facilitating the future development of a new pedestrian cycle connection between Coventry and Coombe Abbey Park. Whereas there is no current commitment from the adjacent local highway authorities to construct a new active travel route, the proposed development layout would allow for its construction at a later date.
- 3.10.30. The ExA concludes in terms of active travel that the applicant has demonstrated compliance with the NNNPS to support improvements to the local transport network that prioritise sustainable transport interventions.

#### **Local access issues**

- 3.10.31. As mentioned in paragraph 3.10.11 above we received three RR related to concerns about local traffic issues. One was concerned about local road traffic congestion at peak times and the other two specifically mentioned the need for a dedicated access to the University Hospital Coventry.
- 3.10.32. The applicant in response [\[REP1-021\]](#) explained that the modelling showed that overall local road traffic flows are predicted to decrease as more traffic stays on the grade separated A46. As explained above we are satisfied this conclusion is justified given the modelling results.
- 3.10.33. The applicant went on to explain that a new dedicated blue light access to the hospital would be provided as part of the overall masterplan associated with the housing land allocation on the land to the east of the A46. (see figure 3.2.1 in section 3.2) The new link would be constructed as part of the future housing development. The applicant did confirm that the western 'dumbbell' roundabout (Work No.1G in the rDCO) would be designed and constructed large enough to accommodate any future link road to the hospital.
- 3.10.34. In addition, we received a representation at D5 [\[REP5-026\]](#) that expressed concern about the local road impact in particular on Clifford Bridge Road. The applicant [\[REP6-024\]](#) responded that the local road impact was considered within the traffic modelling work undertaken to inform the TA [\[APP-134\]](#) and that no significant adverse impacts were identified in that analysis. We had no evidence submitted that would lead us to disagree with the application analysis presented in the TA.

#### **ExA's consideration of local road issues**

- 3.10.35. The ExA is satisfied that the applicant has demonstrated that it has taken account of paragraph 2.8 of the NNNPS in respect to freeing up the local road network for genuinely local journeys and keeping traffic away from centres of population.

#### **Road Safety**

- 3.10.36. Section 7 of the TA [\[APP-134\]](#) provides an assessment of road safety that included the following:
- confirmation that the preliminary designs have been subject to a Stage 1 road safety audit
  - an assessment of the potential effect of the proposed development on road accidents
- 3.10.37. The future road accident analysis showed a reduction in accidents on the local road network (LRN) but an increase in Killed or Seriously Injured (KSI) casualties on the SRN. We asked in question TT.1.1 of ExQ1 [\[PD-008\]](#) about the increase in KSI casualties on the SRN and how it could be considered to accord with the NNNPS. The applicant [\[REP3-044\]](#) responded that the predicted increase in KSI on the SRN, as reported in the TA, is due to increased traffic using the SRN as trips are reassigned away from the LRN. It went on to explain that the SRN links have a higher predicted accident rate for KSI due to the higher volumes of traffic moving at faster speeds than on the local road network.
- 3.10.38. It further explained that both the Binley and Walsgrave schemes were originally developed as one scheme and that when considered together there is predicted to be a reduction in the number of accidents and KSI on both the SRN and the LRN.

#### **ExA's consideration of road safety**

- 3.10.39. The ExA is satisfied that the assessment of the predicted road accidents provided by the applicant is satisfactory. The proposed development would be predicted to reduce road accidents on the LRN and when the Binley and Walgrave junctions are considered together as was originally planned, the road accidents on the SRN would be predicted to reduce. Given the predicted road safety benefits of the proposed development the ExA is satisfied that the applicant has demonstrated compliance with paragraphs 4.57 to 4.61 of the NNNPS.

#### **Construction Traffic Issues**

- 3.10.40. As mentioned above the applicant submitted an OTMP which is the basis of a Traffic Management Plan (TMP) that would seek to minimise the impact on road users and stakeholders. In its LIR, Coventry City Council [\[REP1-036\]](#) set out its understanding that it would expect there to be a detrimental impact to network performance of the Strategic and Local Road Networks at various stages of the proposed development's construction. Coventry CC considered construction traffic effects to be negative but stated that it would work with the applicant to ensure the TMP would be appropriate.

#### **ExA consideration of construction traffic**

- 3.10.41. The ExA understands that construction of a project such as this can create short term traffic and transport issues during the construction period. However, we are satisfied that the OTMP [\[REP1-014\]](#) and the process by which it will be developed into the TMP will ensure that any short term disruption is minimised as far as possible.
- 3.10.42. With respect to the provision of the rDCO, the applicant in accordance with requirement 11 would have to consult with local highway authorities prior to finalising the TMP and submitting it to the Secretary of State for approval. The OTMP would be a certified document listed in schedule 10, and article 50 would secure its submission to the Secretary of State.

- 3.10.43. Given this process the ExA is satisfied that in terms of construction traffic impacts that the applicant has endeavoured to ensure there is a secured process to manage any short term construction impacts on both the SRN and LRN.

## **CONCLUSIONS ON TRAFFIC AND TRANSPORT**

- 3.10.44. The ExA is satisfied that the proposed development complies with the relevant sections of the NNNPS, and that the applicant has undertaken a robust assessment of the traffic and transport impacts of the proposed development.
- 3.10.45. The local highway authorities are in favour of the application and there have been only a few representations from the local community, only one of which provided any direct criticism of the proposals. That said there was no evidence provided to suggest that the applicant's TA was flawed and as such we consider that there is strong evidence that the proposed development will provide a benefit in terms of traffic and transport impacts on the SRN, LRN and the ability to provide for future improvements to the active travel network.
- 3.10.46. Taking these factors into account the ExA considers that there is great weight in favour of the development when considering traffic and transport.

## **3.11. GEOLOGY AND SOILS**

### **INTRODUCTION**

- 3.11.1. This section addresses the potential impacts of the proposed development on geology and soils.
- 3.11.2. The policy considerations relevant to the ExA's consideration of geology and soils are set out in section 2 of this report.

### **APPLICANT'S SUBMISSION**

- 3.11.3. The applicant addressed the potential impacts of the proposed development on geology and soils in Ch. 9 [\[APP-031\]](#) of the ES. This was supplemented by appendices ([\[APP-092\]](#) to [\[APP-094\]](#)) and figures [\[APP-053\]](#).
- 3.11.4. Ch. 9 of the ES outlined the potential effects on geology, soil resources, agricultural land, and contamination. This chapter concluded that while most effects related to contamination would be neutral to slight adverse, the permanent loss of high-quality Best and Most Versatile agricultural land would result in large adverse residual effects.

### **EXAMINATION ISSUES**

#### **Best and most versatile agricultural land**

- 3.11.5. Natural England initially welcomed ([\[RR-010\]](#), Ref. NE13) the applicant's approach to agricultural land classification surveys and soil management but then requested further information on monitoring and reporting regarding the reinstatement of soil and land to agricultural use. Despite both parties' claims ([\[REP1-035\]](#) at page 11, [\[REP2-006\]](#) at page 10, and [\[REP3-044\]](#) at page 41) of Natural England's concerns being resolved, there was a period of uncertainty regarding whether the issue was fully settled ([\[REP4-022\]](#) at page 33, [\[PD-009\]](#) at Ref R17.8}. Ultimately, Natural England confirmed [\[REP5-025\]](#) its satisfaction with the provided information and the matter was agreed upon by both parties ([\[REP5-021\]](#), [\[REP6-021\]](#)).

- 3.11.6. In its Scheme Design Report ([[APP-135](#)] at page 54), the applicant deemed it important to minimise the footprint of the proposed development as much as possible, viewing this as a key principle to mitigate impacts on soils.
- 3.11.7. We asked the applicant (our written question GS.1.3, ExQ1, in [[PD-008](#)]) to specify how they had minimised the footprint of the proposed development.
- 3.11.8. In response to our question the applicant [[REP3-044](#)] described eight separate highway design features they contended helped to minimise the footprint of the proposed development. We were satisfied with the responses received [[REP3-044](#)] and no further questions were deemed necessary.

#### **ExA consideration of best and most versatile land**

- 3.11.9. The applicant reported ([[REP4-008](#)] at Table 9-12) that 65% of agricultural land within the order limits is made up of best and most versatile agricultural land, as confirmed from the results of field surveys. Table 9-12 [[REP4-008](#)] presented the agricultural land classification grades within the study area, which included areas of Grade 1, Grade 3a and Grade 3b with no Grade 2, Grade 4, and Grade 5 land. The ExA concurs with the applicant's assessment ([[REP4-008](#)], at Table 9-15) that the permanent loss of Grade 1, Grade 3a and Grade 3b land would be of a moderate adverse to a large adverse significance of effect.
- 3.11.10. The applicant had assessed alternative schemes (ES Ch. 3, Assessment of Alternatives, of the Environmental Assessment) [[APP-025](#)] and confirmed adjustments to working areas and road geometry were made where possible to reduce the land needed for the proposed development (Scheme Design Report [[APP-135](#)] at section 11.2, Land required for the Scheme).
- 3.11.11. As set out in section 3.2 of this report, we find the applicant's assessment of alternatives to be appropriate, recognising the location of the existing Walsgrave junction as part of the A46 strategic road network. We find that the loss of best and most versatile agricultural land is necessary to deliver the proposed development.
- 3.11.12. We recognise that the proposed development will involve a loss of best and most versatile agricultural land, as the alternatives assessment confirms there is no other viable way to deliver the project. We are also satisfied that the applicant has sought to minimise impacts and justified the inclusion of the proposed development on best and most versatile agricultural land. The proposed development is not therefore considered to conflict with paragraphs 5.189 and 5.202 of the NNNPS.

#### **Historic Landfills**

- 3.11.13. The assessment methodology adopted by the applicant, as set out in section 9.5 of ES Ch. 9 [[REP4-008](#)], stated that the proposed development was not likely to introduce significant sources of contamination during construction or operation. On this basis, the assessment (section 9.5, [[REP4-008](#)]) concentrated on the effects of contamination from historical and ongoing potential sources of contamination. This chapter concluded that only minor evidence of contamination from past activities were noted during the site investigation, and no specific remedial measures were recommended for the proposed development.
- 3.11.14. In its final, signed SoCG with the applicant ([[REP5-016](#)] under the 'Material Assets and Waste' heading), the Environment Agency did not contest the applicant's expectation that historic landfills would not be disturbed by excavation works. The

technical note submitted by the applicant ([APP-095], Management of Historical Landfill Wastes) outlined the procedures for managing and removing landfill wastes that might be encountered during construction, ensuring that such actions would not adversely affect the surrounding environment.

### **Contaminated land and groundwater**

- 3.11.15. At D2 the Environment Agency ([REP2-007] reiterated the case it made in its relevant representation [RR-012] when it advised the applicant to amend the wording in requirement 7(3) of the draft Development Consent Order ([APP-005] at page 48). The Environment Agency argued that the inclusion of the extra wording would provide assurance that any detected contamination necessitating clean-up would be properly documented and validated, and it further suggested that they should be consulted regarding the discovery.
- 3.11.16. The applicant ([REP1-021] at page 40) was not content to amend the wording of requirement 7(3) as the applicant believed requirement 7(2) of the dDCO ([PD1-003] at page 47) provided the Environment Agency the option to request a validation report confirming the completion and effectiveness of measures used to remediate contaminated land.
- 3.11.17. At D3 the applicant ([REP3-043] at page 8) then indicated its willingness to consider the Environment Agency's request, though by the end of the examination no amendments had been made to requirement 7(3) of the dDCO ([REP6-002] at page 47).
- 3.11.18. In their final, signed SoCG [REP5-016] there were no matters of disagreement between the parties in relation to the dDCO and other consents and agreements. In section 3 of [REP5-016] the Environment Agency also confirmed that no requirement was needed for the inclusion of protective provisions following the applicant's revision of the Consents and Agreements Position Statement [REP1-004].

### **ExA consideration of ground contamination**

- 3.11.19. The ExA agrees with the applicant's assessment findings that there would be limited potential for construction activities to mobilise contaminants within the underlying soils or introduce contaminants which may potentially harm human health or environmental receptors. The applicant confirmed [REP4-008] that potentially harmful construction activities would be identified, controlled and mitigated by measures set out in the First Iteration of the EMP.
- 3.11.20. The councils' involved (Coventry City Council, Rugby Borough Council, and Warwickshire County Council) raised no specific concerns or significant negative impacts from the proposed development related to the site's ground conditions or any land contamination present. The ExA therefore find the proposed development is in line with the National Planning Policy Framework, paragraph 196.

### **Soil Handling Management Plan**

- 3.11.21. A Soil Handling Management Plan would be developed ([REP4-008], and [REP6-010]) to help preserve land quality on the temporary land take areas and to make effective reuse of the soils taken from the areas of permanent land take.
- 3.11.22. The applicant confirmed [REP4-008] the Soil Handling Management Plan (SHMP) would include a Soil Resource Plan and a Soil Handling Strategy. The applicant also



confirmed (at issue specific hearing 1, [\[REP1-031\]](#)) that the SHMP would consider the commitments and obligations given in ES appendix 9.2, Soil Resource Plan and Agricultural Land Classification, [\[APP-093\]](#). The applicants post hearing note [\[REP1-031\]](#) clarified that proposals for the monitoring of soil protection including reinstatement and return to agricultural use would also be included in appendix 9.2 of the ES.

### **ExA consideration of the Soil Handling Management Plan**

- 3.11.23. The ExA is satisfied that a SHMP would help to minimise adverse impacts on soil quality and support sustainable use of soils during construction and is satisfied that the SHMP can be secured through the First Iteration of the EMP [\[REP6-010\]](#) and requirement 4 of the draft Development Consent Order [\[REP6-002\]](#).

### **Statement of Common Ground**

- 3.11.24. The final, signed SoCG between the applicant and Natural England [\[REP6-021\]](#) recorded agreement between the parties on issues related to Geology and Soils, specifically soil handling and soils and best and most versatile agricultural land.

## **CONCLUSIONS ON GEOLOGY AND SOILS**

- 3.11.25. The ExA is satisfied that the assessment reported in Ch. 9, Geology and Soils, of the ES [\[APP-031\]](#), as supplemented and updated during the examination ([\[REP1-008\]](#), [\[REP4-008\]](#)), provides a satisfactory assessment of the likely significant effects of the proposed development on geology and soils as required by the EIA Regulations, and the NNNPS.
- 3.11.26. We are also satisfied that the proposed development would accord with the relevant policy requirements of the NNNPS and, where important and relevant, local policies and strategies and all other legislation.
- 3.11.27. Taking into consideration the mitigation secured through the rDCO, we conclude that geology and soil effects should be considered neutral in the planning balance.

## **3.12. MATERIAL ASSETS AND WASTE**

### **INTRODUCTION**

- 3.12.1. This section considers the likely significant material assets and waste effects of the construction of the proposed development.
- 3.12.2. The policy considerations relevant to the ExA's consideration of material assets and waste are set out in section 2 of this report.

### **APPLICANT'S SUBMISSION**

- 3.12.3. Ch. 10 of the ES [\[APP-032\]](#) details the applicant's assessment of the likely impacts related to the consumption of materials and products and the generation and management of waste during the construction phase. ES appendix 10.1, Management of Historical Landfill Wastes, [\[APP-095\]](#) presented further information which supported this chapter.

3.12.4. Operational impacts were largely scoped out [\[APP-032\]](#), in line with the scoping opinion provided by the Inspectorate [\[APP-114\]](#). The scoping opinion provided by the Inspectorate agreed to scope out the following:

- mineral safeguarding areas
- peat and the sterilisation of any peat resources
- material disposal
- waste generation during operation

3.12.5. Ch. 10 of the ES concluded:

- the effects on material assets of constructing the proposed development are likely to be slight adverse
- no significant adverse effects

## **EXAMINATION ISSUES**

### **Site Waste Management Plan**

3.12.6. The applicant's Outline Site Waste Management Plan is presented in appendix B.3, of the ES [\[REP6-010\]](#). The management plan would be secured by requirement 4 of the rDCO in accordance with the second iteration of the EMP [\[REP6-010\]](#).

3.12.7. In response to our written question MW.1.12 (ExQ1, [\[PD-008\]](#)) related to the means of reducing environmental impacts of material assets and waste, the Environment Agency [\[REP3-051\]](#) and the councils' (Warwickshire County Council [\[REP3-050\]](#), Rugby Borough Council [\[REP3-049\]](#), and Coventry City Council [\[REP3-047\]](#)) were content with the coverage and content of the applicants outline Site Waste Management Plan.

3.12.8. The Environment Agency also remarked "Resource efficiency has been integrated into the management process, but the operator should also be dynamic for any unexpectedness that may arise when construction commences".

3.12.9. Warwickshire County Council qualified its response by adding "the County Council would wish to see a firmer commitment to deliver a Materials Management Plan from the outset".

### **Statements of Common Ground**

3.12.10. The applicant's final, signed Statement of Common ground [\[REP6-020\]](#) recorded agreement from Rugby Borough Council with the applicant's proposals for materials handling, re-use, waste management and materials control. The agreed statement also refers to the applicant's submission of a technical note [\[APP-095\]](#) related to the management of historical landfill wastes.

3.12.11. There were no matters of disagreement in the applicant's final, signed SoCG between the applicant and the Environment Agency [\[REP5-016\]](#) with agreement reached on the issues related to material assets and waste, specifically the disposal and recovery of excavated waste and the re-use of contaminated material.

3.12.12. The final signed SoCG between the applicant and Warwickshire County Council [\[REP5-013\]](#) agreed on all eight topics raised by the council related to material assets

and waste and included reference to a technical memorandum between the applicant and the council.

- 3.12.13. The applicant's Statement of Commonality for Statements of Common Ground ([[REP6-022](#)] at Table 5-1) reported that no position was presented on Material Assets and Waste in the final, signed SoCG from Coventry County Council.

#### **Matters raised in relevant representations**

- 3.12.14. Warwickshire County Council highlighted [[RR-006](#)] various matters related to material assets and waste in its relevant representation. They related, amongst others, to waste safeguarding, commercial and industrial wastes and imports of construction materials. The council noted that all matters were agreed.

#### **CONCLUSIONS ON MATERIAL ASSETS AND WASTE**

- 3.12.15. In accordance with the EIA Regulations and the NNNPS, the ExA is satisfied that the assessment of likely significant effects on material assets and waste, as detailed in Ch. 10 of the ES [[APP-032](#)], is satisfactory.
- 3.12.16. We recognise that the applicant has sought to identify measures to reduce the amount of waste generation in accordance with NNNPS paragraph 5.70.
- 3.12.17. A Site Waste Management Plan would be developed to identify the types and likely quantities of wastes that may be generated, and set out how waste would be reduced, reused, managed and disposed in adherence with the waste hierarchy. Adherence with the waste hierarchy accords with NNNPS paragraphs 5.71 and 5.73.
- 3.12.18. Furthermore, the proposed measures are considered sufficient and appropriate according to the requirements outlined in paragraph 5.76 of the NNNPS.
- 3.12.19. Considering this, we conclude that the proposed development is in line with the NNNPS concerning all these issues. We also find that the proposed development is in accordance with relevant local policies and strategies and all other legislation.
- 3.12.20. Consequently, we conclude that the impacts of the proposed development on material assets and waste would be neutral and does not affect the planning balance.

### **3.13. POPULATION AND HUMAN HEALTH**

#### **INTRODUCTION**

- 3.13.1. This section addresses impacts of the proposed development on population and human health.
- 3.13.2. The policy considerations relevant to the ExA's consideration of population and human health are set out in section 2 of this report.

#### **APPLICANT'S SUBMISSION**

- 3.13.3. Ch. 12, Population and Human Health, of the ES [[APP-034](#)] identified and evaluated the potential effects of the proposed development's construction and operation on local population and human health, specifically examining land-use, accessibility, and community well-being. ES Figures 12.1 to 12.3 supporting this chapter are presented in [[APP-058](#)].

3.13.4. Ch. 12 of the ES concluded that:

- the construction phase poses temporary adverse effects, particularly for local farms
- the operational impacts are largely not significant or beneficial (e.g., improved road safety), though adverse effects on farming operations at two farms are anticipated
- the majority of health outcomes are deemed to be Neutral or Positive during construction and operation

## **EXAMINATION ISSUES**

### **Human Health**

- 3.13.5. The assessment of the residual construction effects on human health presented in the ES Table 12-15 [\[APP-034\]](#) showed that during construction, visual disruption to landscape amenity and changes to noise and vibration due to construction activities would result in a negative health outcome, with all other outcomes being neutral.
- 3.13.6. During operation, the health outcomes are predicted (Health outcomes during operation, Table 12-20 of [\[APP-034\]](#)) to be neutral or positive with the exception of visual changes to landscape in the area of Hungerley Hall Farm which are predicted to be negative (moderate adverse).
- 3.13.7. We questioned (written question PH.1.4, ExQ1, in [\[PD-008\]](#)) whether the applicant had considered enhanced mitigation measures for noise and vibration to ensure that there are no discernible health effects during construction. It was explained [\[REP3-044\]](#) that ongoing consideration of noise and vibration mitigation measures to limit health effects at receptors which could experience significant effects / negative health outcomes would be carried out at detailed design stage. It was further explained that the Principal Contractor would develop and implement a Noise and Vibration Management Plan to be included in the second iteration of the EMP (referenced in [\[REP6-012\]](#) under commitment NV1), secured through requirement 4 of the rDCO.

### **Statements of Common Ground**

- 3.13.8. The applicant's Statement of Commonality for Statements of Common Ground ([\[REP6-022\]](#) at Table 5-1) reported that no position was presented under the topic heading of 'Population and Human Health' in the final, signed statements of common ground from Coventry City Council and Warwickshire County Council.

## **CONCLUSIONS ON POPULATION AND HUMAN HEALTH**

### **Construction impacts**

- 3.13.9. Construction is expected to cause adverse effects including disruption to access for private property and housing, community land and assets and development land and businesses and disruption to route used by walkers, cyclists and horse riders. The ExA recognise that traffic management measures would be put in place as part of the Traffic Management Plan to mitigate construction traffic and road closure related impacts.

- 3.13.10. Very large adverse effects are expected at Hungerley Hall Farm, particularly concerning access and infrastructure. There are also anticipated to be large adverse effects at Walsgrave Hill Farm Partnership in relation to access and infrastructure.

#### **Operational impacts**

- 3.13.11. Changes to access are anticipated for private properties, housing, community land and assets, and businesses. This would lead to changes in journey lengths, though it is not expected that these changes would be significant.
- 3.13.12. There is anticipated to be moderate adverse effects on Hungerley Hall Farm and on Walsgrave Hill Farm Partnership in relation to farming activities, access and infrastructure. Hungerley Hall Farm would also experience moderate adverse impacts due to permanent land take. There would be some slight beneficial effects observed at Hungerley Hall Farm and Walsgrave Hill Farm Partnership concerning environmental factors at the farms, including the potential for agri-environmental initiatives and the expansion of habitat areas.
- 3.13.13. There would also be long term safety benefits for pedestrians and cyclists owing to an improvement of an existing crossing facility on the eastern arm of the Clifford Bridge Road roundabout.

#### **Overall conclusion on Population and Human Health**

- 3.13.14. The ExA is satisfied that the applicant has fulfilled the requirements of NNNPS paragraph 4.72 for assessing the potential adverse health impacts.
- 3.13.15. The ExA is satisfied that the proposed development is in accordance with the NNNPS and, where important and relevant, local policies and strategies and all other legislation.
- 3.13.16. We conclude that most health outcomes are neutral or positive throughout the construction and operational phases. However, construction impacts on landscape amenity and those arising from construction noise would lead to significant effects, resulting in a negative health outcome.
- 3.13.17. We conclude that the overall assessment of human health impact during construction is mostly neutral with negative outcomes in two circumstances.
- 3.13.18. During operation, we find that the outcomes for human health are either neutral or positive, except for negative visual changes at a farm setting.
- 3.13.19. Referencing NNNPS paragraph 4.72, the ExA acknowledges the applicant has proposed measures to mitigate adverse health impacts. These measures are secured in the REAC ([\[REP6-012\]](#), commitments G4, G5, G6, and PH1).
- 3.13.20. While we recognize some farms would experience difficulty with access, we see significant long-term benefits for residents' health from improvements to walking and cycling infrastructure, improved road safety during construction and afterward, and advantages for both overall and local traffic flow.
- 3.13.21. Overall, we find that the effect is neutral and does not weigh for or against the making of the Order.

### **3.14. COMBINED AND CUMULATIVE EFFECTS**

## APPLICANT'S SUBMISSION

- 3.14.1. Ch. 15, Combined and Cumulative Effects, of the ES [\[APP-037\]](#) assessed the combined effects from the proposed development alone and cumulative effects with other existing or proposed developments.
- 3.14.2. This was supplemented by an appendix [\[APP-107\]](#) and a figure [\[APP-060\]](#).
- 3.14.3. Assessments for air quality, noise and vibration, and climate in the preceding ES chapters have relied wholly, or in part, on the forecasts derived from the traffic model [\[APP-134\]](#) for the proposed development. In ES Ch. 15 [\[APP-037\]](#) the applicant pointed out that since the traffic model forecasted the impacts of other future developments, the proposed development's effects in these environmental topics already included cumulative impacts. These combined effects, incorporating other developments, are therefore presented within its dedicated ES chapters.
- 3.14.4. Ch. 15, Combined and Cumulative Effects, of the ES concluded that:
- as a result of the residual effects of the proposed development as a single project, the proposed development alone is anticipated to cause:
    - significant cumulative effects on Hungerley Hall Farm and Coombe Pool SSSI during construction
    - significant cumulative effects on Hungerley Hall Farm, due to visual effects in Year 1 and 15 of operation, along with impacts on farming, in relation to permanent land take, access and infrastructure disruption and farming activities
  - when combined with two other shortlisted developments, it is not anticipated that the proposed development would result in any significant cumulative effects with the shortlisted developments

## EXAMINATION ISSUES

- 3.14.5. Ch. 15 of the ES was updated [\[REP3-016\]](#) by the applicant with a clarification that the climate assessment presented in Ch. 14 of the ES [\[APP-036\]](#) should be regarded as a cumulative assessment. The applicant went on to say that a separate cumulative effects assessment on greenhouse gas emissions was therefore not undertaken. The applicant set out its reasoning at paragraph 15.5.12 of the deadline 3 update to ES Ch. 15.
- 3.14.6. A further update to Ch. 15 of the ES at deadline 3 was noted in the applicant's response ([\[REP3-044\]](#) at page 29) to our written question (CC.1.1, ExQ1, in [\[PD-008\]](#)) related to combined effects on ecological receptors.
- 3.14.7. In response to our written question (CC.1.5, ExQ1, in [\[PD-008\]](#)), the host authorities (Rugby Borough Council [\[REP3-049\]](#), Coventry City Council [\[REP3-047\]](#)) agreed with the applicant's list of projects with the potential for cumulative effects.

## Statements of Common Ground

- 3.14.8. The applicant's Statement of Commonality for Statements of Common Ground ([\[REP6-022\]](#) at Table 5-1) reported that no position was presented under the heading of 'Combined Cumulative Effects' in the final, signed Statements of Common Ground from Rugby Borough Council and Coventry City Council.



- 3.14.9. In their final, signed SoCG [\[REP5-013\]](#) Warwickshire County Council confirmed they agreed with the applicant's assessment of cumulative effects on the use of material assets and on landfill capacity.

#### **CONCLUSIONS ON COMBINED AND CUMULATIVE EFFECTS**

- 3.14.10. In accordance with the EIA Regulations and the NNNPS at paragraph 4.12, the ExA is satisfied that the assessment of likely significant effects of combined and cumulative effects, as detailed in Ch. 15 of the ES ([\[APP-037\]](#)), and as updated during the examination [\[REP3-016\]](#)), is satisfactory.
- 3.14.11. We agree with the applicant's cumulative assessment and mitigation conclusions [\[REP3-016\]](#) that the proposed development would not result in significant cumulative effects on other developments.
- 3.14.12. We also agree with the applicant's assessment conclusion that there may be two significant cumulative effects during construction of the project, in relation to Hungerley Hall Farm and Coombe Pool SSSI and, afterwards, long term significant cumulative effects on Hungerley Hall Farm due to visual effects and impacts on farming.
- 3.14.13. Overall, we conclude that cumulative and combined effects carry a moderate weight against the making of the order.

## **4. HRA SUMMARY**

### **4.1. INTRODUCTION**

- 4.1.1. This section sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Transport, as the competent authority, in performing its duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 4.1.2. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (Court of Justice of the European Union Case C-127/02 Waddenzee 7 September 2004).
- 4.1.3. For the purpose of this report, in line with the Habitats Regulations and relevant government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas (SPA), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- 4.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in section 2.7 of this report.
- 4.1.5. The ExA has been mindful throughout the examination of the need to ensure that the Secretary of State has such information as may reasonably be required to carry out its duties as the competent authority. We have sought evidence from the applicant and the relevant interested parties (IPs), including Natural England as the Appropriate Nature Conservation Body (ANCB), through written questions.

### **4.2. INFORMATION AND EVIDENCE**

- 4.2.1. The proposed development is described in section 1.3 of this report.
- 4.2.2. The applicant set out its assessment in a document titled "Habitats Regulations Assessment Report" [\[APP-087\]](#), hereafter referred to as "the HRA Report".
- 4.2.3. The spatial relationship between the order limits of the proposed development and European sites is shown in Figure 2 of [\[APP-087\]](#).
- 4.2.4. NE's relevant representation [\[RR-010\]](#), written representation [\[REP1-035\]](#) and the signed statement of common ground (SoCG) with the applicant [\[REP6-021\]](#) stated agreement with the applicant's conclusions with regard to the European sites assessed and their qualifying features.
- 4.2.5. No other evidence or comment against this was submitted by any other party, and therefore the ExA decided that a report on the implications for European sites (RIES) compiling HRA-relevant information would not be required.
- 4.2.6. The proposed development is not directly connected with, or necessary to, the management of a European site [\[APP-087\]](#). Therefore, the Secretary of State must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.

#### **Transboundary**

- 4.2.7. The applicant did not identify any likely significant effects (LSE) on non-UK European sites in European Economic Area (EEA) states in its HRA Report [\[APP-087\]](#) or within its ES [\[APP-023\]](#) to [APP-114](#). The Inspectorate published a transboundary screening [\[OD-001\]](#) which also did not identify any LSE to any EEA states. No such impacts were raised for discussion by any IPs during the examination. Only UK European sites are addressed in this recommendation.

### **4.3. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS**

- 4.3.1. Under regulation 63 of the Habitats Regulations, the competent authority must consider whether a development will have any LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.
- 4.3.2. The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in section 3.4 of [\[APP-087\]](#). These comprise sites within 30km of the proposed development, listed as follows:
- Ensor's Pool SAC (Approximately 10.1km to the north-west)
    - white-clawed crayfish
  - The River Mease SAC (approximately 29.5km to the north)
    - spined loach
    - bullhead
    - water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation
    - white-clawed (or Atlantic stream) crayfish
    - otter
- 4.3.3. The applicant set out the methodology applied to determining the sites screened into the assessment and what would constitute a 'significant effect' within its HRA Report at section 2 of [\[APP-087\]](#).
- 4.3.4. The assessment of potential LSE was undertaken using the following criteria:
- The proposed development is within 2km of a National Site Network (NSN) site or functionally linked land.
  - The proposed development is within 30km of a SAC, candidate SAC or possible SAC where bats are noted as one of the qualifying interests.
  - The proposed development crosses or lies adjacent to, upstream of, or downstream of, a watercourse which is designated in part or wholly as a NSN site.
  - The proposed development has a potential hydrological or hydrogeological linkage to a NSN site containing a groundwater dependent terrestrial ecosystem (GWDTE) which triggers the assessment of NSN sites in accordance with the Design Manual For Roads and Bridges (DMRB) LA113.
  - The proposed development has an affected road network which triggers the criteria for the assessment of NSN sites in accordance with DMRB LA105.
  - Additional NSN sites should be subject to screening where the existence of ecological connectivity between the project and NSN sites is identified beyond the screening criteria above.

### **LSE from the proposed development alone**

- 4.3.5. The applicant's assessment of the potential for the proposed development alone to result in LSE is set out in sections 3.4 and 4 and tables 4-1 and 4-2 of the HRA Report [\[APP-087\]](#).
- 4.3.6. There are no impacts considered by the applicant to have the potential to result in LSE from the proposed development alone based on an assessment against the criteria given above.
- 4.3.7. Natural England's relevant representation [\[RR-010\]](#), written representation [\[REP1-035\]](#) and signed SoCG with the applicant [\[REP6-021\]](#) stated agreement with the applicant's conclusions with regard to LSE. Agreement with the HRA Report conclusions was also provided by Warwickshire County Council ([\[REP3-050\]](#) in response to [\[ExQ1, BY.1.2, PD-008\]](#)).
- 4.3.8. The ExA sought clarity ([\[PD-008\]](#), BY.1.10) from the applicant and Natural England as to whether water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation, white-clawed (or Atlantic stream) crayfish and otter, as qualifying features present but not a primary reason for selection for the River Mease SAC, were required to be included in the HRA Report, as these had been omitted from [\[APP-087\]](#). The applicant noted [\[REP3-044\]](#) that it considered that Natural England were in agreement with the overall conclusions of the HRA Report. However, Natural England [\[REP3-052\]](#) confirmed that whilst it was in agreement with the overall conclusions ([\[PD-008\]](#), BY.1.2), it recommended the report be updated to include the omitted qualifying features.
- 4.3.9. The applicant provided an updated HRA Report [\[REP5-004\]](#) to include this information and assessment following a request by the ExA [\[PD-009\]](#).

### **LSE from the proposed development in combination**

- 4.3.10. The applicant addressed potential in-combination effects arising from the proposed development within tables 4-1 and 4-2 of [\[APP-087\]](#) which sets out the methodology applied. No other plans and projects were identified in the course of the examination.
- 4.3.11. No in-combination LSE have been identified for the sites and qualifying features where LSE were excluded from the proposed development alone. In-combination effects have been excluded due to the distance between the designated sites and the proposed development, and the conclusions from the assessment of the proposed development alone (which state that there will be no effect on the designated sites), and therefore no in-combination effects to consider.
- 4.3.12. Natural England's relevant representation [\[RR-010\]](#), written representation [\[REP1-035\]](#) and the signed SoCG with the applicant [\[REP6-021\]](#) stated agreement with the applicant's conclusions with regard to LSE.

## **4.4. ExA's CONSIDERATIONS AND HRA CONCLUSIONS**

- 4.4.1. Two European sites and their qualifying features were considered in the applicant's assessment of LSE: Ensor's Pool SAC and The River Mease SAC. No LSE were identified for these sites, both from the proposed development alone and in-combination with other plans or projects.
- 4.4.2. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with

respect to adverse effects on potentially affected sites must be assessed by the Secretary of State.

- 4.4.3. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 4.4.4. The ExA is also satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination likely significant effects.
- 4.4.5. Taking into account the reasoning set out above, the ExA considers that the proposed development is not likely to have a significant effect from the impacts identified above on the qualifying features of the Ensor's Pool SAC and the River Mease SAC when considered alone, or in combination with other plans or projects. This was not disputed by IPs/ Natural England during the examination.

## **5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **5.1. INTRODUCTION**

- 5.1.1. The Examining Authority's (ExA's) overall assessment of the proposed development's planning merits is detailed in this section.

### **5.2. SUMMARY OF THE MAIN PLANNING ISSUES**

#### **The principle of development**

- 5.2.1. Both Coventry City Council and Warwickshire County Council recognise that the proposed development would benefit economic development in the area. Paragraph 3.33 of the NNNPS highlights the importance of the SRN in facilitating economic growth. It is our view that the proposed development would assist in facilitating such economic growth by improving traffic conditions in this part of the SRN.
- 5.2.2. The ExA having considered the applicant's submissions and those from other parties considers that the case has been made for the need for the proposed development. In addition, we are satisfied that the applicant has fully considered alternatives for the proposed development.
- 5.2.3. Taking these factors into account the ExA considers there is very great weight in favour of making the Development Consent Order, when considering the case for the development.

#### **Air quality**

- 5.2.4. The ExA have considered all the submitted air quality evidence as set out in section 3.3. As a consequence, we are satisfied that the air quality assessment has adhered to the requirements set out in paragraphs 5.12, 5.13 and 5.14 of the NNNPS and have concluded there will be no significant effects in terms of air quality on human and ecological receptors as a result of the proposed development.
- 5.2.5. On this basis we consider in terms of the effects on air quality the proposed development should be considered neutral in the planning balance.

#### **Climate**

- 5.2.6. As reported in section 3.4 of this report, we are satisfied that the proposed development's construction and operational greenhouse gas emissions were assessed against relevant UK carbon budgets and evaluated for their significance. The applicant also provided an explanation about how the potential for indirect environmental effects from the proposed development had been addressed in light of the Supreme Court ruling (*R (Finch) v Surrey County Council*, 2024) on the direct and indirect effects of a project on the environment.
- 5.2.7. We find that the proposed development complies with the NNNPS policy requirements. We consider it is unlikely that the carbon emissions of the proposed development would significantly influence the government's ability to meet its carbon reduction targets, based on the information presented.



- 5.2.8. Given our conclusions here on greenhouse gas emissions in relation to a proposed enhancement to the existing national road network, we view the effects of greenhouse gas emissions as neutral in relation to the making of the Order.

### **Road drainage and the water environment**

- 5.2.9. In section 3.5 of this report, we have considered construction and operational effects along with the adequacy of secured mitigation with respect to flood risk and the water environment.
- 5.2.10. The ExA is content the proposed development meets the Water Framework Directive requirements.
- 5.2.11. We are also satisfied that the proposed development, with implementation of the identified mitigation measures, would have no significant adverse effects on water quality, resources or flooding. We therefore view the effects on road drainage and the water environment as neutral in relation to the making of the Order.

### **Biodiversity**

- 5.2.12. As detailed in section 3.6 of this report, we have confirmed the adequacy of the assessment of the proposed development's impacts on biodiversity receptors. Considering the committed actions and protections, the proposed development would avoid significant harm to existing wildlife and their environments and would actively create new habitats to enhance local wildlife populations. All necessary legislative and policy requirements, including NNNPS, have been satisfied.
- 5.2.13. We find that there would be potential for slight adverse construction and operational effects on several protected and notable species and on designated sites of national and local importance.
- 5.2.14. Therefore, we find that the effects on biodiversity and the natural environment do carry a little weight against the making of the Order.

### **Cultural heritage**

- 5.2.15. The ExA has considered all of the submitted evidence relating to the effects created by the proposed development on cultural heritage. We consider that the applicant's assessment has been undertaken in compliance with paragraphs 5.210 and 5.211 of the NNNPS. In addition, we conclude that the mitigation proposed and secured in the rDCO complies with the approach set out in paragraphs 5.212 to 5.215 of the national policy statement.
- 5.2.16. The ExA concludes that the proposed development, taking account of the secured mitigation, would lead to a slight adverse (not significant) effect on the farm wall and setting of Hungerley Hall Farm and the setting of Coombe Abbey RPG. We also consider that the impact on both of these assets would be a minor level of less than substantial harm.
- 5.2.17. The ExA concludes that less than substantial harm would occur to the identified designated heritage assets, which would carry a little weight against the making of the order. In accordance with NNNPS paragraph 5.222 and NPPF paragraph 215, the public benefits must be weighed against development which would lead to less than substantial harm and this is considered in paragraph 5.3.9 below.

## **Landscape and visual effects**

- 5.2.18. As set out in section 3.8 of this report, the landscape and visual impacts of the proposed development have been adequately assessed. We are content that the policy tests contained in NNNPS related to landscape and visual effects have been met.
- 5.2.19. We concur with the applicant's assessment that there would be short-term significant adverse landscape and visual effects resulting from construction activities.
- 5.2.20. We recognise that the recovery and maturation of replacement and mitigation planting would not completely reverse these effects, as there would also be long-term moderate adverse effects on views from Hungerley Hall Farm.
- 5.2.21. We conclude therefore that the adverse landscape and visual effects of the proposed development carry a moderate against the making of the Order.

## **Noise and vibration**

- 5.2.22. As stated in section 3.9 of this report, significant residual construction noise effects may occur, particularly from night-time or weekend works. The applicant has made clear that these effects would require further consideration once their scope and duration are finalised. The ExA notes the applicant's position (Environmental Statement Table 12-15, [\[APP-034\]](#)) that noise disturbance from construction activities is anticipated to result in an overall negative health outcome.
- 5.2.23. However, we also note from the applicant's reported health outcomes during operation (Environmental Statement Table 12-20, [\[APP-034\]](#)) that overall health outcomes related to noise pollution, specifically effects on tranquillity in green/ open space, are classified as neutral. On this basis, we consider that there is no specific conflict with the requirements of paragraph 5.241 of the NNNPS.
- 5.2.24. Taking account of the conclusions in section 3.9 of this report, we consider that the applicant's assessment of noise and vibration complies with the policy aims of the NNNPS.
- 5.2.25. Overall, we find that the issue of noise and vibration during construction carries a little weight against the making of the Order.

## **Traffic and transport**

- 5.2.26. The ExA is satisfied that the proposed development complies with the relevant sections of the NNNPS, and that the applicant has undertaken a robust assessment of the traffic and transport impacts of the proposed development.
- 5.2.27. The local highway authorities are in favour of the application and there have been only a few representations from the local community, only one of which provided any direct criticism of the proposals. That said there was no evidence provided to suggest that the applicant's TA was flawed and as such we consider that there is strong evidence that the proposed development will provide a benefit in terms of traffic and transport impacts on the SRN, LRN and the ability to provide for future improvements to the active travel network.
- 5.2.28. Taking these factors into account the ExA considers that there is great weight in favour of the development when considering traffic and transport.

## **Geology and soils**

- 5.2.29. The ExA notes that there is a permanent loss of best and most versatile (BMV) agricultural land of grade 1 and subgrades 3a and 3b, which is a significant and adverse effect. However, the applicant has assessed alternative design options for the proposed development and confirmed adjustments to working areas and road geometry to reduce the prime land needed for the proposed development. We are satisfied therefore that the applicant has demonstrated the loss of BMV is both unavoidable and necessary to deliver the proposed development.
- 5.2.30. We are also satisfied that the proposed development would accord with the relevant policy requirements of the NNNPS.
- 5.2.31. Therefore, we conclude that the effects of the proposed development on geology and soils would be neutral in the planning balance.

## **Material assets and waste**

- 5.2.32. In section 3.11 of this report, we have considered construction and operational phase effects along with the adequacy of secured mitigation with respect to material assets and waste.
- 5.2.33. The ExA agrees with the Environmental Statement Ch. 10 [\[APP-032\]](#) finding that the impact of the proposed development on material assets and waste to be a slight adverse (not significant) effect during the construction phase.
- 5.2.34. We are satisfied that these adverse effects can be effectively mitigated and managed through requirement four in the recommended draft Development Consent Order.
- 5.2.35. We are also satisfied that the applicant's proposals related to the safe and effective management of waste and the safe and sustainable use of resources and waste for both construction and operation are in accordance with the NNNPS.
- 5.2.36. Therefore, we conclude that the effects of the proposed development on material assets and waste would be neutral in the planning balance.

## **Population and human health**

- 5.2.37. In section 3.13 of this report, the ExA has had regard to the population and human health aspects of the proposal including those with the ability to have health impacts. We have also considered the adequacy of the applicant's measures to mitigate adverse health impacts.
- 5.2.38. We are satisfied that the applicant has fulfilled the requirements of NNNPS paragraph 4.72 for assessing the potential adverse health impacts.
- 5.2.39. We conclude that the overall assessment of human health impact during construction is mostly neutral with negative outcomes in two circumstances. During operation, we find that the outcomes for human health are either neutral or positive, except for negative visual changes at a farm setting.
- 5.2.40. While we recognise some farms would experience difficulties with access, we see significant long-term benefits for residents' health from improvements to walking and cycling infrastructure, improved road safety during construction and afterwards, and advantages for both overall and local traffic flow.

- 5.2.41. Having considered all the matters within section 3.13 above in respect of population and human health, we conclude that the effect is neutral and does not weigh for or against the making of the Order.

### **Combined and cumulative effects**

- 5.2.42. Section 3.14 of this report indicates that adequate assessment has been made of the cumulative effects arising from the proposed development in combination with other development.
- 5.2.43. We concur with the applicant's assessment and mitigation conclusions [\[REP3-016\]](#) in relation to significant cumulative effects during construction at a farm and at a SSSI, and, afterwards, long term significant cumulative effects at the same farm due to visual effects and impacts on farming. We attribute this moderate weight against the making of the Order.

### **Habitats Regulations Assessment considerations**

- 5.2.44. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the Secretary of State for Transport.
- 5.2.45. Two European sites and their qualifying features were considered in the applicant's assessment of likely significant effects (LSE):
- Ensor's Pool Special Area of Conservation (SAC)
  - the River Mease SAC
- 5.2.46. No LSE were identified for these sites, both from the proposed development alone and in-combination with other plans or projects.
- 5.2.47. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 5.2.48. The ExA considers that there is sufficient information before the Secretary of State for Transport to enable them to undertake an appropriate assessment in order to fulfil its duty under the requirements of the Habitats Regulations.

## **5.3. THE OVERALL PLANNING BALANCE**

- 5.3.1. The proposed development would make an important contribution to the improvement and enhancement of the existing Strategic Road Network (SRN), thereby meeting a key objective of the NNNPS. The ExA concludes that the proposed development meets the needs as established in the NNNPS and satisfies the tests of s104(2) and s104(3) of the PA2008 and accordingly should be determined as thus.
- 5.3.2. In paragraph 3.39, the NNNPS recognises developments on the SRN need to be sensitive to, respond to, and contribute to their environmental context.
- 5.3.3. The ExA's findings in terms of the planning balance is set out in Table 5.3.1 below.

**Table 5.3.1 Planning balance**

Issue	Finding	Weighting	Section
Need for the development	Positive	Very great	<a href="#">Section 3.2</a>
Traffic and transport	Positive	Great	<a href="#">Section 3.10</a>
Air quality	Neutral	Does not affect the balance	<a href="#">Section 3.3</a>
Climate	Neutral	Does not affect the balance	<a href="#">Section 3.4</a>
Road drainage and the water environment	Neutral	Does not affect the balance	<a href="#">Section 3.5</a>
Geology and soils	Neutral	Does not affect the balance	<a href="#">Section 3.11</a>
Material assets and waste	Neutral	Does not affect the balance	<a href="#">Section 3.12</a>
Population and human health	Neutral	Does not affect the balance	<a href="#">Section 3.13</a>
Biodiversity	Negative	A little	<a href="#">Section 3.6</a>
Cultural heritage	Negative	A little	<a href="#">Section 3.7</a>
Noise and vibration	Negative	A little	<a href="#">Section 3.9</a>
Landscape and visual effects	Negative	Moderate	<a href="#">Section 3.8</a>
Combined and cumulative effects	Negative	Moderate	<a href="#">Section 3.14</a>

- 5.3.4. In applying the overall planning balance, the ExA considers that the very great weight attached to the need for the proposed development established by the NNNPS, taken with the traffic and transport benefits of the proposed development are sufficient to outweigh the negative weightings listed in Table 5.3.1 above.
- 5.3.5. In reaching this recommendation, the ExA considers that the positive benefits of the proposed development, would outweigh in each case the less than substantial harm that would occur to the identified designated heritage assets. Taking account of the significant public benefits of the proposed development, we are satisfied that there is clear and convincing justification for the harm that would result to the significance of the identified designated heritage assets. We have also been mindful of the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010. Consequently, we are satisfied that matters concerning the historic environment would accord with the relevant policy provisions of the NNNPS and NPPF.
- 5.3.6. A Habitats Regulations Assessment (HRA) Report was provided and in reaching its overall conclusion and recommendations in this report, the ExA considered all documentation relevant to HRA. The Secretary of State for Transport is the Competent

Authority, and the ExA considers that sufficient information has been provided to undertake an appropriate assessment to fulfil the Habitats Regulations duty.

- 5.3.7. The ExA considers that, on the planning merits, the adverse effects do not outweigh the benefits of the development. Accordingly, s104(7) of the PA2008 does not apply. The ExA also considers s104(8) is not applicable. In conclusion therefore, the ExA considers that the case for development consent is made.



## **6. LAND RIGHTS AND RELATED MATTERS**

### **6.1. INTRODUCTION**

- 6.1.1. The application includes proposals for the compulsory acquisition (CA) of the freehold of land, the CA of rights over land, the creation of new rights in land and the temporary possession (TP) of land.

### **6.2. LEGISLATIVE REQUIREMENTS**

#### **The Planning Act 2008**

- 6.2.1. Section (s) 122(2) of the Planning Act 2008 (PA2008) provides that a development consent order (DCO) may include provision authorising CA only if the Secretary of State is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which development consent relates or is required to facilitate or is incidental to it.
- 6.2.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met the Department for Communities and Local Government's 'Guidance related to procedures for the compulsory acquisition of land' published September 2013 (CA Guidance) indicates the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 6.2.3. Section 123 requires the Secretary of State to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:
- that the application for the order included a request for CA of the land to be authorised – s123(2)
  - that all persons with an interest in the land consent to the inclusion of the provision – s123(3)
  - that the prescribed procedure has been followed in relation to the land – s123(4)
- 6.2.4. Section 127 of the PA2008 applies to statutory undertakers' (SU) land. Section 127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the Secretary of State is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to SUs to the extent that the Secretary of State is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good by the undertakers by the use of other land belonging to or available for acquisition by them. A number of SUs have land interests within the order limits. These are set out in the Book of Reference (BoR) [\[REP6-006\]](#).
- 6.2.5. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purposes of carrying

out the development to which it relates. For the proposed development, this section of the PA2008 is relevant to SUs with land and equipment interests within the order limits.

- 6.2.6. TP powers are also capable of being within the scope of a DCO by virtue of paragraph 2, part 1 of schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole and only capable of proceeding if the primary development is justified.

### **Neighbourhood Planning Act 2017**

- 6.2.7. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the Act. Article 52(2) of the recommended draft DCO (rDCO) disapplies the provisions of the Act insofar as they relate to TP of land under articles 39 (temporary use of land for carrying out the authorised development) and 40 (temporary use of land for maintaining the authorised development).

### **The CA Guidance**

- 6.2.8. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also need to be addressed. Namely that:
- All reasonable alternatives to CA must have been explored.
  - The applicant must have a clear idea of how it intends to use the land subject to CA powers and demonstrate that there are funds available.
  - The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 6.2.9. The Examining Authority (ExA) has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this section.

## **6.3. THE REQUEST FOR CA AND TP POWERS**

- 6.3.1. Articles in the application draft DCO (dDCO) [\[APP-005\]](#) and all subsequent versions included both permanent and temporary powers to construct and maintain the proposed development.
- 6.3.2. The order limits of the dDCO established the extent of the land that would be affected by the CA and TP powers sought.
- 6.3.3. The application was accompanied by:
- Statement of Reasons (SoR) [\[APP-008\]](#)
  - Funding Statement [\[APP-009\]](#)

- BoR [[APP-010](#)]
- Land Plans [[APP-012](#)]
- Special Category Land Plans [[APP-019](#)]
- Works Plans [[APP-013](#)]

6.3.4. Taken together, these documents set out the land and rights sought by the applicant at the time of submission together with the reasons for its requirement and the basis under which compensation would be funded. Where the examination and due diligence processes required changes to this documentation, new versions were submitted. By the close of the examination the most up to-date versions of these documents were as follows:

- SoR [[PD1-007](#)]
- Funding Statement [[APP-009](#)]
- BoR [[REP6-006](#)]
- Land Plans [[REP4-002](#)]
- Special Category Land Plans [[APP-019](#)]
- Works Plans [[APP-013](#)]

6.3.5. The ExA was kept updated by the applicant throughout the examination on the progress of negotiations with affected persons (AP) and SU, by means of the Land and Rights Negotiations Tracker, the final version of which was submitted at deadline (D)7 [[REP7-004](#)].

6.3.6. These documents taken together form the basis for analysis for this section. Reference to the documents and plans in this section from this point should be read as reference to the latest versions above.

## **6.4. THE PURPOSES FOR WHICH THE LAND IS REQUIRED**

6.4.1. The application is for development consent for the construction and maintenance of improvements to provide a new grade separated junction to replace the existing at grade roundabout on the A46 and its junction with the B4082. The BoR [[REP6-006](#)] identifies all the plots of land required and these are shown on the land plans [[REP4-002](#)] and the special category land plans [[APP-019](#)].

6.4.2. The applicant provides justification for the CA and TP of land in section 5 of the SoR [[PD1-007](#)] on the basis of the CA Guidance which requires interference with the rights of those with an interest in land to be for a legitimate purpose, and that it is necessary and proportionate.

6.4.3. In annex A of the SoR [[PD1-007](#)] the applicant sets out why compulsory powers are necessary in relation to each individual parcel of land, with reference to the relevant DCO works numbers, and the nature of the works as set out in schedule 1 of the rDCO. The purpose of the land that is required is set out in annex A of the SoR [[PD1-007](#)]. The applicant considers that the land included in the dDCO [[REP6-002](#)] is the minimum land-take required to construct, operate, maintain and mitigate the proposed development necessary to achieve the objectives of the scheme. The applicant has sought to achieve a balance between minimising land-take and securing sufficient land to deliver the proposed development, noting that the detailed design has yet to be developed. The applicant considers that the limits of deviation

have been drawn as tightly as possible, to avoid unnecessary land-take. The applicant confirms that if less land proves to be required in a particular area following the detailed design stage, it would only seek to acquire that part of the land that is required and, in all events, would seek to minimise effects on land interests.

- 6.4.4. The applicant considers that compulsory acquisition powers are required to override any existing rights and interests in the land, as well as grant the right to temporary possession of land for construction and maintenance purposes. The applicant states that without these rights over the land, the proposed development cannot be delivered. The applicant is accordingly satisfied that the land to be taken is necessary, proportionate and justified.

## 6.5. THE CA AND TP POWERS SOUGHT

- 6.5.1. The powers sought in the dDCO relate to the acquisition of land, rights and temporary possession of land. The BoR [\[REP6-006\]](#) sets out the various categories of rights which are being sought, as described in the table below.

**Table 6.5.1: Land use power being sought by the applicant**

Land use power sought	Wording used in BoR plot description	Colour of plot on land plans	Principal relevant DCO article
CA of all interests and rights in land (including as required, subsoil, surface or airspace)	"All interests and rights in..."	Pink	article 27
CA of new rights (including where necessary, a right to impose restrictive covenants)	"Acquisition of rights over..."	Blue	article 30
TP and use of land	"Temporary possession and use of..."	Green	article 39 & 40

- 6.5.2. Paragraph 2.1.2 of the SoR [\[PD1-007\]](#) states the area within the order limits covers an area of approximately 36.62 hectares (ha). Of this approximately 34.66ha will be permanently acquired for the implementation of the proposed development (which includes land already owned by the applicant (18.36ha)), including the proposed environmental mitigation area which covers approximately 3.6ha. Approximately 1.95ha will be required temporarily during the construction phase and approximately 0.01ha will be permanent acquisition of rights over land. The powers being sought by the applicant are set out in the SoR [\[PD1-007\]](#) and on the Land Plans [\[REP4-002\]](#).
- 6.5.3. Section 7.1 of the SoR [\[PD1-007\]](#) confirms that none of the land required is Crown land for the purposes of s135 of PA2008 and also that none of the land required is Crown Estate land.
- 6.5.4. The Special Category Land Plans [\[APP-019\]](#) (sheet 2 of 5) include two plots of land coloured green indicating temporary possession only (Plots 2/1e and 2/2). Section

7.2 of the SoR [\[PD1-007\]](#) confirms that the applicant is not seeking any permanent rights over special category land so s131 and s132 of PA2008 do not apply.

- 6.5.5. Paragraph 7.3.1 of the SoR [\[PD1-007\]](#) states that none of the land to be acquired is National Trust “inalienable” land for the purposes of s130 of PA2008.
- 6.5.6. Paragraph 7.4.1 of the SoR [\[PD1-007\]](#) states that none of the land to be acquired for the proposed development is statutory undertakers’ land for the purposes of s127(3) of PA2008.
- 6.5.7. Annex A of the SoR [\[PD1-007\]](#) includes a table which sets out on a plot by plot basis the nature and purpose of the proposed acquisition of interests in the land or the need for TP.

## **6.6. EXAMINATION OF THE CA AND TP CASE**

### **The examination process**

- 6.6.1. The ExA’s approach to the question of whether CA powers should be granted and if so, what we should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance and the Human Rights Act 1998. In addition, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 6.6.2. In examining the application, the ExA considered all written material in respect of CA and TP and asked written questions regarding justification of the need for the CA and TP in the ExA’s first written questions (ExQ1) [\[PD-008\]](#).
- 6.6.3. The ExA received no objections to the CA and TP of land and rights via relevant representations (RR) and written representations (WR). The applicant continued to negotiate with affected persons throughout the course of the examination. It actively pursued discussions to seek to address specific issues and concerns. At various points throughout the examination the applicant provided the ExA with an update on progress on negotiations by submitting a land and rights negotiations tracker with APs and SUs [\[PD1-013\]](#), [\[REP1-018\]](#), [\[REP3-040\]](#), [\[REP4-016\]](#), [\[REP6-016\]](#), and finally [\[REP7-004\]](#)

### **The applicant’s case**

- 6.6.4. The applicant’s general case for CA and TP is set out in chapter 5 of the SoR [\[PD1-007\]](#).
- 6.6.5. The applicant concludes that:
- The conditions in s122 of PA2008 are met and the tests in the CA Guidance are satisfied.
  - All of the land subject to CA and TP powers is necessary to construct, operate, maintain and mitigate the Scheme; and necessary to achieve the objectives of the Scheme. The extent of the land sought is reasonable and proportionate.
  - There is a compelling case in the public interest to include the CA powers sought by the applicant in the dDCO.
  - The CA powers sought are 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 proposed development, therefore the public benefits of the proposed development would not be realised.

6.6.6. Overall, the ExA, based on the evidence provided, agrees with the applicant's conclusions on the generality of the case. Subject to the ExA's further consideration of individual issues below, the ExA considers the tests set out in s122(2) and s122(3) of the PA2008 to be met.

### **Alternatives**

6.6.7. The CA Guidance indicates that the applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to CA (including modifications to the proposed development) have been explored.

6.6.8. The applicant set out the various alternatives considered, and the flexibility requested, in the SoR section 2.6 [PD1-007]. In ES Ch.3 [APP-025] the applicant detailed the assessment of alternatives undertaken during the development of the proposed development design.

6.6.9. The ExA has reported on its findings with regards to alternatives in section 3 of this report. The ExA does not intend to repeat it here, only to report that the ExA is satisfied that at a strategic level the applicant has adequately considered alternatives to the proposed development and that there are no matters relating to alternatives that would weigh for or against the order being made.

6.6.10. In light of the above, the ExA considers that the applicant has satisfactorily demonstrated that all reasonable alternatives to CA have been explored.

### **Funding**

6.6.11. The Funding Statement [APP-009] in paragraph 3.1.7 confirms that the proposed development would be fully funded by the Department for Transport and consequently it is not dependent on funding contributions from other parties. Accordingly, the applicant's view is that there is no impediment to the delivery of the proposed development, or the payment of compensation to persons affected by CA, TP or any future blight claim.

6.6.12. Through question CA.1.3 in ExQ1 [PD-008] the ExA sought confirmation that funds would remain available for the proposed development considering that no Road Investment Strategy (RIS) has been published for a period beyond 2025 and in the light of the June 2025 Spending Review. The applicant [REP3-044] responded "The second Road Investment Strategy (RIS2) period ended on 31 March 2025. Until a new RIS has been set, the arrangements for 2025 to 2026 are covered by an interim settlement. The Interim Settlement Investment and management of the strategic road network from April 2025 to March 2026 was published in March 2025. The interim settlement sets out plans for investment of £4.842 billion in the network from 2025 to 2026. Table 1 in the Interim Settlement contains a full list of enhancement schemes for the interim period and includes A46 Coventry Junctions (the scheme and Binley Junction). Taking the above into account, to the best of available knowledge, funds remain available for the proposed development"

6.6.13. As the Secretary of State is both the funder and arbiter of this proposed development, they will need to be satisfied that the funds are in place if they are minded to make the order.



## **6.7. CONSIDERATION OF EXAMINATION ISSUES**

6.7.1. The ExA did not receive any objections in the context of the application for the grant of CA and TP powers. The ExA also did not receive any requests to be heard at a compulsory acquisition hearing (CAH). Thus, the requirement set out in s92(3) of PA2008 was not engaged and given the satisfactory evidence provided by the applicant through the application submission and in response to our ExQ1 we took the decision not to hold a CAH. Therefore, unless an AP who is listed in the BoR has specifically objected to the CA or TP of land or rights they are assumed to have no objection to the CA or TP of land in which they have an interest and will not be reported below.

6.7.2. The Land and Rights Negotiation Tracker submitted at D7 [\[REP7-004\]](#) identified a number of APs had not signed an agreement with the applicant by the close of the examination.

6.7.3. The main land owners affected by the proposed development were Coventry City Council and a group of landowners represented by Fisher German LLP.

### **Coventry City Council**

6.7.4. Coventry City Council is both owner and occupier of the alignment of the existing B4082. This is based on the highway vesting with Coventry City Council upon its adoption pursuant to s263(1) of the Highways Act 1980. Coventry City Council made no direct representation to the examination in relation to compulsory acquisition matters.

6.7.5. The applicant has been in discussions with Coventry City Council as local highway authority about various plots. A number of plots will be transferred to Coventry City Council upon completion of works as outlined in the Land and Rights Negotiations Tracker [\[REP7-004\]](#). The applicant has not engaged in negotiations for the majority of these plots as the realigned B4082 will be transferred back to Coventry City Council's ownership and thus did not consider negotiation by agreement necessary.

6.7.6. Coventry City Council expressed concern directly to the applicant over the originally proposed permanent acquisition of two plots (plots 2/7 and 2/8) on submitted Land Plans [\[APP-012\]](#). Coventry City Council raised concerns about acquisition of the land permanently due to planned future works in the area of Clifford Bridge Road and inquired if the work could be done via a license agreement. The applicant agreed to change the land requirement for plots 2/7 and 2/8 from CA to TP, which would still allow the applicant to undertake the required work as part of the proposed development.

6.7.7. The BoR [\[REP4-004\]](#), Land Plans [\[REP4-002\]](#) and Land and Rights Negotiations Tracker [\[REP4-016\]](#) were consequently updated at D4. The applicant committed to continue working with Coventry City Council to enter into a license agreement if preferred.

### **Landowners represented by Fisher German LLP**

6.7.8. Fisher German represented a number of landowners in negotiations with the applicant but made no direct representation about CA to the examination. During the examination Fisher German informed the applicant about the creation of Walsgrave Hill Eastern and Western Land Pool Trusts to consolidate the ownerships of the land

on the eastern and western sides of the A46. These are comprised of the ownerships of Hungerley Hall and Walsgrave Hill farms.

#### **Walsgrave Hill Western Land Pool Trust**

- 6.7.9. The BoR [\[REP4-004\]](#) and Land Plans [\[REP4-002\]](#) were updated at D4 to reflect the information provided by Fisher German, though the applicant noted that the changes had not yet been formally registered at the Land Registry at that time.
- 6.7.10. The applicant in its closing statement [\[REP6-025\]](#) confirmed that the Land Registry had been partially updated, in September 2025, with new title numbers, although title plans were not available, therefore the BoR was updated at D6 [\[REP6-006\]](#) to reflect the changes.

#### **Walsgrave Hill Eastern Land Pool Trust**

- 6.7.11. The applicant in its closing statement [\[REP6-025\]](#) confirmed that Fisher German would share information regarding an Eastern Land Pool Trust in due course.

#### **ExA conclusion on examination issues**

- 6.7.12. The applicant has demonstrated that it is still working with landowners about seeking to acquire the land necessary for the proposed development by agreement. None of the landowners have made any direct representations to the examination about CA or TP. On that basis the ExA is satisfied that the applicant has complied with paragraph 24 of the “Planning Act 2008 – Guidance related to procedures for the compulsory acquisition of land” September 2013 (CA Guidance)”, which requires the applicant develops good working relationships with APs and is willing to be open and treat any concerns with respect.

## **6.8. OTHER PARTICULAR CONSIDERATIONS**

### **Special category land**

- 6.8.1. As mentioned in paragraph 6.5.4 above, TP is sought for an area of special category land. This land comprises of open space, forming part of Coombe Abbey Park, a registered park and garden (not currently accessible to the public), to the east of the proposed development. The land would be required temporarily during construction for the removal and reinstatement of existing boundary fencing. The land is in the ownership of Coventry City Council and is only subject to temporary possession. Coventry City Council has no objections to this temporary possession.
- 6.8.2. As no permanent acquisition is sought for this special category land s131 and s132 of PA2008 do not apply.

### **SU land, rights or apparatus**

- 6.8.3. Section 7.4 of the SoR [\[PD1-007\]](#) sets out the SUs identified by the applicant that may have land or apparatus belonging to them in the order limits. As mentioned above none of the land to be acquired is SU land for the purposes of s127(3) of PA2008.
- 6.8.4. Throughout the examination the applicant has sought to reach agreement with affected SU and, where necessary, to include protective provisions within schedule 9 of the dDCO to protect their interests. The protective provisions for statutory undertakers are discussed in section 7 of this report.

## Human Rights Act 1998 and the Equality Act 2010 considerations

- 6.8.5. The European Convention on Human Rights (ECHR) was incorporated into UK domestic law by the Human Rights Act 1998. The CA Guidance, paragraph 10 states that the Secretary of State must be persuaded that the purposes for which an order authorises the CA of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. Therefore, in assessing whether there is a case in the public interest for the land to be acquired compulsorily, it is also necessary to consider the interference with human rights which would occur, if CA and TP powers were granted.
- 6.8.6. The applicant acknowledged that the dDCO would engage a number of articles of the ECHR:
- article 1 of the First Protocol (protects the rights to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest.)
  - article 6 of the First Protocol (which entitles those affected by the powers sought to a fair and public hearing)
  - article 8 of the First Protocol (seeks to protect private and family life, home and correspondence. Interference with this right can be justified if it is in accordance with law and is necessary in the interests of, among other things, national security, public safety or the economic wellbeing of the country.)
- 6.8.7. Article 6 of the Human Rights Act 1998 prohibits the public authorities from acting in a way which is incompatible with rights protected by the ECHR. The applicant set out in Section 6 of the SoR [\[PD1-007\]](#) the considerations that arise in relation to this application and advised that it had carefully considered the balance to be struck between individual rights and the wider public interest. For the reasons set out in section 6.3 of the SoR the applicant concluded that the inclusion of powers for CA would not breach the convention rights of those who would be affected and that it would be appropriate and proportionate to make the DCO, including the grant of powers of CA.
- 6.8.8. The ExA has found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, the ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. The ExA is therefore satisfied that the CA and TP sought is compatible with the Human Rights Act 1998 and the ECHR.
- 6.8.9. The Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The ExA has had regard to this duty throughout the examination and in its consideration of the issues raised in this report.
- 6.8.10. The applicant undertook an equality impact assessment during the preliminary design stage with the outputs from this assessment found in section 2 of the Equality Impact Assessment (EqIA) [\[APP-137\]](#). The EqIA found that it would not anticipate any disproportionate impacts on protected characteristic groups as a result of the proposed development. The ExA did not receive any representation on this matter during the examination.
- 6.8.11. Overall, the ExA finds that the proposed development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the

relationships between such persons and persons who do not share a protected characteristic. On that basis, the ExA has found no breach of the Public Sector Equality Duty.

## **6.9. CONCLUSIONS**

6.9.1. The ExA concludes that the applicant has had regard for all the legislative tests set out in the Planning Act 2008 and the advice in the CA Guidance. We also conclude that the land to be acquired compulsorily is required for the proposed development and is the minimum necessary that will allow the applicant to construct, operate and maintain the scheme.

6.9.2. In the event that the Secretary of State is minded to grant development consent for the proposed development, and is satisfied that the funds are in place, the ExA recommends that:

- The CA included in the rDCO be granted.
- The TP included in the rDCO be granted.
- The powers included in the rDCO to apply, modify or exclude a statutory provision be granted.

## 7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

### 7.1. INTRODUCTION

- 7.1.1. The application draft Development Consent Order (dDCO) [APP-005] and the Explanatory Memorandum (EM) [APP-006] were submitted by the applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the examination with the latest version of the dDCO being [REP6-002] and the EM being [REP3-006]. The EM describes the purpose of the dDCO and each of its articles and schedules.
- 7.1.2. The ExA's recommended draft DCO (rDCO) is contained in [appendix C](#) of this report.
- 7.1.3. Changes because of typographical or grammatical errors, or minor changes in the interests of clarity, consistency or updates to lists following discussion between the applicant and relevant IPs, or as a result of written questions or comments which we have made, are not reported.
- 7.1.4. The ExA is aware that on 01 October 2025, the Secretary of State for Transport granted development consent for the A46 Newark Bypass. In doing so the Secretary of State made a number of changes to the proposed DCO. Most of these changes relate to the specifics of the Newark Bypass DCO, however the ExA notes that there were some more general changes made by the Secretary of State. Given the A46 Newark Bypass DCO was made after the closure of our examination (12 September 2025) we had no opportunity to engage with parties about any further changes to the rDCO. In those circumstances the ExA consider it would not be appropriate to recommend any changes in our rDCO in the absence of being able to understand parties' views as to any amendments of substance.

### 7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The structure of the applicant's final dDCO [REP6-002] is set out in Table 7.2.1 below.

**Table 7.2.1 – Structure of draft DCO**

Part	Summary
1 Preliminary	Article 1 defines how the order may be cited. Article 2 provides interpretation of terms and definitions.
2 Principal Powers	Article 3 grants development consent to the undertaker to construct, operate and use the authorised development. Article 4 enables the undertaker to maintain the authorised development while article 5 addresses the maintenance of drainage works. Article 6 clarifies the relationship between the application of planning permissions granted under the Town and Country Planning Act 1990 (or permitted development rights deemed to be granted under it) and the development powers granted by the Order.

	<p>Article 7 controls the limits of deviation of the works by reference to the Works Plans.</p> <p>Articles 8 set out who has the benefit of the powers of the Order and article 9 sets out how (and to whom) those powers can be transferred.</p>
3 Streets	<p>Articles 10 to 17 provide for the undertaker to be able to carry out works to and within streets, to alter the layout of streets, to create or improve accesses; to stop up streets and temporarily close streets and public rights of way and use private roads.</p> <p>Articles 18, 19 and 20 provide for the undertaker to have relevant traffic regulation powers.</p>
4 Supplemental Powers	<p>Articles 22 to 26 set out supplemental powers relating to the discharge of water, works to watercourse, protective works to buildings, the authority to survey land, the works to trees/ hedgerows and works relating to tree preservation order trees.</p>
5 Powers of Acquisition and Possession	<p>Articles 27 to 45 provide for the undertaker to be able to compulsorily acquire rights over/ within the Order land, and to be able to temporarily use parts of the Order land for the construction or maintenance of the authorised development.</p> <p>The provisions also provide for the undertaker to suspend or extinguish certain private rights.</p> <p>The provisions provide for compensation to be payable to affected persons (AP) in respect of these powers, where that is not already secured elsewhere.</p> <p>These articles also provide for powers in relation to land and equipment of statutory undertakers.</p>
6 Miscellaneous and General	<p>Article 46 overrides statutory provisions relating to landlord and tenant law.</p> <p>Article 47 defines operational land for the purposes of the Town and Country Planning Act 1990.</p> <p>Article 48 provides a defence to proceedings in respect of statutory nuisance.</p> <p>Articles 49 to 56 respectively include provisions for the protection of interests through the protective provisions (set out in schedule 9); the certification of documents relevant to the Order; notices served under the Order; arbitration in case of disagreements under the Order; disapplication and modification of certain legislative provisions; amendment of certain local legislation provisions; appeals relating to the Control of Pollution Act 1974; and arbitration.</p>
<b>Schedules</b>	



1 Authorised Development	Specifies numbered works which comprise the authorised development and other associated development.
2 Requirements	Sets out the requirements which are proposed to control the construction, operation and maintenance of the authorised development.
3 Stopping Up of Streets and Private Means of Access & Provisions of New Streets and Private Means of Access	Sets out the streets and private means of access which are to be stopped up pursuant to the Order in accordance with article 17 and any replacements to be provided.
4 Classification of Roads, etc.	Sets out the classification of new and realigned roads, footway provision, private means of access provision, the speed limits and clearways as provided for by articles 18,19 and 20 of the Order.
5 Hedgerows and Trees	Sets out the removal of hedgerows and works to trees subject to tree preservation orders in accordance with articles 25 and 26 of the Order.
6 Land in Which Only New Rights etc. May be Acquired	Identifies the land in respect of which the undertaker's compulsory acquisition powers are limited to the compulsory acquisition of rights, in accordance with Article 30.
7 Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights and Imposition of Restrictive Covenants	Provides for various amendments to legislation relating to compulsory purchase and compensation for the purposes of the Order.
8 Land of which only Temporary Possession may be taken	Identifies the land for which temporary possession may be taken, in accordance with article 39 of the Order.
9 Protective Provisions	Contains provisions for the benefit of different types of statutory undertakers in accordance with articles 42 and 49.
10 Documents to be Certified	Identifies the plans and other documents to be certified by the Secretary of State in accordance with Article 50.

7.2.2. The structure is explained more fully in the final EM [\[REP3-006\]](#). The EM takes account of the (now withdrawn) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. It also refers to where the drafting has been taken from wording for other orders made under the Planning Act 2008 (the PA2008). The original application dDCO and subsequent iterations are in the form of a statutory instrument as required by s117(4) of the PA2008

- 7.2.3. No IPs objected to the structure of the DCO, and we find that it is fit for purpose and no changes to the structure are required.
- 7.2.4. The dDCO [\[REP6-002\]](#) identifies various “*control documents*” which would be secured through direct commitments under the dDCO. The control documents contain more detailed commitments, being certified documents under article 50 and listed in schedule 10 of the DCO.
- 7.2.5. The First Iteration of the Environmental Management Plan [\[REP6-010\]](#) identifies how mitigation and management measures would be implemented to manage the environmental effects of the proposed development as identified within the ES. In addition, a Register of Environmental Actions and Commitments [\[REP6-012\]](#) provides further detail of the environmental commitments and actions secured.
- 7.2.6. During the examination through LIRs, written representations (WR) and written questions various issues were raised in relation to the detail of certain control documents. Where appropriate these are addressed in the relevant topic chapter.

### 7.3. CHANGES DURING EXAMINATION

- 7.3.1. The applicant updated the dDCO during the pre-examination stage and during the examination at various deadlines responding to issues raised in questions, to WR and as a consequence of the hearing process. The applicant submitted both clean and tracked change versions of the dDCO. The changes made to the dDCO and the reasons for these changes can be found in the Schedule of Changes to Development Consent Order [\[REP6-018\]](#) submitted alongside a revised version of the dDCO.
- 7.3.1. Section 2 of the applicant’s Closing Summary Statement [\[REP6-025\]](#) provides details of the amendments which the applicant made to its dDCO articles during the examination.
- 7.3.1. The notable changes made can be summarised as:
- Requirement 4 – Additional management plans added (Traffic Management Plan, Schemes Asbestos Management Plan and Pollution Control Incident Plan).
  - Requirement 4 - Introduction of Ornithological Noise Monitoring at Coombe Pool SSSI Method Statement.
  - Requirement 8 – inclusion of an updated mechanism for dealing with protected species which were not previously identified in the Environmental Statement (ES).
  - Requirement 15 – Changing wording to include to improve precision to replace parties with undertaker.

### 7.4. ExA RECOMMENDED CHANGES TO THE dDCO [\[REP6-002\]](#)

- 7.4.1. There are two changes to the dDCO we are recommending.

#### **Article 52 (1) (c) - Disapplication and modification of legislative provisions**

- 7.4.2. Natural England (NE) [\[REP6-027\]](#) set out its continued disagreement with the disapplication of its powers under sections 28E and 28H of the Wildlife and Countryside Act (WCA) 1981 regarding works within the Coombe Pool SSSI. In Item 1 of the signed SoCG [\[REP6-021\]](#) this matter is shown as not agreed. The applicant responded in the SoCG that the works within the SSSI are relatively minor consisting of the replacement of the timber boundary fence and related vegetation removal. It goes on to assert that by virtue of section 28P of the WCA that planning permission

represents a reasonable excuse for works in an SSSI and consequently the disapplication should apply to sections 28E and 28H.

- 7.4.3. Section 28P is specific about allowing planning permission granted under Part III of the Town and Country Planning Act 1990 and not relating to an order granting development consent. The ExA understands that the work to replace the timber boundary fencing would represent a relatively minor intrusion into the SSSI, but we do not agree with the applicant that it can rely on section 28P of the WCA as a defence against not properly engaging with NE as required in advance of any works. For this reason, we agree with NE and are recommending that article 52 (1) (c) should be deleted from the dDCO and it is not included in our rDCO in [appendix C](#).

#### **Article 12 (1)(a) and (b) - Power to alter layout etc. of streets**

- 7.4.4. In question DCO.1.3 of ExQ1 [\[PD-008\]](#) the ExA requested deletion of the word “kerb” because it is a building block of an element of a highway like footway, cycleway and carriageway. It is not an element of a highway in its own right and inclusion in this article is meaningless. The applicant [\[REP3-044\]](#) responded “that the inclusion of the word ‘kerb’ is well preceded in this article (see the A12 Chelmsford to A120 Widening Scheme DCO and the M3 Junction 9 Improvement DCO) and does not consider that it needs to be removed.”
- 7.4.5. In terms of precedence the Gatwick Airport Northern Runway Project DCO article 12 (1) (a) and (c) does not have the word “kerb” included in the corresponding article. The ExA considers, in any event, that precedence does not confer meaning and that the inclusion of the word “kerb” in this paragraph is meaningless and should be removed. Consequently, our rDCO does not include the word “kerb” in this article.

## **7.5. OUTSTANDING DCO MATTERS**

### **Schedule 9 – protective provisions**

- 7.5.1. At the start of the examination representations were made about protecting the networks of National Grid Telecoms Limited (NGT) [\[RR-002\]](#) and National Grid Electricity Distribution (East Midlands) plc (NGED) [\[RR-003\]](#). Discussion between the parties continued throughout the examination. Osborne Clarke LLP [\[REP6-028\]](#), near the close of the examination, set out that the protective provisions were still under discussion but had not yet been agreed. The final Land and Rights Negotiations Tracker [\[REP7-004\]](#) records the closing position on negotiations between the parties. It records that the applicant is confident that it will agree protective provisions by the time of the decision on the DCO. The ExA have no reason to challenge that assumption.
- 7.5.2. In the final Land and Rights Negotiations Tracker [\[REP7-004\]](#) it is also recorded that Neos Networks, Vodafone and Colt Technology Services had yet to agree the protective provisions. None of these companies made representation to the examination but the applicant again expressed confidence that agreement can be reached prior to the decision being made on the DCO.
- 7.5.3. The ExA considers, notwithstanding the ongoing discussions with some undertakers, the protective provisions set out in the rDCO are satisfactory to protect the interests of the various statutory undertakers

### **ExA Conclusion on outstanding matters relating to protective provisions**

- 7.5.4. Only two representations were made to the examination about protective provisions and at the close of the examination the applicant records that these were still under

discussion along with three other companies which had made no representation to us. We acknowledge that the applicant was still in discussion with a number of statutory undertakers at the close of the examination. We are however satisfied that the protective provisions as set out in the rDCO will protect the interests of the statutory undertakers whose apparatus may be affected by the works.

## **7.6. LEGAL AGREEMENTS AND OTHER CONSENTS**

- 7.6.1. There are no planning obligations proposed to secure any element of the proposed development or to manage its onsite or offsite effects. We are content that all necessary security would be provided by the rDCO and that no planning obligations are required.
- 7.6.2. Details of other consents required to construct, operate and maintain the proposed development are set out in the Consents and Agreements Position Statement [\[REP6-004\]](#).
- 7.6.3. We conclude that there are no additional matters arising from or relating to other consents which indicate against the grant of the DCO or for which the DCO should additionally provide.

## **7.7. CONCLUSIONS**

- 7.7.1. The ExA has had regard to all matters forming the application and put before us during the examination, including the iterations of the dDCO.
- 7.7.2. We are satisfied that the rDCO ([Appendix C](#)) adequately defines the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the ES.
- 7.7.3. We consider that the rDCO ([Appendix C](#)) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis we are of the view that paragraph 4.11 of the NNNPS is satisfied.

## 8. SUMMARY OF FINDINGS AND CONCLUSIONS

### 8.1. FINDINGS AND CONCLUSIONS

- 8.1.1. This is an application where a national policy statement (NPS) has effect and accordingly falls to be determined under section (s) 104 the Planning Act 2008 (PA2008). As required by s104(2), in making this recommendation, the ExA has had full regard to the National Networks NPS 2024 (NNNPS). The making of the recommended draft Development Consent Order (rDCO) would be in accordance with the said policy document. Accordingly, s104(3) is satisfied. The ExA has concluded that s104(4), s104(5) and s104(6) do not apply.
- 8.1.2. The proposed development would also accord with the development plans when taken as a whole; and other relevant policies, all of which have been taken into account in this report. The ExA has had regard to the local impact reports (LIR) produced by:
- Coventry City Council [\[REP1-036\]](#);
  - Rugby Borough Council [\[REP1-039\]](#); and
  - Warwickshire County Council [\[REP1-040\]](#).
- 8.1.3. With regard to all other matters and representations received in the examination, there are no important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- 8.1.4. The ExA concludes that the weight to be attached to the compelling case for the need for the proposed development, as set out in NNNPS, outweighs the negative effects as identified in section 3 and summarised in section 5 of this report.
- 8.1.5. Section 4 of this report sets out the ExA's analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). The ExA has had regard to the findings of the HRA Report [\[APP-087\]](#) and subject to the mitigation measures secured in the rDCO, our view is that there are no HRA matters that we consider would prevent the making of the DCO. However, we recognise that the Secretary of State is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the definitive assessment.
- 8.1.6. As assessed in section 3 and summarised in section 5 of this report, the ExA concludes that the proposed development accords with the policies in the designated NNNPS.
- 8.1.7. In relation to the application for compulsory acquisition (CA) and temporary possession (TP) powers within the rDCO, the ExA concludes that the proposed development for which the land and rights are sought would be in accordance with national policy as set out in the NNNPS.
- 8.1.8. The need to secure the land and rights required, and to construct the proposed development within a reasonable commercial timeframe, represent a significant public benefit. The private loss to those affected is mitigated through the fact that the construction period would be limited, and the applicant is seeking to acquire the minimum possible rights and interests that they would need to construct and maintain the proposed development.
- 8.1.9. The applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. As the Secretary of State is both the funder and arbiter of this proposed development, they

will need to be satisfied that adequate and secure funding would be available to enable CA within the statutory period following the order being made.

- 8.1.10. The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree. Furthermore, throughout the examination the ExA has had due regard to the Public Sector Equality Duty.
- 8.1.11. The ExA concludes that the Order be made subject to the changes as prescribed in the rDCO, which would overcome any final concerns with the proposed development.

## **8.2. RECOMMENDATION**

- 8.2.1. For all of the above reasons and in the light of our findings and conclusions on important and relevant matters set out in this report, the ExA recommends that the Secretary of State for Transport makes the A46 Coventry Junctions (Walsgrave) Junctions Order in the form recommended in [appendix C](#) to this report.



**APPENDICES**

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## **APPENDIX A: REFERENCE TABLES**

Table A1 Summary of relevant legislation for the proposed development

Table A2 Summary of other relevant national policies

Table A3 Summary of relevant local policies

Table A4 List of issues raised in the Local Impact Reports

**Table A1 – Summary of relevant legislation for the proposed development**

Relevant Legislation
<ul style="list-style-type: none"><li>• Acquisition of Land Act 1946</li><li>• Acquisition of Land Act 1981</li><li>• Agricultural Holdings Act 1986 and Agricultural Tenancies Act 1995</li><li>• Ancient Monuments and Archaeological Areas Act 1979</li><li>• Banking and Financial Dealings Act 1971</li><li>• Burial Act 1857</li><li>• Climate Change Act 2008, (as amended)</li><li>• Communications Act 2003</li><li>• Competition and Service (Utilities) Act 1992</li><li>• Compulsory Purchase Act 1965</li><li>• Compulsory Purchase (Vesting Declarations) Act 1981</li><li>• Control of Pollution Act 1974</li><li>• Countryside and Rights of Way Act 2000 (as amended)</li><li>• Courts Act 1971</li><li>• Coventry Gas Act 1856</li><li>• Criminal Justice Act 1982</li><li>• Criminal Justice and Courts Act 2015</li><li>• Cycle Tracks Act 1984</li><li>• Digital Economy Act 2017</li><li>• Electricity Act 1989</li><li>• Environment Act 1995</li><li>• Environment Act 2021</li><li>• Environmental Protection Act 1990 (as amended by the Environment Act 1995)</li><li>• Equality Act 2010</li><li>• EU (Withdrawal) Act 2018</li><li>• Flood and Water Management Act 2010 and Commencement Orders</li><li>• Forestry Act 1967</li><li>• Gas Act 1986</li><li>• Growth and Infrastructure Act 2013</li><li>• Health and Social Care Act 2012 (as amended by the Health and Care Act 2022)</li><li>• Housing (Consequential Provisions) Act 1985</li></ul>

## Relevant Legislation

- Housing and Planning Act 2016
- Highways Act 1980
- Historic Buildings and Ancient Monuments Act 1953
- Infrastructure Act 2015
- Interpretation Act 1978
- Land Compensation Act 1961
- Land Compensation Act 1973
- Land Drainage Act 1991
- Land Drainage Act 1994
- Local Government Act 1985
- Marine and Coastal Access Act 2009
- Military Remains Act 1986
- Natural Environment and Rural Communities Act 2006 (as amended)
- Neighbourhood Planning Act 2017
- New Roads and Street Works Act 1991
- Noise and Statutory Nuisance Act 1993
- Planning Act 2008
- Planning (Consequential Provisions) Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning and Compensation Act 1991
- Postal Service Act 2000
- Protection of Badgers Act 1992
- Reservoirs Act 1975
- Road Traffic Regulation Act 1984
- Road Traffic (Consequential Provisions) Act 1988
- Rural Communities Act 2006
- Salmon and Freshwater Fisheries Act 1975
- Town and Country Planning Act 1990 (as amended)
- Traffic Management Act 2004
- Treasure Act 1996
- Trent Valley Railway Act 1845
- Tribunals, Courts and Enforcement Act 2007
- Utilities Act 2000
- Wales Act 2003

## Relevant Legislation

- Water Act 2017
- Water Industry Act 1991
- Water Resources Act 1991 (as amended)
- Water Act 2003 and Water Act 2014, UK Government
- Wildlife and Countryside Act 1981 (as amended)
- The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019
- The Air Quality (England) Regulations 2000
- The Air Quality (England) Amendment Regulations 2002
- The Air Quality Standards Regulations 2010 (as amended)
- The Air Quality Standards (Amendment) Regulations 2016
- The Community Infrastructure Levy Regulations 2010
- The Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017
- The Conservation of Habitats and Species Regulations 2017 (as amended)
- The Contaminated Land (England) (Amendment) Regulations 2012
- The Control of Pollution Act 1974
- The Control of Pollution Regulation 1996
- The Controlled Waste (England and Wales) Regulations 2012
- The Eels (England and Wales) Regulations 2009
- The Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (as amended)
- The Environmental Noise (England) Regulations 2006
- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (as amended)
- The Environmental Permitting (England and Wales) Regulations 2016 (as amended)
- The Environmental Permitting (England and Wales) (Amendment) Regulations 2023
- The Environmental Protection (Duty of Care) Regulations 1991 (as amended)
- The Environmental Targets (Fine Particulate Matter) (England) Regulations 2023
- The Hazardous Waste (England and Wales) Regulations 2005 (as amended)

## Relevant Legislation

- The Hazardous Waste (Miscellaneous Amendments) Regulations 2015
- The Hedgerow Regulations 1997
- The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- Infrastructure Planning (Decisions) Regulations 2010
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)
- The Landfill Tax Regulations 1996
- The Management of Health and Safety at Work Regulations 1999
- The Noise Insulation Regulations 1975 (as amended)
- The Street Works (Charges for Occupation of the Highway) (England) Regulations 2012
- The Town and Country Planning (Tree Preservation) England Regulations 2012
- The Traffic Management Permit Scheme (England) Regulations 2007
- The Traffic Management Permit Scheme (England) (Amendment) Regulations 2015
- The Urban Waste Water Treatment (England and Wales) Regulations 1994
- The Waste (England and Wales) Regulations 2011 (as amended)
- The Waste and Environmental Permitting etc (Legislative Functions and Amendment etc) (EU Exit) Regulations 2020
- The Waste (Circular Economy) (Amendment) Regulations 2020
- The Waste Electrical and Electronic Equipment (England and Wales) Regulations 2013
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- The Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009
- The Kyoto Protocol, 1997
- The Paris Agreement, 2015
- European Landscape Convention (ELC), 2000
- United Nations Framework Convention on Climate Change, 1992
- Hazardous Waste Directive (1991/689/EEC)
- Landfill Directive (1999/31/EC)
- The Birds Directive (2009/147/EC)
- Waste Framework Directive (WFD) (2008/98/EC)



### Relevant Legislation

- The Groundwater (WFD) (England) Direction 2016

**Table A2 – Summary of other relevant national policies**

<b>Design Manual for Roads and Bridges</b>
<p>The Design Manual for Roads and Bridges (DMRB), published by National Highways, contains information about its current standards relating to the design, assessment and operation of motorway and all-purpose trunk roads in the United Kingdom.</p> <p>Chapter 4 of the ES <a href="#">[APP-026]</a> sets out the position of the DMRB and its role in the application. It stated that the DMRB is the established standard for assessing the environmental impacts of highway schemes. It went on to state that the methodologies used for the assessments in the ES was founded on those set out in the Environmental Scoping Report <a href="#">[APP-113]</a> and informed by the relevant DMRB standards. ES paragraph 4.2.2 and Table 4-1 of ES Chapter 4 <a href="#">[APP-026]</a> provided lists of the DMRB standards that applied to the assessments reported in the ES.</p>
<b>Environmental Improvement Plan (2023)</b>
<p>The Environment Improvement Plan was published in January 2023 by the Department for Environment Food and Rural Affairs and represents the Government's five revision of its 25 Year Environmental Plan (25YEP) published in 2018. The Environmental Improvement Plan reported on progress made against the ten goals set out in the 25YEP.</p> <p>The Environmental Improvement Plan stated that reducing emissions from transport was essential to delivering better air quality. The plan went on to state that the Government provided funding for road and junction improvements with the purpose of reducing NO<sub>2</sub> concentrations in hotspots and improving air quality.</p>
<b>Green Infrastructure Planning and Design Guide (2023)</b>
<p>The Green Infrastructure Planning and Design Guide was issued in 2023 by Natural England. The stated aims of the guidance document were to provide practical, evidence-based advice on the design and delivery of good quality green infrastructure.</p> <p>section 2.2 of the guidance sets out green infrastructure principles, while section 2.3 of the guidance sets out the ambition for green infrastructure in terms of quality, quantity, and type in the form of headline green infrastructure standards.</p> <p>Page 126 guides on managing vegetation and ecological corridors along linear infrastructure, including roads, with a particular emphasis on:</p> <ul style="list-style-type: none"><li>• managing surface water runoff; and,</li></ul>

- providing green infrastructure networks such as green bridges, underpasses and ducts to connect important landscapes, habitats and foraging sites.

Pages 129 and 130 recommend a menu of green infrastructure standards specific to linear infrastructure.

## National Infrastructure Strategy (2020)

The National Infrastructure Strategy (NIS) (Nov 2020) sets out the Government's plans to transform the UK's infrastructure networks.

The NIS commits the Government to high levels of investment in the strategic road network.

Upgrading the A46 Coventry Junctions is specifically mentioned within the NIS. The upgrading of the A46 Coventry Junctions is identified on page 38 as a key transport investment in the West Midlands by the government.

## Road Investment Strategies

The Road Investment Strategy 2 (RIS2) published in March 2020 by the Department for Transport (DfT) explained the Government's aims and proposals for investment in the strategic road network for 2020 to 2025.

RIS2 was the successor to the first Road Investment Strategy (RIS1). The RIS2 strategy document noted that RIS1 invested £17 billion in upgrades and maintenance to the strategic road network.

Upgrading the A46 Coventry Junctions was specifically mentioned within RIS2. The upgrading of the A46 Coventry Junctions was identified on page 97 as a commitment for RP2 (second Road Period, covering the financial years 2020/21 to 2024/25).

Page 98 of RIS2 described the scope of the A46 Coventry Junctions project:

*'A46 Coventry Junctions – grade separation of the Binley and Walsgrave roundabouts on the A46 near Coventry, upgrading the trunk sections of the A45/A46 between the M6 and M40 to a consistent standard.'*

As part of the A46 Coventry Junctions scheme, improvements at the A45/A46 Tollbar End Junction, to the south of Coventry, were completed in 2017 and work to upgrade the Binley Junction was completed in February 2023 [\[APP-024\]](#).

RIS2 expired on the 31 March 2025. The third Road Investment Strategy (RIS3) was delayed on account of a government spending review. The RIS3 followed an Interim Settlement for National Highways from April 2025 to March 2026. The third RIS is intended to cover the period 2026 to 2031.

The published Interim Settlement explaining investment and management of the strategic road network from April 2025 and March 2026 referred in Table 1

(page 26) to the A46 Coventry Junctions as a project in construction for the duration of 2025/26.

### **The National Planning Policy Framework (NPPF)**

A new version of the National Planning Policy Framework (NPPF) was published in December 2024. The NPPF, and the accompanying national planning practice guidance, set out the Government's planning policies for England and how these are expected to operate.

Paragraph 5 of the NPPF notes that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the Planning Act 2008 (the PA2008) and relevant National Policy Statements (NPSs), as well as any other relevant matters (which may include the NPPF).

Paragraphs 7 and 8 describe the Government's approach to achieving sustainable development through the planning system, based on three overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive ways.

Paragraph 11 state that plans and decisions should apply a presumption in favour of sustainable development.

The NPPF and the national planning practice guidance are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project.

### **25 Year Environment Plan (2018)**

Known as the 25 Year Environment Plan, the plan, published in 2018, sets out the Government's goals aimed at increasing the benefits from the environment and managing growing pressures on the environment.

Chapter 4 of the plan set out improvements aimed at increasing resource efficiency and reducing pollution and waste. Section 2 (iv) of Chapter 4 focused on improvements to minimise the risk of chemical contamination in water noting road runoff as one such source.

Section 5 (ii) of Chapter 1 noted that a range of statutory agencies, including highway authorities, would be called on to work jointly when addressing the risks of environmental pollution from surface water flooding.

**Table A3 Summary of relevant local policies**

Local Authority	Identified Documents and/or Relevant Policies
Coventry City Council	<p>Coventry City Council Air Quality Supplementary Planning Document, 2019</p> <p>Coventry City Council Biodiversity Net Gain Supplementary Planning Document December 2022</p> <p>Coventry City Council Local Development Plan 2011-2031</p> <p>Policy AC4: Walking and Cycling</p> <p>Policy AC2: Impact of growth on local network</p> <p>Policy DE1: Ensuring High Quality Design</p> <p>Policy DS 3: Sustainable development Policy</p> <p>Policy DS 4 (Part A): General masterplan principles</p> <p>Policy EM1: Planning for Climate Change Adaptation</p> <p>Policy EM2: Building Standards</p> <p>Policy EM4: Flood Risk Management</p> <p>Policy EM5: Sustainable Drainage Systems (SuDS)</p> <p>Policy EM6: Redevelopment of Previously Developed Land</p> <p>Policy EM7: Air Quality</p> <p>Policy EM8: Waste management</p> <p>Policy EM9: Safeguarding mineral resources</p> <p>Policy EM10: Non mineral development in mineral safeguarded areas</p> <p>Policy GE1: Green Infrastructure</p> <p>Policy GE2: Green Space</p> <p>Policy GE3: Biodiversity, Geological, Landscape and Archaeological Conservation</p> <p>Policy GE4: Tree Protection</p> <p>Policy HE2: Conservation and Heritage Assets</p> <p>Policy HW1: Health Impact Assessments</p> <p>Coventry City Council Transport Strategy (2022)</p> <p>Coventry Connected (Transport and Accessibility) SPD (2019)</p> <p>Coventry Health and Wellbeing Strategy (2023- 2026)</p>

Local Authority	Identified Documents and/or Relevant Policies
Coventry City Council cont'd	<p>Coventry Local Flood Risk Management Strategy (Coventry City Council, 2022)</p> <p>Coventry Preliminary Flood Risk Assessment (Coventry City Council, 2017)</p> <p>Coventry Strategic Flood Risk Assessment (Coventry City Council, 2015)</p> <p>Coventry Surface Water Management Plan (Coventry City Council, 2023)</p> <p>Supplementary Planning Document (SPD) Trees &amp; Development Guidelines for Coventry (Coventry City Council, October 2020)</p>
Leicestershire County Council	<p>Leicestershire County Council Minerals and Waste Local Plan 2015 to 2031</p> <p>Policy M1: Supply of sand and gravel aggregate</p> <p>Policy M2: Supply of sand and gravel aggregate from existing sites</p> <p>Policy M3: Sand and gravel extraction (unallocated areas)</p> <p>Policy M4: Crushed rock</p>
Regional Level	<p>The Warwickshire, Coventry and Solihull Local Biodiversity Action Plan 2017 – 2022</p> <p>Transport for West Midlands Local Transport Plan 4</p> <p>Warwickshire, Coventry and Solihull Subregional Green Infrastructure Strategy 2013</p> <p>West Midlands Combined Authority: Five Year Plan (2021 – 2026)</p> <p>West Midlands Local Transport Plan 2011 – 2016</p> <p>GT9 To minimise noise nuisance from the transport network.</p> <p>West Midlands Natural Environment Plan: 2021-2026</p>
Rugby Borough Council	<p>Rugby Borough Council Air Quality Supplementary Planning Document, 2021</p> <p>Rugby Borough Council Climate Change and Sustainable Design and Construction Supplementary Planning Document (Rugby Borough Council, 2023)</p> <p>Rugby Borough Council Local Plan 2011-2031</p> <p>Policy HS1: Healthy, safe and inclusive communities</p> <p>Policy HS2: Health Impact Assessments</p>



Local Authority	Identified Documents and/or Relevant Policies
Rugby Borough Council cont'd	<p>Policy HS5: Healthy, safe and inclusive communities</p> <p>Policy NE1: Protecting Designated Biodiversity and Geodiversity Assets</p> <p>Policy NE2: Strategic Green and Blue Infrastructure</p> <p>Policy NE3: Landscape Protection and Enhancement</p> <p>Policy SDC1: Sustainable Design</p> <p>Policy SDC2: Landscaping</p> <p>Policy SDC3: Protecting and Enhancing the Historic Environment</p> <p>Policy SDC5 Flood Risk Management</p> <p>Policy SDC6: Sustainable Drainage</p> <p>Policy SDC7: Protection of the Water Environment and Water supply</p> <p>Spatial Vision, Spatial Objectives, section 2.23, Environmental - Point 9</p> <p>Chapter 10 Sustainable Design and Construction, paragraph 10.2</p>
Warwickshire County Council	<p>Warwickshire Local Cycling and Walking Infrastructure Plan</p> <p>Warwickshire's Local Transport Plan 4</p> <p>Warwickshire Minerals Local Plan 2018 to 2032</p> <p>Policy S0: Overarching Policy – Mineral sites to be allocated</p> <p>Policy MCS 1: Supply of minerals and materials</p> <p>Policy MCS 2: Sand and Gravel</p> <p>Policy MCS 3: Crushed rock</p> <p>Policy MCS 4: Secondary and recycled aggregates</p> <p>Policy MCS 5: Safeguarding of minerals and mineral infrastructure</p> <p>Policy DM 10: Mineral safeguarding</p> <p>Warwickshire Strategic Flood Risk Assessment (Warwickshire County Council, 2013)</p> <p>Warwickshire Waste Core Strategy Adopted Local Plan 2013 to 2028</p> <p>Policy CS 1: Waste management capacity</p>

Local Authority	Identified Documents and/or Relevant Policies
Warwickshire County Council cont'd	<p>Policy CS 5: Proposals for re-use, recycling, waste transfer/storage and composting</p> <p>Policy CS 6: Proposals for other types of recovery</p> <p>Policy CS 7: Proposals for disposal facilities</p>

**Table A4 List of issues raised in the Local Impact Reports (LIRs)**

<b>Coventry City Council LIR</b>	<a href="#"><u>REP1-036</u></a>
<p>Relevant Planning History</p> <p>Policy Context</p> <p>Landscape and Visual</p> <p>Heritage and Conservation</p> <p>Archaeology</p> <p>Biodiversity</p> <p>Flooding and Drainage</p> <p>Noise and Vibration</p> <p>Transport and Traffic</p> <p>Traffic Modelling</p> <p>Accessibility and Integration</p> <p>Road design</p> <p>Construction Traffic</p> <p>Clifford Bridge Road</p> <p>Air Quality</p> <p>Coventry air quality management area</p>	
<b>Rugby Borough Council LIR</b>	<a href="#"><u>REP1-039</u></a>
<p>Statement of applicable development plan policies</p> <p>Accessibility and integration for walkers, cyclists and horse-riders</p> <p>Creation of an employment-led headquarters campus development at Crowner Fields Farm and Home Farm, Hinckley Road (B4065), Ansty, Warwickshire</p> <p>A new Local Plan for Rugby Borough covering the period 2024-2045</p>	
<b>Warwickshire County Council LIR</b>	<a href="#"><u>REP1-040</u></a>
<p>Context</p> <p>Key Impacts and Outcomes</p> <ul style="list-style-type: none"> <li>(a) Route Consistency and Performance</li> <li>(b) Supporting Economic Growth</li> <li>(c) Network Resilience</li> <li>(d) Reducing Severance and Improving Access</li> </ul>	

## APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Meaning
AA	Appropriate Assessment
ANCB	Appropriate Nature Conservation Body
AP	Affected person
ASI	Accompanied site inspections
BMV	Best and most versatile
BNG	Biodiversity Net Gain
BoR	Book of reference
CA	Compulsory acquisition
CAH	Compulsory acquisition of land and rights hearing
Ch.	chapter
D	Deadline
db	Decibel
dDCO	draft Development Consent Order
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
EC	European Community
ECHR	European Convention on Human Rights
EEA	European Economic Area
EEC	European Economic Community
EIA	Environmental Impact Assessment
EL	Examination library
ELC	European Landscape Convention
EM	Explanatory memorandum
EMP	Environmental Management Plan
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EqIA	Equality Impact Assessment
ES	Environmental Statement
EU	European Union
ExA	Examining Authority

ExQ1	Examining Authority's first written questions
GWDTE	Groundwater Dependent Terrestrial Ecosystem
HRA	Habitats Regulations Assessment
IAP1	Initial assessment of principal issues
IP	Interested party
IPG	Interim Planning Guidance
ISH	Issue specific hearing
Km	Kilometre
KSI	Killed or seriously injured
LIR	Local impact report
LRN	Local road network
LSE	Likely significant effect
mph	Miles per hour
NE	Natural England
NIS	National Infrastructure Strategy
NNNPS	National Networks National Policy Statement
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSER	No significant effects report
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
OFH	Open floor hearing
OTMP	Outline Traffic Management Plan
PA2008	Planning Act 2008
PLCA	Project Landscape Character Area
PD	Procedural decision
PP	Protective provision
PPG	Planning Policy Guidance
PM	Preliminary meeting
REAC	Register of Environmental Actions and Commitments
rDCO	Recommended draft Development Consent Order
RIES	Report on the implications for European sites
RIS1	Road Investment Strategy 1

RIS2	Road Investment Strategy 2
RIS3	Road Investment Strategy 3
RP2	Second Road Period
RPG	Registered park and garden
RR	Relevant representation
SAC	Special Areas of Conservation
SHMP	Soil Handling Management Plan
SoCG	Statement(s) of common ground
SoR	Statement of reasons
SPA	Special Protection Areas
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SU	Statutory undertaker
TMP	Traffic management plan
TP	Temporary possession
USI	Unaccompanied site inspections
WCA	Wildlife and Countryside Act 1981
WCH	Walkers, cyclists and horse riders
WFD	Water Framework Directive
WR	Written representations
25YEP	25 Year Environmental Plan



## **APPENDIX C: THE RECOMMENDED DRAFT DCO**

**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

**The A46 Coventry Junctions (Walsgrave) Development Consent  
Order 202[ ]**

*Made* - - - - 202[ ]

*Coming into force-* 202[ ]

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An application has been made to the Secretary of State, under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a Panel of [x] members “the Panel” appointed as an examining authority (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the Panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(d), 115(e), 117(f), 120(g), 122(h) and 123(i) of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5(j) to, the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ] and comes into force on [ ].

#### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(k);

“the 1965 Act” means the Compulsory Purchase Act 1965(l);

“the 1980 Act” means the Highways Act 1980(m);

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- (a) Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
- (b) Amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2024/332.
- (c) Amended by S.I. 2024/317.
- (d) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
- (e) Section 115 was amended by paragraph 56 of Part 2 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
- (f) Section 117 was amended by paragraph 58 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
- (g) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (h) Section 122 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (i) Section 123 was amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
- (j) Part 1 of Schedule 5 was amended by paragraph 4 of Part 1 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c.23), paragraph 71 of Part 1 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Part 3 of Schedule 6 to the Wales Act 2017.
- (k) 1961 c. 33.
- (l) 1965 c. 56.
- (m) 1980 c. 66.

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(a);

“the 1984 Act” means the Road Traffic Regulation Act 1984(b);

“the 1990 Act” means the Town and Country Planning Act 1990(c);

“the 1991 Act” means the New Roads and Street Works Act 1991(d);

“the 2008 Act” means the Planning Act 2008(e);

“the 2017 Regulations” means the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017(f);

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“the book of reference” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in section 329(1) of the 1980 Act;

“classification of roads plans” means the document of that description listed in Schedule 11 (documents to be certified) certified by the Secretary of State as the classification of roads plans for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of pre-commencement works, and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in section 329(1) of the 1980 Act(g);

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form,

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003(h);

“the engineering drawings and sections” means the drawings and sections of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the engineering drawings and sections for the purposes of this Order;

“environmental masterplan” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the environmental masterplan for the purposes of this Order;

“environmental statement” means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the environmental statement for the purposes of this Order;

“footway” and “footpath” have the same meaning as in section 329(1) of the 1980 Act;

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(a) 1981 c. 66.

(b) 1984 c. 27.

(c) 1990 c. 8.

(d) 1991 c. 22.

(e) 2008 c. 29.

(f) S.I. 2017/3.

(g) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(h) 2003 c. 21.

“highway”, “highway authority” and “local highway authority” have the same meaning as in section 329(1) of the 1980 Act;

“the land plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7 (limits of deviation);

“maintain” in relation to any part of the authorised development includes to inspect, repair, adjust, alter, improve, landscape, preserve, remove, decommission, reconstruct, refurbish or replace, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“permit scheme” means any schemes made under Part 3 of the Traffic Management Act 2004(b) in force at the date in which this Order is made;

“pre-commencement plan” means the document of that description listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the pre-commencement plan for the purposes of this Order;

“pre-commencement works” means the work described as such in the Pre-Commencement Plan;

“relevant planning authority” means in any given provision of this Order, either Coventry City Council or Rugby Borough Council in their capacity as local planning authorities insofar as the matter in question falls within their respective administrative areas or both, as the case may be;

“the rights of way and access plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

“Secretary of State” means the Secretary of State for Transport;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A(c) (traffic authorities) of the 1984 Act;

“the traffic regulation plans” means the plans of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the traffic regulation plans for the purposes of this Order;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

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(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(b) 2004 c. 18.

(c) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the New Roads and Street Works Act 1991 (c. 22).



“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10(a) (general provision as to trunk roads) or 19(1)(b) (certain special roads and other highways to become trunk roads) of the 1980 Act;
- (b) an order or direction under section 10 of that Act;
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means National Highways Limited (company number 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans of that description listed in Schedule [11] (documents to be certified) and certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the discretion of the undertaker, either—

- (a) to an affected person directly, where that person’s land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or
- (b) to any statutory undertaker for the purpose of their undertaking.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(5) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(6) References to any statutory body includes that body’s successor bodies from time to time that have jurisdiction over the authorised development.

(7) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way and access plans.

(8) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).

(9) In this Order, the expression “includes” is to be construed without limitation.

(10) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development.

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(a) Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991; paragraph 22 of Schedule 2 to the Planning Act 2008; and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(b) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

#### **Maintenance of authorised development**

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

#### **Maintenance of drainage works**

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

#### **Planning permission**

6.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the authorised development,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(2) Development consent granted by this Order is to be deemed as specific planning permission for the purposes of section 264(3) (cases in which land is not to be treated as operational land for the purposes of that Act) of the 1990 Act.

(3) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act or compliance with any conditions of that permission is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

- (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter or that planning permission is capable of physical implementation; and
- (b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that planning permission, or compliance with any conditions of that permission, whether inside or outside the Order limits.

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(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under sub-paragraph (1) or (3) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) Any works carried out under this Order are deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act for the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(a).

(6) In paragraph (3), “enforcement action” means any enforcing action under Part 7 of the 1990 Act.

### **Limits of deviation**

7.—(1) In carrying out and maintaining the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections up to a maximum of 1 metre upwards or 1 metre downwards;

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction, and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The maximum limits of deviation set out in paragraph (1) do not apply where it is demonstrated by the undertaker to the Secretary of State’s satisfaction and the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to their functions and, in respect of the authorised development comprising highways other than a trunk road, consultation by the undertaker with the relevant local highway authority on matters related to their functions, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

### **Benefit of Order**

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of Order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

### **Consent to transfer benefit of Order**

9.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

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(a) 1967 c. 10.

- (b) grant to another person (“the grantee”) for a period agreed between the undertaker and the grantee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the grantee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

## PART 3

### STREETS

#### Application of the 1991 Act

**10.**—(1) Works constructed or maintained under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act (including any equivalent or modified provisions in any permit scheme) do not apply in relation to any works executed under the powers conferred by this Order—

- section 56(c) (power to give directions as to timing);
- section 56A(d) (power to give directions as to placing of apparatus);
- section 58(e) (restrictions on works following substantial road works);
- section 58A(f) (restriction on works following substantial street works);
- section 73A(g) (power to require undertaker to re-surface street);
- section 73B(h) (power to specify timing etc. of re-surfacing);
- section 73C(i) (materials, workmanship and standard of re-surfacing);
- section 78A(j) (contributions to costs of re-surfacing by undertaker); and

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- (a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
  - (b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.
  - (c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
  - (d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
  - (e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.
  - (f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
  - (g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
  - (h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
  - (i) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
  - (j) Section 78A was inserted by section 57 of the Traffic Management Act 2004.

Schedule 3A(a) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any alteration, diversion or restriction of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary closure, alteration, diversion and restriction of use of streets), whether or not the alteration, diversion or restriction constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(b) referred to in paragraph (4) are—

section 54(c) (advance notice of certain works), subject to paragraph (6);

section 55(d) (notice of starting date of works), subject to paragraph (6);

section 57(e) (notice of emergency works);

section 59(f) (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to an alteration, diversion or restriction (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets and other structures)—

(a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act and the undertaker is not by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 (street works in England and Wales) of that Act; or

(b) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 (street works in England and Wales) of the 1991 Act apply.

(8) Any order which may be made by the Secretary of State under section 74A(2) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(g) will not have effect in relation to the construction or maintenance of the authorised development.

## Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

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(a) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.

(b) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.

(c) As also amended by section 49(1) of the Traffic Management Act 2004.

(d) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(e) As also amended by section 52(3) of the Traffic Management Act 2004.

(f) As amended by section 42 of the Traffic Management Act 2004.

(g) S.I. 2012/425.

- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in or under the street;
- (e) maintain, renew or alter apparatus in the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a) to (j).

(2) The authority given by paragraph (1) is a statutory right for the purposes of the sections of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Subject to article 10 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

#### **Power to alter layout etc. of streets**

**12.—**(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which receives an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(5) Any application to which this article applies must include a statement that the provisions of paragraph (4) apply to that application.

(6) Paragraphs (2), (3), and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

#### **Construction and maintenance of new, altered or diverted streets and other structures**

**13.—**(1) Any highway (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, the street including any culverts or other structures laid under it, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, be maintained by and at the expense of the local highway authority from its completion.

(3) Where a street which is not, and is not intended to be, a highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street or structure to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street or structure and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street or structure of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street or structure;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause dangers to users of the street or structure; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street or structure before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street or structure to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street or structure and that the competent person had carried out those instructions.

### **Access to works**

14. The undertaker may, for the purposes of the authorised development, form and layout such means of access, or improve existing such means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Temporary closure, alteration, diversion and restriction of use of streets**

15.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.



(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter, divert or restrict the use of any street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Use of private roads**

16.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction and maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Permanent stopping up of streets and private means of access**

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in column (1) of Parts 1 and 2 of Schedule 3 (permanent stopping up of streets and private means of access) to the extent specified and described in column (2) of that Schedule.

(2) No street specified in column (1) of Parts 1 and 2 of Schedule 3 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, is open for use and been completed to the reasonable satisfaction of the street authority; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and is subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article is subject to article 43 (apparatus and rights of statutory undertakers in stopped up streets).

## **Classification of roads, etc.**

18.—(1) On the date on which the relevant part of the authorised development is completed and open for traffic the roads described in Part 1 (trunk roads) of Schedule 4 (classification of roads, etc.) will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On the date on which the roads described in Part 2 (classified roads) of Schedule 4 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(3) Unless otherwise agreed in writing with the local authority, the footways set out in Part 3 (footways) of Schedule 4 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised developed is open for traffic.

(4) The private means of access specified in column (2) of Part 4 (private means of access) of Schedule 4 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.

(5) On the date on which the roads specified in Part 5 (speed limits) of Schedule 4 (are completed and open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(6) Where the words “national speed limit” appear in column (3) of the table in Part 5 (speed limits) of Schedule 4, on and after the date on which the lengths of road identified in the corresponding row of column (2) of that table are open to traffic the national speed limit will apply to those lengths of roads.

(7) The application of paragraphs (1) to (6) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters, including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

## **Clearways**

19.—(1) From the date on which the roads described in column (2) of Part 6 (traffic regulation measures (clearways)) of Schedule 4 (classification of roads, etc.) and identified in the corresponding row of column (3) of that Part as to become a clearway, are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) may apply—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
  - (i) the removal of any obstruction to traffic;
  - (ii) the maintenance, improvement, reconstruction or operation of the road;
  - (iii) the laying, erection, maintenance or renewal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(a); or
  - (iv) any building operation or demolition;

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(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

- (b) in relation to a vehicle being used—
  - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(a)</sup>; or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000<sup>(b)</sup>; or
- (c) in relation to a vehicle waiting when the person in control of it is—
  - (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004<sup>(c)</sup>.

### **Traffic regulation**

**20.**—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—

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(a) 1991 c. 56.  
 (b) 2000 c. 26.  
 (c) 2004 c. 18.

- (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
- to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—
- (a) has effect as if duly made by, as the case may be—
    - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
    - (ii) the local authority in whose area the road is situated, as an order under section 32(a) (power of local authorities to provide parking spaces) of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
  - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers conferred by paragraph (2), the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.
- (12) Any application for consent under paragraph (2) must be accompanied by a letter informing the traffic authority—
- (a) of the period mentioned in paragraph (11); and
  - (b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

21.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance

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(a) 2004 c. 18.

of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining the works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river subject to the works that are authorised under this Order.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Subject to article 52(1)(a) (disapplication and modification of legislative provisions), nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

### **Powers in relation to watercourses**

22. The undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

- (a) temporarily alter, interfere with, occupy and use the banks, bed, waters and walls of a watercourse; and
- (b) construct, place, maintain and remove temporary works and structures within the banks, bed, waters and walls of a watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

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(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154.

(c) 1991 c. 57.

### Protective work to buildings

23.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 56 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Where the undertaker exercises the power under paragraph (1) in relation to a building listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990(a), the undertaker must, except in an emergency—

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(a) 1990 c. 9.

- (a) serve the notice served on owners and occupiers of a building or land under paragraph (5) on the local planning authority and Historic England; and
- (b) have due regard to any response received from the local planning authority or Historic England within the period specified in the notice under paragraph (5).

(10) Without affecting article 54 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (compulsory acquisition provisions) of the 2008 Act.

(12) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(13) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to land and any building on that land by the carrying out, maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the land or any building on that land by the carrying out, maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

#### **Authority to survey and investigate the land**

24.—(1) The undertaker may for the purposes of the construction, operation or maintenance of the authorised development enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land (including any watercourses, ground water, static water bodies or vegetation on the land);
- (b) without limitation on the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and ground water, to investigate the extent and nature of underground structures, foundations, plant or apparatus and remove soil and water samples and discharge water from sampling operations onto the land;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes for such purposes; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or boreholes.

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(a) Section 152 was amended by S.I. 2009/1307.



(4) No trial holes or boreholes are to be made under this article—

(a) in land located within a highway boundary without the consent of the highway authority;  
or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the entry onto land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

### **Felling or lopping of trees and removal of hedgerows**

**25.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) and (4), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(a) and includes important hedgerows.

(6) Development consent granted by this Order is to be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012(b) and section 9(4)(d) of the Forestry Act 1967(c).

### **Trees subject to tree preservation orders**

**26.**—(1) The undertaker may fell or lop any tree described in Schedule 5 (hedgerows and trees) or cut back its roots or undertake such other works described in column (2) of that Schedule

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(a) S.I. 1997/1160.

(b) S.I. 2012/605.

(c) 1967 c. 10.

relating to the relevant part of the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker will do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act will not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION OF LAND

#### **Compulsory acquisition of land**

27.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (2) of article 30 (compulsory acquisition of rights and imposition of restrictive covenants) and article 39 (temporary use of land for carrying out the authorised development).

#### **Compulsory acquisition of land – incorporation of the mineral code**

28. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated in this Order subject to the modification that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this order”.

#### **Time limit for exercise of authority to acquire land compulsorily**

29.—(1) After the end of the period of 5 years beginning on the start date—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by this Order; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 36 (application of the 1981 Act).

(2) The authority conferred by article 39 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in

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(a) 1981 c. 67.

this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(3) In this article “start date” means—

- (a) where no challenge to this Order has been made under section 118 of the 2008 Act, the day after the period for legal challenge in respect of this Order under section 118 of the 2008 Act expires; or
- (b) where a legal challenge to this Order has been made under that section, the earlier of—
  - (i) the day after the final determination of any legal challenge under that section; or
  - (ii) the day after the one-year anniversary of the date of the expiry of the period for legal challenge under section 118 of the 2008 Act, whether or not such proceedings have been finally determined by that date.

### **Compulsory acquisition of rights and imposition of restrictive covenants**

**30.**—(1) Subject to paragraphs (2) to (5), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 27 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which new rights only etc. may be acquired) the undertaker’s powers of compulsory acquisition under article 25(1) are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 6 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as are required for the benefit of any other statutory undertaker or any other person.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land, the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

### **Private rights over land**

**31.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

- (b) on the date of entry on the land by the undertaker under section 11(1)(a) (power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 42 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of the right or the imposition of the restrictive covenant over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

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(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981, section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(b) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

### **Power to override easements and other rights**

**32.**—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(3) Subject to article 54 (no double recovery), where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 101 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(4) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (3); and
- (b) fails to discharge that liability, the liability is enforceable against the undertaker.

(5) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(6) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

### **Disregard of certain improvements etc.**

**33.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

### **Set off for enhancement in value of retained land**

34.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the claim any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 30 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the claim—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

### **Modification of Part 1 of the 1965 Act**

35.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(a) (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118(c) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 29 (time limit for exercise of authority to acquire land compulsorily) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ](d)”.

(3) In section 11A(e) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 29 (time limit for exercise of authority to acquire land compulsorily) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 37(3) (acquisition of subsoil or airspace only) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

- (b) after paragraph 29, insert—

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(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.

(c) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(d) S.I. 202[ ]/[ ].

(e) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include exercising the powers under articles 16 (use of private roads), 23 (protective work to buildings), 24 (authority to survey and investigate the land), 39 (temporary use of land for carrying out the authorised development) or 40 (temporary use of land for maintaining the authorised development) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ].”.

### **Application of the 1981 Act**

- 36.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act), for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5(a) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(b) (time limit for general vesting declaration).
- (6) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 29 (time limit for exercise of authority to acquire land compulsorily) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ]”.
- (7) In section 6(d) (notices after execution of declaration) in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7(e) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 37(3) acquisition of subsoil or airspace only) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ], which excludes the acquisition of subsoil or airspace only from this Schedule.”
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 35 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil or airspace only**

**37.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 27 (compulsory acquisition

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- (a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.
- (b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
- (c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.
- (d) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
- (e) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016.
- (f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 35 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(a) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

### **Rights under or over streets**

38.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

39.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 29 (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 8 (land of which temporary possession only may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

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(a) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.



- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than a notice of entry or a declaration in connection with the acquisition of rights and/or the imposition of restrictive covenants only);
- (b) remove any apparatus, buildings, landscaping and vegetation from that land;
- (c) remove any electric line, electrical plant, apparatus, buildings, landscaping and vegetation from that land;
- (d) construct temporary works (including the provision of means of access) and buildings on that land; and
- (e) construct any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of two years beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of two years beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (e) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works; or
- (f) remove any temporary works where this has been agreed with the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

### **Temporary use of land for maintaining the authorised development**

**40.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter onto land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable

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(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

satisfaction of the owners of the land but the undertaker is not required to restore the land to a condition better than the relevant land was in before temporary possession was taken.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (6) does not prevent the undertaker giving up possession of the land.

(8) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(9) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(10) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) In this article "the maintenance period", in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

### **Crown rights**

41.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary—

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

### **Statutory undertakers**

42.—(1) Subject to the provisions of Schedule 9 (protective provisions), article 30 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, acquire existing rights, create new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 43 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

### **Apparatus and rights of statutory undertakers in stopped up streets**

43.—(1) Where a street is stopped up under article 17 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 17 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

### **Recovery of costs of new connections**

44.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 42 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 38, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 43 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

### **Special category land**

45.—(1) So much of the special category land as is required for the purposes of the exercising by the undertaker of the relevant Order powers will be discharged from all rights, trusts and incidents to which it was previously subject but only in so far as their continuance would be inconsistent with the exercising by the undertaker of the relevant Order powers.

(2) So far as the temporary use of land under article 39 (temporary use of land for carrying out the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

“the relevant Order powers” means the rights and powers exercisable over the special category land by the undertaker under article 30 (compulsory acquisition of rights and imposition of

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(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.

restrictive covenants) and article 39 (temporary use of land for carrying out the authorised development);

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference subject to compulsory acquisition and shown on the plan entitled “special category land plans”; and

“special category land plans” means the document of that description for the purposes of this Order.

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Application of landlord and tenant law**

46.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the Town and Country Planning Act 1990**

47. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

#### **Defence to proceedings in respect of statutory nuisance**

48.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d), (fb), (g) and (ga) of section 79(1) (statutory nuisances and inspection therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) of that Act if—

- (a) the defendant shows that the nuisance—

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(a) 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

(b) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974<sup>(a)</sup>; or
- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use or operation of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protection of interests**

49. Schedule 9 (protective provisions) to the Order has effect.

### **Certification of documents, etc.**

50.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 is required to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) If a plan certified under paragraph (1) is inaccurate, the undertaker, after giving not less than 28 days' notice to the relevant local planning authority, and any persons it considers appropriate including the owners and occupiers of any land affected, may apply to two justices having jurisdiction in the place where any land affected is situated for the correction of that document.

(5) The application under paragraph (4) must include copies of any representations from the relevant local planning authority and any other persons notified and the undertaker must provide notice to the relevant local planning authority of the date on which the justices will consider any such application as soon as reasonably practicable.

(6) If on an application under paragraph (4) it appears to the justices that the inaccuracy or wrong description arose from mistake or inadvertence, the justices will certify accordingly and will in their certificate state in what respect a matter is misstated or wrongly described.

(7) A certificate under subsection (6) must be notified to the Secretary of State, and upon that notification, the document certified under paragraph (1) is deemed to be amended according to that certificate and it will be lawful for the undertaker to proceed under this Order as if the certified document had always been in the corrected form.

(8) A copy of a certificate under subsection (6) must be kept with the documents to which it relates and be provided to any persons notified under paragraph (4).

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(a) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to this subsection which are not relevant to this Order.

(9) The undertaker must make copies of the certified plans available in electronic form to the public no later than 28 days after certification under paragraph (1) until no earlier than one year after the completion of all parts of the authorised development.

### **Service of notices**

**51.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and



- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Disapplication and modification of legislative provisions**

**52.**—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction or maintenance of the authorised development—

- (a) section 32 (variation of awards) of the Land Drainage Act 1991(a); and
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraph 5, 6 or 6A of Schedule 25 (bye-law making powers of the appropriate agency) to the Water Resources Act 1991(b);

(2) The provisions of the Neighbourhood Planning Act 2017(c), insofar as they relate to temporary possession of land under articles 39 (temporary use of land for carrying out the authorised development) and 40 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 39(13), any maintenance of any part of the authorised development.

(3) The provisions of the Traffic Management (Coventry City Council) Permit Scheme Order 2014(d) will not have effect in relation to any “works” or “urgent activities or works” (as those terms are defined in that Order) which are required for the carrying out of the authorised development.

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(e) any building comprised in the authorised development is to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(5) Nothing in this Order is to prejudice the operation of, and the exercise of powers and duties of the undertaker, a statutory undertaker or the Secretary of State under the 1980 Act, the 1991 Act, the 2000 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015(f).

### **Amendment of local legislation**

**53.**—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

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- (a) 1991 c. 59.
  - (b) 1991 c. 57.
  - (c) 2017 c. 20.
  - (d) The Traffic Management (Coventry City Council) Permit Scheme Order 2014 was made under Part 3 of the Traffic Management Act 2004 (c.18) and the Traffic Management Permit Scheme (England) Regulations 2007 (SI 2007/3372) as amended by Traffic Management Permit Scheme (England) (Amendment) Regulations 2015 (SI 2015/958).
  - (e) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.
  - (f) S.I. 2015/596, amended by S.I. 2015/659.

- (a) sections 32, 33, 37, 57, 77, 78, 79, 80, 81, 82, 83, 84 and 85 of the Trent Valley Railway Act 1845<sup>(a)</sup>;
- (b) sections 40 and 42 of the Coventry Gas Act 1856<sup>(b)</sup>;
- (c) byelaw of Coventry City Council in relation to the destruction of Ferns and other Plants 1930;
- (d) byelaws 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 25, 29, 30 and 31 of Coventry City Council in relation to Pleasure Grounds 1931;
- (e) byelaws 1 to 55 of Coventry City Council in relation to the Water Undertaking 1950;
- (f) byelaws 12, 13, 17, 18, 21 and 30 of Coventry City Council in relation to the Good Rule and Government of the City of Coventry 1953;[                      ].
- (g) byelaws 7, 25, 29, 34 and 39 of Rugby District Council in relation to the Good Rule and Government and for the Prevention of Nuisances 1934;
- (h) byelaws 1 to 14 of Rugby District Council in relation to the Good Rule and Government and for the Prevention of Nuisances 1938; and
- (i) byelaws 1 and 2 of Rugby District Council in relation to the Good Rule and Government and for the Prevention of Nuisance 1959.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

### **No double recovery**

**54.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract, or any rule of law, or under two or more different provisions of this Order.

### **Appeals relating to the Control of Pollution Act 1974**

**55.**—(1) The undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(c)</sup>.

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(a) 1845 c. cxii.  
(b) 1856 c. xxxviii.  
(c) 1974 c. 40.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(8) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(11) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Department for Levelling Up, Housing and Communities or such guidance as may from time to time replace it.

### **Arbitration**

**56.**—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Date

*Name*  
Title  
Department for Transport

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

The authorised development comprises a nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act and associated development, as defined in section 115(2) of the 2008 Act, comprising—

#### **In the administrative areas of Coventry City Council and Rugby Borough Council**

The Works are situated as follows—

- (a) in respect of—
  - (i) the whole of Work Nos. 1G, 1L, 1M, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I and 4A,
  - (ii) part of Work Nos. 1B, 1C 1D and 2A,in the administrative area of Coventry City Council; and
- (b) in respect of—
  - (i) the whole of Work Nos. 1A, 1E, 1F, 1H, 1I, 1J, 1K, 3A and 3C,
  - (ii) part of Work Nos. 1B, 1C, 1D and 2A,in the administrative area of Rugby Borough Council.

**Work No. 1A** — Improvement and realignment of the existing A46 northbound and southbound carriageway, as shown on sheets 1, 2, 4 and 5 of the works plans, and including—

- (a) realignment and new construction along a length of 880 metres, commencing at a location situated 80 metres north of the existing Brinklow Road underbridge and terminating at a location situated 12 metres south of the existing Hungerley Hall Farm accommodation overbridge as shown between reference points 1/2 on sheet 1 and 1/15 on sheet 2 of the rights of way and access plans;
- (b) cross-section widening along the A46 and provision of connection to new slip roads from 12 metres south of Hungerley Hall Farm accommodation overbridge, 900 metres in length, as shown between reference points 1/15 on sheet 2 and 1/7 on sheet 4 of the rights of way and access Plan; and
- (c) placement of 50mph Speed Limit Terminal signs, as shown between reference point 1/2 on sheet 1 and point 1/8 of sheet 5 of the traffic regulations Plans.

**Work No. 1B** — A new A46 Walsgrave overbridge comprising of single span, 30 metres in length, carrying the new dumb-bell link road connecting the two new roundabouts (Work No 1G and 1H) of the new A46 Walsgrave grade separated junction, as shown on sheet 4 of the works plans.

**Work No. 1C** — A new northbound off-slip, 264 metres in length, commencing at a location situated 128 metres north of the existing Hungerley Hall Farm accommodation overbridge and continuing northwest until the new circulatory carriageway of western roundabout (Work No. 1G), as shown on sheet 4 of the works plans.

**Work No. 1D** — A new northbound on-slip, 290 metres in length, commencing from the new circulatory carriageway of western roundabout (Work No. 1G) and continuing northeast to merge with the existing A46, as shown on sheet 4 of the works plans.

**Work No. 1E** — A new southbound off-slip, 294 metres in length, commencing at a location situated 460 metres south of the existing Farber Road overbridge and continuing southeast until

the new circulatory carriageway of eastern roundabout (Work No. 1H), as shown on sheet 4 of the works plans.

**Work No. 1F** — A new southbound on-slip, 274 metres in length, commencing from the new circulatory carriageway of eastern roundabout (Work No. 1H) and continuing southwest to merge with the existing A46, as shown on sheet 4 of the works plans.

**Work No. 1G** — New roundabout to the west of the A46 providing connection between the existing A46 and realigned B4082, as shown on sheet 4 of the works plans.

**Work No. 1H** — New roundabout to the east of the A46 providing connection between the existing A46 and realigned B4082, as shown on sheet 4 of the works plans.

**Work No. 1I** — New maintenance layby, 110 metres in length, constructed along the A46 northbound carriageway located north of the northbound off-slip (Work No. 1C) and south of the northbound on-slip (Work No. 1D), as shown on sheet 4 of the works plans.

**Work No. 1J** — A new gantry, or similar signage, over the A46 northbound carriageway, at a location situated 28 metres south of the new single span overbridge (Work No. 1B), as shown on sheet 4 of the works plans.

**Work No. 1K** — Removal and reinstatement of existing environmental bund situated southeast of the realigned A46 (Work No. 1A), from south of the existing Smite Brook culvert for up to 150 metres in length, as shown on sheet 2 of the works plans.

**Work No. 1L** — A new northern pond, together with associated drainage facilities including a new outfall, situated at a location west of Work No. 1A and south of Work No. 4A, as shown on sheet 4 of the works plans.

**Work No. 1M** — A new northern pond access, 810 metres in length, commencing at its junction with the private means of access (Work No. 2C) and circulating around Work No. 1L, as shown on sheets 2 and 4 of the works plans.

**Work No. 2A** — Realignment, improvement and new construction of the B4082 road, as shown on sheets 2, 3 and 4 of the works plans including—

- (a) the construction of a new section of highway with two-way single carriageway commencing at a location situated 240 metres east of the existing Clifford Bridge Road roundabout, running generally northwards parallel to the A46, passing between Hungerley Hall Farm buildings and the existing A46 before connecting to the new western roundabout (Work No. 1G) of the new A46 Walsgrave grade separated junction, with a total length of 894 metres as shown on sheets 3 and 4 of the works plans; and
- (b) placement of 40mph Speed Limit Repeater signs along B4082, as shown between reference point 2/11 on sheet 3 and point 2/8 of sheet 4 of the traffic regulations plans.

**Work No. 2B** — A new private means of access, 34 metres in length, commencing from a new junction with the realigned B4082 road (Work No. 2A) and terminating at Hungerley Hall Farm accommodation overbridge, as shown on sheet 2 of the works plans.

**Work No. 2C** — A new private means of access, 118 metres in length, commencing at a new junction with the realigned B4082 road (Work No. 2A) and terminating at Hungerley Hall Farm buildings, as shown on sheet 2 of the works plans.

**Work No. 2D** — A new central pond, together with associated drainage facilities including a new outfall, situated at a location between Work No. 1A and Work No. 2A, as shown on sheet 4 of the works plans.

**Work No. 2E** — A new southern detention basin, together with associated drainage facilities, situated at a location to the northeast of Work No. 2A, as shown on sheet 3 of the works plans.

**Work No. 2F** — A new central pond access, 393 metres in length, commencing at its junction with the realigned B4082 (Work No. 2A) and circulating around Work No. 2D, as shown on sheet 4 of the works plans.

**Work No. 2G** — A new southern detention basin access, 283 metres in length, commencing at a location approximately 140 metres from the existing Clifford Bridge Road roundabout and circulating around Work No. 2E, as shown on sheet 3 of the works plans.

**Work No. 2H** — A new ditch along the western side of the B4082 commencing from north of Work No. 2C and terminating adjacent to Work No. 1D, as shown on sheets 2 and 4 of the works plans.

**Work No. 2I** — A new signalised pedestrian crossing situated 20 metres east of the existing Clifford Bridge Road roundabout, as shown on sheet 3 of the Works Plans and the extension of existing footway between points 2/7 and 2/10 and points 2/12 and 2/13, as shown on sheet 3 of the rights of way and access plans.

**Work No. 3A** — Habitat creation including areas of woodland planting of native species, as shown on sheet 2 of the works plans.

**Work No. 3B** — A new badger crossing, as shown on sheet 4 of the works plans.

**Work No. 3C** — Reinstatement of existing timber fence where required and vegetation removal, as shown on sheet 2 of the works plans.

**Work No. 4A** — A temporary construction compound, as shown on sheet 4 of the works plans.

#### **Other associated development**

For the purposes of or in connection with the construction of any of the works and other development mentioned above, ancillary or related development within the Order limits which does not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, consisting of —

- (a) alteration to the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of any street by reducing or increasing the width of any kerb, footpath, footway, cycle track or verge within the street; and altering the level of any such kerb, footpath, footway, cycle track or verge;
- (b) works required for the strengthening, improvement, protection, repair, maintenance or reconstruction of any street;
- (c) the strengthening, alteration, refurbishment, or demolition of any building or highway bridge or structure;
- (d) the remediation of any carriageway made redundant by the stopping up of any highway or means of access;
- (e) ramps, means of access (including private means of access), non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
- (f) embankments, cuttings viaducts, bridges, aprons, abutments, shafts, foundations, retaining walls, barriers (including road restraint, safety barriers), parapets, wing walls, new and replacement highway lighting, roadside signage, fencing and drainage works (including carrier drains, filter drains, outfalls, culvert headwalls, ditches, attenuation earthwork ditches, soakaways, pollution control devices and catch pits);
- (g) the erection of highway boundary fencing, including gates, anti-dazzle fencing and the realignment of existing highway fencing;
- (h) settlement monitoring and mitigation measures for the benefit or protection of, or in relation to, any land, building or structure, including monitoring and safeguarding of existing infrastructure, utilities and services affected by the authorised development;
- (i) street works, including breaking up or opening up a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;

- (j) processing, deposition or use of excavated materials;
- (k) works to place, alter, divert, relocate, protect, maintain, decommission or remove street furniture, apparatus, services, plant, traffic signals and other equipment in a street, or in other land, including mains, sewers, drains, tanks, pipes, hydrants, cables, ducts and associated cabinets, connections, conduits, CCTV, radar, traffic detection equipment and lights;
- (l) works to alter the course of or otherwise interfere with a watercourse;
- (m) landscaping, environmental and noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (n) works for the benefit or protection of land and apparatus affected by the authorised development;
- (o) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths);
- (p) earthworks (including soil stripping and storage, site levelling); remediation of contamination;
- (q) the felling of trees and hedgerows;
- (r) the establishment of construction compounds and working sites, storage areas, temporary vehicle parking, construction fencing, hoarding and perimeter enclosure, security fencing, construction-related buildings, welfare facilities, for vehicles recovery crew, vehicle recovery, construction lighting, haulage roads, protective works to apparatus, and other buildings, machinery, apparatus, works and conveniences;
- (s) ground investigation works and remedial work in respect of any contamination or other adverse ground condition, including the installation and monitoring of associated apparatus;
- (t) the provision of other works including pavement works, carriageway surfacing, kerbing and paved areas works, signing, signals, modification or demolition of existing gantries, new and replacement highway safety barriers, road markings, traffic management measures including temporary roads, temporary earthworks and construction site accesses and such other works as are associated with the construction of the authorised development;
- (u) pumping for the purposes of dewatering excavations and the management of surface water flows and temporary storage, settlement and treatment of surface water flows;
- (v) removal of surfaces for closed or redundant carriageways, accesses or streets; and
- (w) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation and maintenance of the authorised development.



## SCHEDULE 2 REQUIREMENTS

Article 3

### PART 1 REQUIREMENTS

#### Interpretation

1. In this Schedule—

“completion or completed” means the relevant parts of the authorised development are completed and fully open to traffic;

“contaminated land” has the same meaning as that term is given in section 78A of the Environmental Protection Act 1990<sup>(a)</sup>;

“DMRB” means the Design Manual for Roads and Bridges, which accommodates all current standards, advice and other documents relating to the design, assessment and operation of trunk roads and motorways, or any equivalent replacement to the DMRB published;

“Ecological Clerk of Works” means the individual appointed as such by the undertaker;

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017<sup>(b)</sup>;

“First Iteration EMP” means the first iteration of the environmental management plan produced in accordance with the DMRB during the preliminary design stage listed in Schedule 10 (documents to be certified) and certified as the First Iteration EMP by the Secretary of State for the purposes of this Order.

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981<sup>(c)</sup>;

“Outline Traffic Management Plan” means the Outline Traffic Management Plan referred to in Schedule 10 (documents to be certified);

“Second Iteration EMP” means the second iteration of the environmental management plan produced in accordance with the DMRB which is to be a refined version of the First Iteration EMP including more detailed versions of the outline plans and method statements contained or listed within the First Iteration EMP or any other plans required;

“Third Iteration EMP” means the third iteration of the environmental management plan produced in accordance with the DMRB containing detailed plans relating to the operational and maintenance phase of the authorised development substantially in accordance with the First Iteration EMP and Second Iteration EMP; and

“REAC” means the register of environmental actions and commitments contained in the First Iteration EMP.

#### Time limits

2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

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(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).

(b) S.I. 2017/1012.

(c) 1981 c. 69.

### **Detailed design**

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available online for inspection by members of the public.

### **Second Iteration Environmental Management Plan**

4.—(1) No part of the authorised development is to commence until the Second Iteration EMP for that part, substantially in accordance with the First Iteration EMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

(2) The Second Iteration EMP for a part must be produced in accordance with DMRB and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the environmental statement and must include the following management plans and method statements and method statements as are applicable to the part of the authorised development to which it relates—

- (a) Carbon Management Plan;
- (b) Construction Air Quality and Dust Management Plan;
- (c) Construction Communication Strategy;
- (d) Construction Noise and Vibration Management Plan;
- (e) Detailed Historical Building Recording Written Scheme of Investigation;
- (f) Invasive Non-native Species Management Plan;
- (g) Landscape and Ecology Management Plan;
- (h) Materials Management Plan;
- (i) Operational Unexploded Ordnance Emergency Response Plan;
- (j) Site Waste Management Plan;
- (k) Soil Handling Management Plan;
- (l) Water Monitoring and Management Plan;
- (m) Unexpected Archaeological Finds Protocol;
- (n) Traffic Management Plan;
- (o) Scheme Asbestos Management Plan;
- (p) Pollution Incident Control Plan; and
- (q) Ornithological Noise Monitoring at Coombe Pool SSSI Method Statement.

(3) The authorised development must be carried out in accordance with the Second Iteration EMP.

### **Third Iteration Environmental Management Plan**

5.—(1) Following completion of construction of the authorised development the Third Iteration EMP must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority.

- (2) The authorised development must be carried out in accordance with the Third Iteration EMP.

### **Landscaping**

6.—(1) No part of the authorised development is to commence until a landscaping scheme for that part has been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions.

(2) The landscaping scheme for each part must reflect the relevant mitigation measures set out in the First Iteration EMP and the landscaping principles set out in the environmental masterplan.

(3) The authorised development must be landscaped in accordance with the approved landscaping scheme for that part.

(4) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels;
- (e) implementation timetables for all landscaping works; and
- (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.

(5) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

### **Contaminated land and groundwater**

7.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

### **Protected species**

8.—(1) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must—

- (a) cease the relevant parts of the relevant works and report it immediately to the Ecological Clerk of Works;
- (b) follow the advice of the Ecological Clerk of Works; and
- (c) implement the protected species method statement referred to in the First Iteration EMP Appendix A REAC.

(2) The undertaker must implement the method statement referred to in paragraph (1)(c) immediately and construction in the relevant area must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

### **Surface water drainage**

9.—(1) No part of the authorised development is to commence until for that part written details of the surface water drainage system, reflecting the relevant mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority and relevant highway authority on matters related to its function.

(2) The surface water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation by the undertaker with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

### **Archaeological remains**

10.—(1) No part of the authorised development is to commence until a Historical Building Recording Written Scheme of Investigation has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

### **Traffic management**

11.—(1) No part of the authorised development comprising the construction, alteration or improvement of the A46 is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant highway authority on matters related to its function.

(2) The traffic management plan prepared under sub-paragraph (1) must be substantially in accordance with the Outline Traffic Management Plan and reflect the relevant mitigation measures set out in the REAC.

(3) The authorised development must be constructed in accordance with the traffic management plan referred to in sub-paragraph (1).

### **Fencing**

12. Any permanent and temporary fencing and other means of enclosure for the authorised development, except noise barriers, must be constructed and installed in accordance with Manual of Contract Documents for Highway Works maintained by or on behalf for the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development, following consultation by the undertaker with the relevant highways authority to the extent that it relates to matters relevant to its function.

### **Pre-commencement works**

13. Any pre-commencement works must be carried out in accordance with the Pre-Commencement Plan.

### **Approvals and amendments to approved details**

14. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

## **PART 2**

### **PROCEDURE FOR DISCHARGE OF REQUIREMENTS**

#### **Applications made under requirements**

15.—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 15 (further information); or
- (c) such longer period as may be agreed between the undertaker and the Secretary of State.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

#### **Further information**

16.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the Secretary of State does not give such notification within that 21 day business period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes

of calculating the time periods referred to in paragraph 14 (applications made under requirements) and in this paragraph.

(5) In this paragraph, “business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

### **Register of requirements**

17.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in a form suitable for inspection by members of the public an online register of the documents to be certified under Schedule 11 and those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

### **Anticipatory steps towards compliance with any requirement**

18. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

### **Details of consultation**

19. In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 28 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted including copies of any representations made by a consultee about the proposed application and the undertaker’s response to those representations.

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(a) 1970 c.80.

## SCHEDULE 3

Article 17

### PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

#### PART 1

#### HIGHWAYS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Highway to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New highway to be provided</i>
A46 at the approach to and through the at-grade roundabout	Existing section of public road to be stopped up between point 1/W and, point 1/Z and between point 1/X, point 2/Z and point 1/Y, as shown on sheet 2 of the rights of way and access plans.	A new and altered existing road (Work No. 1A) between point 1/2 and point 1/7, as shown on sheets 1, 2 and 4 of the rights of way and access plans.
B4082 at the approach to at-grade roundabout	Existing section of public road to be stopped up between point 2/Y and point 2/Z, as shown on sheets 2 and 3 of the rights of way and access plans.	A new road (Work No. 2A) between point 2/1 and point 2/8, as shown on sheets 2, 3 and 4 of the rights of way and access plans.

#### PART 2

#### PRIVATE MEANS OF ACCESS TO BE STOPPED UP AND FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted or provided</i>
Private means of access from Hungerley Hall Farm accommodation overbridge towards Hungerley Hall Farm buildings	Existing private means of access to be stopped up between point 2/W and point 2/X, as shown on sheet 2 of the rights of way and access plans.	A new access is to be provided between point 2/2 and point 2/3 and between point 2/4 and point 2/5, along Works Nos. 2B and 2C, as shown on sheet 2 of the rights of way and access plans.

SCHEDULE 4  
CLASSIFICATION OF ROADS, ETC.

Article 18, 19 and 20

PART 1  
TRUNK ROADS

<i>(1)</i> <i>Highway</i>	<i>(2)</i> <i>Extent</i>
A46	Between point 1/1 and point 1/8 as shown on sheets 1, 2, 4 and 5 of the classification of roads plans
A46 Northbound off-slip	Between point 1/3 and point 1/4 as shown on Sheet 4 of the classification of roads plans
A46 Northbound on-slip	Between point 1/5 and point 1/6 as shown on Sheet 4 of the classification of roads plans
A46 Southbound off-slip	Between point 1/9 and point 1/10 as shown on Sheet 4 of the classification of roads plans
A46 Southbound on-slip	Between point 1/11 and point 1/12 as shown on Sheet 4 of the classification of roads plans
A46 Dumb-bell Link road	Between point 1/13 and point 1/14 as shown on Sheet 4 of the classification of roads plans

PART 2  
CLASSIFIED ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of road</i>
Coventry City Council	B4082 Between point 2/11 and point 2/8 as shown on sheets 2, 3 and 4 of the classification of roads plans

PART 3  
FOOTWAY

<i>(1)</i> <i>Parish</i>	<i>(2)</i> <i>Length of footway</i>
Wyken Parish	Extension of existing footway by 16 metres on the northern side of the B4082 between points 2/7 to 2/10, as shown on sheet 3 of the rights of way and access plans
Wyken Parish	Extension of existing footway by 16 metres on the south side of the B4082 between points 2/12 to 2/13, as shown on sheet 3 of the rights of way and access plans



## PART 4

### PRIVATE MEANS OF ACCESS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Access track (Work No. 2C)	Between point 2/2 and point 2/3, as shown on sheet 2 of the rights of way and access plans
Access track (Work No. 2B)	Between point 2/4 and point 2/5 as shown on sheet 2 of the rights of way and access plans
Maintenance access (Work No. 1M)	A private access, 810 metres in length, commencing at point 2/14, circulating around the northern pond (Work No. 1L) and terminating at point 2/14, as shown on sheets 2 and 4 of the rights of way and access plans
Maintenance access (Work No. 2F)	A private access, 393 metres in length, commencing at point 2/6, circulating around the central pond (Work No. 2D) and terminating at point 2/6, as shown on sheet 4 of the rights of way and access plans
Maintenance access (Work No. 2G)	A private access, 283 metres in length, commencing at point 2/9, circulating around the southern detention basin (Work No. 2E) and terminating at point 2/9, as shown on sheet 3 of the rights of way and access plans

## PART 5

### SPEED LIMITS

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Speed Limit</i>
A46	The length of existing A46 northbound and southbound between point 1/1 and point 1/2 as shown on sheet 1 of the traffic regulation plans	National Speed Limit
A46	The length of the realigned A46 northbound and southbound between point 1/2 and point 1/8 as shown on sheets 1, 2, 4 and 5 of the traffic regulation plans	50 mph Speed Limit
A46 Northbound off-slip	Along the length of the new slip road, from its diverge from the A46 northbound carriageway for a total distance of 260 metres between point 1/3 and point 1/4 as shown on sheet 4 of the traffic regulation plans	50 mph Speed Limit
A46 Northbound on-slip	Along the length of the new slip road, from new western roundabout junction for a total	50 mph Speed Limit

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Speed Limit</i>
	distance of 290 metres between point 1/5 and point 1/6 as shown on sheet 4 of the traffic regulation plans	
A46 Southbound off-slip	Along the length of the new slip road, from its diverge from the A46 southbound carriageway for a total distance of 290 metres between point 1/9 and point 1/10 as shown on sheet 4 of the traffic regulation plans	50 mph Speed Limit
A46 Southbound on-slip	Along the length of the new slip road, from new eastern roundabout junction for a total distance of 270 metres between point 1/11 and point 1/12 as shown on sheet 4 of the traffic regulation plans	50 mph Speed Limit
B4082	New B4082 link road for a total distance of 894 metres between point 2/11 and point 2/8 as shown on sheets 2, 3 and 4 of the traffic regulation plans	40 mph Speed Limit

## PART 6

### TRAFFIC REGULATION MEASURES (CLEARWAYS)

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent of Regulation</i>	<i>(3)</i> <i>Measures</i>
A46	The whole length of the realigned A46 northbound and southbound between point 1/1 and point 1/8 as shown on sheets 1, 2, 4 and 5 of the traffic regulation plans	Clearway (to include verge and hard strips)
A46 Northbound off-slip	Along the length of the new slip road, from its diverge from the A46 northbound carriageway for a total distance of 260 metres between point 1/3 and point 1/4 as shown on sheet 4 of the traffic regulation plans	Clearway (to include verge and hard strips)
A46 Northbound on-slip	Along the length of the new slip road, from new western roundabout junction for a total distance of 290 metres between point 1/5 and point 1/6 as shown on sheet 4 of the	Clearway (to include verge and hard strips)

<i>(1)</i> <i>Road name and number</i>	<i>(2)</i> <i>Extent of Regulation</i>	<i>(3)</i> <i>Measures</i>
	traffic regulation plans	
A46 Southbound off-slip	Along the length of the new slip road, from its diverge from the A46 southbound carriageway for a total distance of 290 metres between point 1/9 and point 1/10 as shown on sheet 4 of the traffic regulation plans	Clearway (to include verge and hard strips)
A46 Southbound on-slip	Along the length of the new slip road, from new eastern roundabout junction for a total distance of 270 metres between point 1/11 and point 1/12 as shown on sheet 4 of the traffic regulation plans	Clearway (to include verge and hard strips)

**SCHEDULE 5**  
**HEDGEROWS AND TREES**

Articles 25 and 26

**PART 1**  
**REMOVAL OF HEDGEROWS**

<i>(1)</i> <i>Reference No.</i> <i>(location of</i> <i>hedgerow)</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>	<i>(4)</i> <i>Important hedgerow</i>
H2 (Running parallel to and to the north of the B4082 and west of the A46) as shown on sheets 2, 3 and 4 of the hedgerow and trees plans	Partial removal	Works Nos. 1A, 1B, 1C, 1D, 1M, 2A, 2B, 2H	No
H3 (Between A46 and Hungerley Hall Farm) as shown on sheet 2 of the hedgerow and tree plans	Removal	Work No. 2A.	No
H4 (South-west of Hungerley Hall Farm) as shown on sheet 2 of the hedgerow and tree plans	Partial removal	Work No. 2A	No
H5 (North-west of Hungerley Hall Farm), as shown on sheet 2 of the hedgerow and tree plans	Partial removal	Work No. 2C	Yes
H6 (West of the A46, north-east of Hungerley Hall Farm) as shown on sheet 4 of the hedgerow and tree plans	Partial removal (the existing hedge extends beyond surveyed extents)	Works Nos. 1C and 2A.	Yes
H7 (West of the A46, north-east of Hungerley Hall Farm) as shown on sheet 4 of the hedgerow and tree plans	Partial removal	Works Nos. 1L and 1M	Yes
H13 (Running parallel to and to the east of the A46) as shown on sheets 2 and 4 of the hedgerow and tree plans	Partial removal	Works Nos. 1A, 1B, 1E, 1F and 3A	No

<i>(1)</i> <i>Reference No.</i> <i>(location of</i> <i>hedgerow)</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>	<i>(4)</i> <i>Important hedgerow</i>
H16 (East of the A46) as shown on sheet 4 of the hedgerow and tree plans	Partial removal	Works Nos. 1A and 1E	Yes
H17 (East of the A46, north-east of Hungerley Hall Farm) as shown on sheet 4 of the hedgerow and tree plans	Partial removal (the existing hedge extends beyond surveyed extents)	Works Nos. 1F and 1H	Yes

## PART 2

### TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Type of tree</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>	<i>(4)</i> <i>TPO reference</i>
T46 to T55, east of the existing roundabout on the boundary with Coombe Country Park	To facilitate the construction of an environmental bund and fence replacement; raising of the western/north-western side canopies to allow a five metre clearance over the highway embankment works within the root protection area	Work No. 1K	TPO No. 82

## SCHEDULE 6

Article 30

### LAND IN WHICH NEW RIGHTS ONLY ETC. MAY BE ACQUIRED

(1) <i>Plot Reference Number shown on Land Plans</i>	(2) <i>Purpose for which rights over land may be acquired</i>	(3) <i>Relevant part of the authorised development</i>
<b>Land plans – Sheet 2 and 2A of 5</b>		
2/3d	Required to operate, access and maintain the authorised development. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	Work No. 2G
2/3e	Required to operate, access and maintain the authorised development. Right to pass and repass with or without plant and vehicles and access highways. To include restrictive covenants for protecting the installed apparatus from excavation and to prevent access to the installed apparatus being made materially more difficult.	Work No. 2G

## SCHEDULE 7

Articles 30(4) and (5)

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

#### *Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights) to the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ] (“the 202[ ] Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the 202[ ] Order) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

#### *Application of the 1965 Act*

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 35 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 27 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 30 (compulsory acquisition of rights and imposition of restrictive covenants)—

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(a) 1973 c. 26.

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(2) References in the 1964 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 24 (authority to survey and investigate the land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), section 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
  - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
  - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.



(if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) (compulsory acquisition of rights and imposition of restrictive covenants) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### *Introduction*

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 36 (application of the 1981 Act) of the A46 Coventry Junctions (Walsgrave) Development Consent Order 202[ ] in respect of the land to which the notice to treat relates.

(2) But see article 37(3) (acquisition of subsoil and airspace only) of the A46 Coventry Junctions (Walsgrave) Junction Development Consent Order 202[ ] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### *Counter-notice requiring purchase of land*

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### *Response to counter-notice*

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

#### *Determination by Upper Tribunal*

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the proposed use of the right or the imposition of the covenant, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

#### *Application of the 2017 Regulations*

6. References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is to be exercisable, or the restrictive covenant is or is to be enforceable.

# SCHEDULE 8

Article 39

## LAND OF WHICH TEMPORARY POSSESSION ONLY MAY BE TAKEN

(1) <i>Plot Reference Number shown on Land plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
<b>Land plans – Sheet 1 of 5</b>		
Such of plot 1/1c as is vested in Warwickshire County Council	Temporary access to facilitate works to the A46 as it crosses Brinklow Road	Work No. 1A
1/6b	Temporary access and working area to facilitate the improvement and realignment of the A46 southbound carriageway	Work No. 1A
1/7b	Temporary access and working area to facilitate the improvement and realignment of the A46 southbound carriageway	Work No. 1A
1/9b	Temporary access and working area to facilitate the improvement and realignment of the A46 southbound carriageway	Work No. 1A
<b>Land plans – Sheet 2 and 2A of 5</b>		
2/1b	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A
2/1d	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/1e	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/1f	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A
2/1g	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/2	Temporary access and working area to facilitate the reinstatement of existing timber fence where required and vegetation removal	Work No. 3C
2/3a	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A
2/3f	Temporary access and working area to facilitate the new private means of access between the realigned B4082 road (Work No. 2A) and Hungerly Hall Farm buildings. Temporary access and working area to facilitate the new southern detention basin access. Temporary access and working area to facilitate	Works Nos. 2C, 2G and 2E

<i>(1) Plot Reference Number shown on Land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
	the new southern detention basin.	
2/4	Temporary access and working area to facilitate the improvement and realignment of the A46 northbound and southbound carriageway	Work No. 1A
2/7	Temporary access and working area to facilitate the new signalised pedestrian crossing situated 20 metres east of the existing Clifford Bridge Road roundabout and the extension of existing footway.	Work No. 2I
2/8	Temporary access and working area to facilitate the new signalised pedestrian crossing situated 20 metres east of the existing Clifford Bridge Road roundabout and the extension of existing footway.	Work No. 2I
<b>Land plans – Sheet 3 and 3A of 5</b>		
3/2d	Temporary access and working area to facilitate the new roundabout to the east of the A46	Work No. 1H
3/2e	Temporary access and working area to facilitate the northern pond access. Temporary access and working area to facilitate the new ditch along the western side of the B4082.	Work No. 1M and 2H
3/4c	Temporary access and working area to facilitate the new roundabout to the east of the A46	Work No. 1H
3/4e	Temporary access and working area to facilitate the new northern pond. Temporary access and working area to facilitate the new northern pond access. Temporary access and working area to facilitate the new ditch along the western side of the B4082. A temporary construction compound.	Works Nos. 1L, 1M, 2H and 4A
<b>Land plans – Sheet 4 of 5</b>		
4/2a	A temporary construction compound	Work No. 4A
4/2d	Temporary access and working area to facilitate the new southbound off-slip	Work No. 1E

## SCHEDULE 9

### PROTECTIVE PROVISIONS

Articles 42 and 49

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

##### *Application*

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

##### *Interpretation*

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991(a);

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(b)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(c) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(d); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

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(a) 1991 c. 22.

(b) 1989 c. 29.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(d) 1991 c. 56.

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

#### *On street apparatus*

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### *Apparatus in stopped up streets*

4.—(1) Where any street is stopped up under article 17 (permanent stopping up of streets and private means of access), any utility undertaker has the same powers and rights in respect of any apparatus in the street as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary alteration, diversion or restriction of a street under the powers conferred by article 15 (temporary closure, alteration, diversion and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

#### *Protective works to buildings*

5. The undertaker, in the case of the powers conferred by article 23 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

#### *Acquisition of land*

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

#### *Removal of apparatus*

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker 28 days' written notice of that

requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

#### *Facilities and rights for alternative apparatus*

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction, maintenance of the utility undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### *Retained apparatus*

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give the utility undertaker notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

### *Expenses and costs*

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 56 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess

(4) For the purposes of sub-paragraph (3)—



- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless a utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### *Co-operation*

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 42 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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(a) 2003 c. 21.

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 56 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## SCHEDULE 10

Article 50

### DOCUMENTS TO BE CERTIFIED

The reference to a document in the table with a numbered regulation is a reference to the regulation as numbered in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Book of reference	TR010066/APP/4.3 Rev 6	6
Classification of roads plans	TR010066/APP-021	0
Engineering drawings and sections	TR010066/APP-015 and APP-016	0
Environmental masterplan	TR010066/APP-043	0
Environmental statement Chapters (except those below)	TR010066/APP-023 to APP-038	0
Environmental statement Chapter 5	TR010066/REP3-010	1
Environmental statement Chapter 6	TR010066/REP4-006	1
Environmental statement Chapter 8	TR010066/REP5-002	2
Environmental statement Chapter 9	TR010066/REP4-008	2
Environmental statement Chapter 11	TR010066/REP3-014	1
Environmental statement Chapter 15	TR010066/REP3-016	1
Environmental statement Chapter 16	TR010066/REP3-018	1
Environmental statement Figures (except those below)	TR010066/APP-039 to APP-060	0
Environmental statement Figures 5.9-5.11	TR010066/REP3-020	1
Environmental statement Figures 8.1-8.3	TR010066/REP3-022	1
Environmental statement Appendices (except those below)	TR010066/APP-061 to APP-107	0
Environmental statement Appendix 5.3	TR010066/REP3-024	1
Environmental statement Appendix 7.1	TR010066/AS-008	1
Environmental statement Appendix 8.11	TR010066/AS-011	1
Environmental statement Appendix 8.12	TR010066/REP5-004	1
Environmental statement Appendix 8.15	TR010066/REP3-026	1
Environmental statement Appendix 8.16	TR010066/REP3-028	1
Environmental statement Appendix 13.1	TR010066/AS-012	1
First Iteration Environmental Management Plan	TR010066/APP/6.5 Rev 4	4
First Iteration Environmental Management Plan Appendix A Register of Environmental Actions and Commitments	TR010066/APP/6.5 Appendix A Rev 4	4
Environmental Statement Addendum	TR010066/REP3-045	0
General arrangement plans	TR010066/AS-002	1
Hedgerow and trees plans	TR010066/APP-022	0
Land plans	TR010066/REP4-002	3
Location plan	TR010066/APP-011	0
Pre-commencement plan	TR010066/APP-112	0
Outline traffic management plan	TR010066/REP1-014	1
Rights of way and access plans	TR010066/APP-014	0
Statement relating to statutory nuisance	TR010066/APP-111	0
Traffic regulation plans	TR010066/APP-020	0

<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Works plans	TR010066/APP-013	0

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises National Highways to undertake works to alter the Walsgrave junction of the A46 near Coventry and carry out all associated works.

The Order permits National Highways to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the Book of Reference, Plans, Engineering Drawings and Sections, the Environmental Statement and the First Iteration EMP mentioned in this Order and certified in accordance with article 50 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at National Highways, Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ.

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STATUTORY INSTRUMENTS

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**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

**The A46 Coventry Junctions (Walsgrave) Development Consent  
Order 202[ ]**

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