



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

**The Alteration of the Daventry International Rail Freight
Interchange**

**Examining Authority's Report of Findings and
Conclusions**

and

**Recommendation to the
Secretary of State for Transport**

**Paul Hudson
Examining Authority**

7 April 2014

The Alteration of the Daventry International Rail Freight Interchange, Northamptonshire

The application, dated 22 February 2013, was a resubmission pursuant to section 55(8) of the Planning Act 2008 for an alteration to a Rail Freight Interchange, being a nationally significant infrastructure project within the criteria set out in section 26 of the Act.

The applicant is Rugby Radio Station Limited Partnership and Prologis UK Limited.

The application was accepted for examination on 20 March 2013.

The examination of the application began on 9 July 2013 and was completed on 8 January 2014.

The development proposed is for the expansion of the existing Daventry International Rail Freight Terminal and involves the construction and operation of:

- a new rail link from the existing rail freight terminal to a replacement interchange which includes new transhipment sidings, container storage and a HGV reception area
- up to 731,000 square metres of rail served storage and distribution floor space
- operational facilities including a rail control building and staff facilities
- a lorry park
- strategic open space
- infrastructure to serve the development including roads, bridges and utilities
- highway works
- other associated development.

Summary of Recommendation: The Examining Authority recommends that the Order be made subject to modifications in the form at Appendix F

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Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Transport, dated [7 April 2014]

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1 INTRODUCTION

- 1.1 The existing Daventry International Rail Freight Terminal (known by the abbreviation DIRFT) close to junction 18 of the M1 motorway comprises a rail freight interchange connected to the Northampton loop of the West Coast Main Line (WCML), and two rail connected warehouse developments to the north and west of it called respectively DIRFT I and II. The main development proposed by this application is for the relocation and redevelopment of the current rail freight interchange to a new site to the north of DIRFT I and II, together with substantial new rail served warehousing. The applicant is the Rugby Radio Station Partnership, comprising BT as landowner with Aviva Investors, and Prologis a developer specialising in the strategic distribution sector. Prologis are the managers of the DIRFT I estate as well as owners of the existing current rail freight interchange and the DIRFT II estate.
- 1.2 Throughout the rest of this report, the abbreviation DIRFT III is used for the main development proposed in the application together with several elements of highway works away from the main site. Documents considered during the examination are listed in Appendix D of this report, and where they are referred to in the text they are cited as Doc Ref ... as appropriate. In many cases this is followed by an additional reference Doc ... which is the applicant's reference for their documents submitted as part of the application or during the examination.
- 1.3 An application for an Order granting development consent for DIRFT III was submitted on 31 October 2012, but was not accepted for examination. It was resubmitted on 22 February 2013 within the provisions of s55(8) of the Planning Act 2008 (PA 2008) and accepted for examination on 20 March 2013. I was appointed by the Secretary of State on 29 May 2013 as the Examining Authority (ExA) to examine and report on the application under s83(1)(b) PA 2008. The examination began on 9 July 2013 and was completed on 8 January 2014.
- 1.4 The development proposed is for the alteration of a rail freight interchange and is a nationally significant infrastructure project (NSIP) as defined by s14(1)(l) of PA 2008. It meets the criteria set out in s26 of PA 2008. The application also contains proposed associated development as defined in s115 of PA 2008.
- 1.5 To the extent that the proposed development is or forms part of a NSIP, development consent is required before that project can proceed (s31 PA 2008). Development consent under the PA 2008 can only be granted by the Secretary of State and this report provides the Secretary of State for Transport with my findings and conclusions on the application for development consent for DIRFT III. This report also contains my recommendation on whether to grant consent for the powers sought for compulsory acquisition of rights, and the terms of the Development Consent Order (DCO or

Order) should the Secretary of State agree with my recommendation.

- 1.6 The application is EIA development as defined by the Regulations¹. It was accompanied by an environmental statement (ES) (Doc Ref AD_111-212, Docs 6.1 and 6.2) which in my view meets the definition given in Regulation 2(1). Supplementary environmental information was supplied during the course of the examination. In reaching my recommendation, I have taken all the environmental information into consideration in accordance with Regulation 3(2).

The Examination

- 1.7 A preliminary meeting (PM) was held on 8 July 2013 at which the applicant and all other interested parties (IPs) were able to make representations to me about how the application should be examined. My procedural decision as the ExA was issued on 15 July 2013 (Doc Ref PrD_4), with some minor variations to the proposed timetable, and the examination proceeded broadly in line with this.
- 1.8 As Appendix D illustrates, just over 90 relevant representations (RR) and written representations (WR) and additional submissions were received concerning the proposal. This is not a large number compared with other recent applications for development consent, and is arguably a consequence of the long period during which the project has been in preparation and consulted upon.
- 1.9 My first round of questions contained in an Annex to my letter of 15 July 2013 (Doc Ref PrD_4) covered a wide range of matters concerning:
- the policy context
 - further details of the application
 - transport
 - the environmental statement
 - landscape and the visual impacts
 - traffic management
 - air quality
 - drainage and flooding

¹ Regulation 2(1) and sub paragraphs 10 (c) and 10 (d) of schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended by the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012

- heritage impacts
 - ecology impacts
 - noise.
- 1.10 Following the receipt on 14 August 2013 and 13 September 2013 of WR, the Local Impact Reports (LIR), responses to my first round of questions and subsequent comments on these documents, and a number of Statements of Common Ground (SoCGs), I wrote to all IPs on 20 September 2013 setting out a number of further written questions. These were directed particularly to the applicant, Public Health England, the West Northamptonshire Joint Planning Unit and the Environment and Highways Agencies (Doc Ref PrD_7).
- 1.11 I held three issue specific (IS) hearings on 30 August, 22 October and 27 November 2013 to consider the drafting aspects of the draft DCO.
- 1.12 No request was received for a compulsory acquisition (CA) hearing, so consequently I did not hold one. Whilst no requests were received for an open floor hearing, I decided nonetheless to hold such a hearing on 27 November 2013 to ensure all those participating in the examination had every opportunity to explain their concerns.
- 1.13 During the later stages of the examination, I issued several requests for information² particularly relating to revisions of the draft DCO, and observations on the draft of the National Policy Statement for National Networks published for consultation on 4 December 2013 (Doc Ref PrD_13). I carried out an accompanied site visit at the beginning of the examination on 19 July 2013, and several unaccompanied site visits before the PM and during the examination. The examination closed on 8 January 2014.
- 1.14 In addition to the development consent required under the PA 2008, the proposal is subject to various environmental consents and licences from the Environment Agency (EA) to prevent adverse impacts on the water environment, and licences from Natural England (NE) in connection with European Protected Species³. A number of flood defence consents were issued by the EA in September 2011⁴. At the time the examination closed on 8 January 2014 letters of comfort from NE had been sent to the applicant in respect of bats and great crested newts such that no outstanding issues remain which would prevent the licences from NE being granted⁵.

² Rule 17 The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

³ Conservation of Habitats and Species Regulations 2010 (as amended)

⁴ See paragraphs 4.160 and 4.161 below

⁵ Doc Ref AD_238, Doc 8.8, and Doc Ref AD_8

Undertakings

- 1.15 During the course of the examination, a Development Consent Obligation (DCOb) made pursuant to s106 of the Town and Country Planning Act 1990 (TCPA) was offered by the applicant to Daventry District Council (DDC) and others. This has been executed and dated 16 December 2013 (Doc Ref R17_4_7, Doc 7.9F). It provides particularly for the phasing of warehouse development with construction of rail infrastructure, a local employment scheme, the implementation of traffic management works, mechanisms for dealing with additional highway and transport works unforeseen at the present time, and the implementation of a site wide travel plan (see paragraph 7.52 below).
- 1.16 I am satisfied that all those making representations had a full opportunity to participate in the examination, through the written submissions made and at the hearings. I took these matters and all representations properly made into account in my findings, conclusions and recommendation.

STRUCTURE OF THE REPORT

- 1.17 Chapter 2 sets out the main features of the proposed development. Chapter 3 summarises the legal and policy context applicable to it. In chapters 4 and 5, my findings and conclusions in respect of each of the main considerations and on the development merits are set out. Chapter 6 deals with compulsory acquisition matters. Chapter 7 considers the proposed draft Order, the changes which were made to it during the course of the examination, and further modifications I feel are necessary to make the proposed development acceptable. In the light of that, chapter 8 sets out my overall conclusions and my recommendation that the Order should be made.
- 1.18 The main events occurring during the examination and the main procedural decisions taken by myself as the ExA are listed in the Appendices A and B. Appendix C contains a list of those parties who attended hearings and other events held during the examination. Appendix D sets out the documents submitted by the applicant and others in connection with the examination, with the references used in this report. Appendix E contains a list of the main abbreviations used in this report. Finally, Appendix F is the final version of the draft Order submitted by the applicant at the conclusion of the examination with the further modifications I propose.

2 MAIN FEATURES OF THE PROPOSAL

The Site

- 2.1 The main site⁶ encompasses an area of approximately 345 hectares immediately to the north of the existing DIRFT I and II, and lies between the A5 and the M1 which provide the western and eastern boundaries respectively. The vast majority of the development proposed in the application is located within the administrative area of DDC and Northamptonshire County Council (NCC). Some access works, rail infrastructure and highway works away from the main site are located within the administrative areas of Rugby Borough Council (RBC) and Warwickshire County Council (WCC). Despite the name in the proposal, the application site is actually much closer to the town of Rugby which lies to the west of it.
- 2.2 The most recent use of the main site was as part of the Rugby Radio Station from the 1950s and which was operational until its closure in 2007. Though the tallest masts have been removed, many smaller scale aerials and masts remain on the site, together with the now redundant and partially derelict 'B' station, a 1950s brick built complex located centrally in the site. During the time the Radio Station was operational, the site was fenced such that the public had no access to it apart from footpaths and bridleways traversing the site, which indeed is still the position.
- 2.3 The site contains two farms on its eastern boundary, Shenley Farm and New House Farm and the land presently supports sheep and cattle grazing and some limited arable cultivation. Shenley Farm house is a fairly substantial late Victorian double fronted building with commanding views over the site, with adjacent farm buildings in varying states of repair. New House Farm house is a more modest 1960s building, presently vacant. Apart from these two farms, there are no settlements or population on the site.
- 2.4 The ground falls from the south-east (approximately 122 metres AOD⁷) towards the north-west and western boundary of the site (approximately 96 metres AOD). With the exception of this gentle fall, the site is otherwise largely flat.
- 2.5 The site does not contain any scheduled ancient monuments (SAM), listed buildings, conservation areas, or other designated heritage assets. The main archaeological feature of significance is several areas of medieval ridge and furrow. Watling Street, a major Roman road, borders the site to the west as the current A5. Outside the application site to the north-west, a Norman motte and bailey is designated as a SAM.

⁶ The main site of the application as defined in article 2 of the draft Order(Doc Ref R17_4_8, Doc 3.1D)

⁷ AOD Above Ordnance Datum

- 2.6 There are no European sites⁸ within or near the application site that would give rise to the need for an appropriate assessment under the Regulations⁹. Whilst there are no Sites of Special Scientific Interest within or near the site, it does possess some ecological features such as populations of great crested newts, curlew, bats, hares and some hedgerows of note.
- 2.7 The nearest community to the proposed development is Lilbourne which lies to the immediate north of the main site. From here, there would be views of parts of the proposed development. Other communities with views to parts of the site are Clifton-upon-Dunsmore, Hilmorton and Kilsby to the west of the A5, and Yelvertoft and Crick to the east beyond the M1.
- 2.8 The most prominent features in the immediate vicinity of the application site are the Night Owl Truck Stop to the north of the site, the existing developments at DIRFT I and II, and a recently constructed wind farm at Yelvertoft with 8 turbines.
- 2.9 The Clifton Brook runs alongside the east of the A5 through the existing DIRFT II into the southern end of the application site, passing underneath the A5 by way of a culvert and then flowing north-west. A tributary of the Clifton Brook rises to the east of the M1 and flows in an east-west direction crossing the northern part of the application site before being culverted beneath the A5 and joining the Clifton Brook approximately 1,200 metres downstream. There is an existing area of flood plain in the north of the site around the Clifton Brook tributary.
- 2.10 A high pressure gas main crosses the north-east of the site. There is also a chalk slurry pipeline along the site boundary to the north and east serving the Rugby cement works.
- 2.11 The main highway network in the vicinity of the site includes the M1 (immediately to the east), the M6 (to the north), the M45 (to the south), the A5 (immediately to the west), the A14 (to the north-east) and the A428 (to the south) along with local roads within Rugby (to the west) and the nearby villages.
- 2.12 Junction 18 of the M1 is located immediately south-east of DIRFT enabling traffic movements between the M1, A5 and A428. The A5 runs in a broadly north-south direction and is a single carriageway road with one lane in each direction.
- 2.13 Two bridleways and a footpath (all public rights of way) traverse the main site and connect to the surrounding area.

⁸ The European protected sites within the Natura 2000 network in England, made up of Special Areas of Conservation (SAC) designated through the 1992 Habitats Directive, and Special Protection Areas classified by the 1979 Wild Birds Directive

⁹ Conservation of Habitats and Species Regulations 2010 (as amended)

The Proposed Development

- 2.14 Consultation about future development of the whole Rugby Radio Station site has been in progress for the past 10 years. The land to the east of the A5 has been proposed for large-scale logistics and distribution development, now the subject of this application for development consent. The land to the west of the A5 has been identified as a potential location for a mixed use sustainable urban extension (SUE) to the east of Rugby. A planning application for the SUE development was made to RBC in March 2011 (reference R11/0699)¹⁰.
- 2.15 DIRFT first opened in 1997 comprising the rail freight interchange connected to the Northampton loop of the WCML, and approximately 390,645 square metres of rail linked and rail related warehouse and distribution buildings (DIRFT I). A second phase was granted outline planning permission in January 2005 and provides for 180,741 square metres of similar development (DIRFT II). The applicant envisages that DIRFT III will provide up to 731,000 square metres of rail served storage and distribution warehousing (Doc Ref AD_ 218, Doc 7.3).
- 2.16 The proposed development is described in full in the application documents, particularly the ES (Doc Ref AD_ 111-212, Doc 6.1 and 6.2), the Works Plans (Doc Ref AD_ 69 - 72, Doc 2.3), and the Framework Plans (Doc Ref AD_ 34-56, Doc 2.13). An overview of the proposals is provided in the ease of reference plans bundle (Doc Ref AD_ 64, Doc 2.1B) and the non-technical summary of the ES (Doc Ref AD_213, Doc 6.3).
- 2.17 The main elements of the application for development consent for DIRFT III comprise:
- an extension of the private rail line from the existing rail freight interchange within DIRFT I running through DIRFT II to a new replacement rail freight interchange in the centre of DIRFT III; this includes transhipment sidings, container storage and an HGV reception area
 - up to 731,000 square metres of rail served storage and distribution floor space
 - operational provisions including a rail control building and staff facilities
 - a lorry park at the northern end of the main site
 - strategic open space, in particular a new landscape feature termed Lilbourne Meadows to provide a buffer between the

¹⁰ See paragraph 4.25 below

proposed new development and the existing settlement of Lilbourne

- internal infrastructure to serve the proposed new development including roads, bridges and utilities
- associated development on the main site covering minor works such as drainage and utilities, fencing, earthworks and parking
- associated development involving minor highway works to improve capacity and safety at various points outside the main site, particularly along the A5 (the A246 Gibbet roundabout, the A428 Parklands roundabout, Lilbourne and Catthorpe crossroads) traffic calming schemes in Clifton-upon-Dunsmore and Kilsby, and pedestrian and cycle links from the site to Crick and Hillmorton.

2.18 According to the Planning Statement (Doc Ref AD_218, Doc 7.3) the proposed development will take in the region of 17 years to complete. Its purpose is to meet a market requirement for which no specific occupiers are identified as yet. In addition, the logistics market is very dynamic and the requirements of occupiers are constantly changing in order to meet market demands. For this reason, the applicants argue that the DCO needs to provide the same level of flexibility as would be available under an outline planning permission to ensure occupiers' requirements can be accommodated. To that end, the application seeks to fix a number of key scheme parameters which will then form the envelope within which future detailed design proposals will need to accord. These matters are considered further in chapter 7 of this report.

Changes to the Application during the Examination

- 2.19 The applicant tabled additional documents at the PM, which included detailed rail plans, a note on mitigation controls which would be delivered through requirements in the DCO, and a SoCG with the Highways Agency (HA) (Doc Ref AS_1-6, Doc 7.11, 8.9, 2.9 C – F). I concluded that these did not constitute material changes to the application and accordingly formally accepted these as part of the examination (Doc Ref PrD_4).
- 2.20 During the course of the examination, I requested a number of supplementary documents to clarify elements of the proposal. Conversely, some original application documents were withdrawn by the applicant, for example proposals to improve the A5/A428 Halfway House junction which were considered to be unnecessary by the HA. Alternative alignments for some elements of rail infrastructure¹¹ were able to be firmed up consequent upon the

¹¹ Works No 2

granting of planning permission for development by Sainsbury's at DIRFT II. All these changes are reflected in the applicant's final revised list of documents (Doc Ref R17_4_1, Doc 1.5E).

- 2.21 I am satisfied that the proposed authorised development in Schedule A of the draft Order comprising the NSIP (Works Nos 1 - 6) and the various elements of associated development (Works Nos 7 - 10) are capable of being granted development consent under s115 of the PA 2008. Whilst not explicitly stated as such either in the Order or the Explanatory Memorandum (EM), I regard the range of site wide development listed following Works No 10 in the Order also as associated development.

3 LEGAL AND POLICY CONTEXT

LEGAL FRAMEWORK

- 3.1 The Secretary of State has not to date designated a National Policy Statement¹² (NPS) concerning the construction or alteration of a rail freight interchange. In the absence of a relevant NPS having effect, the Secretary of State would at present make his decision under s105 of the PA 2008 under which he must have regard to:
- any local impact report
 - any prescribed matters
 - any other matter the Secretary of State thinks both important and relevant to his decision.
- 3.2 Every public authority has a duty under the Natural Environment and Rural Communities Act 2006 (NERC) with regard to the conservation of biodiversity¹³ and in particular the Secretary of State must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992¹⁴ when deciding an application for development consent.
- 3.3 Specific steps are required to be taken under the Habitats Regulations¹⁵ in order to protect species and habitats. These Regulations also require competent authorities¹⁶ to comply with the requirements of the Habitats Directive¹⁷.
- 3.4 With regard to European Protected Species¹⁸ I set out my findings and conclusions in the ecology section below (paragraphs 4.128 - 4.157), taking into account the representations made by NE who is a statutory consultee in respect of NSIPs. There are limited exceptions to the strict protection from disturbance of protected species under the Habitats Regulations and in those cases a licence¹⁹ is required from NE before any disturbance takes place.
- 3.5 If there were European designated sites directly or indirectly likely to be significantly affected by the proposed development (either alone or in-combination with other plans or projects), an appropriate assessment under Regulation 61 of the Habitats Regulations would need to be undertaken by the Secretary of State prior to granting consent for the project, if he were so minded. However, in this case the applicant states there are no European

¹² As defined by s5 of PA 2008 and referred to in s104 of the Act

¹³ Section 40: 'Every public authority must, in exercising its functions, have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'

¹⁴ Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (as amended)

¹⁵ Conservation of Habitats and Species Regulations 2010 (as amended)

¹⁶ Defined in Regulation 7 of the Conservation of Habitats and Species Regulations 2010 (as amended)

¹⁷ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

¹⁸ Listed in Annex IV of the Habitats Directive

¹⁹ Regulation 53 of the Conservation of Habitats and Species Regulations 2010 (as amended)

sites on land affected by the proposed development (Doc Ref AD_110, Doc 5.3) and NE agrees with this (Doc Ref RR_32). It is my view therefore that there are no European sites likely to be significantly affected by this development and that an appropriate assessment is not required.

- 3.6 Every public authority also has a duty to have regard to the Public Sector Equality Duty (PSED) under s.149 of the Equality Act 2010, and I have taken these matters into account as part of the examination of this application.

IMPORTANT AND RELEVANT POLICIES

- 3.7 I set out below the policy context that I consider is important and relevant to the application and within which I draw conclusions on the evidence in later sections of the report.

National Policies

- 3.8 Although there is at present no designated NPS covering the proposed development, the Department for Transport published two documents in November 2011 which are of considerable relevance to the assessment of this application: The Logistics Growth Review -- Connecting People with Goods, and Strategic Rail Freight Interchange Policy Guidance.
- 3.9 The Logistics Growth Review underlines the importance to the UK economy of the logistics sector, the potential for future growth in rail freight, and the changing needs of the logistics sector. The Government supports growth in this sector and hence recognises that the development of strategic rail freight interchanges (SRFIs) is critical to the expansion of rail freight.
- 3.10 The Strategic Rail Freight Interchange Policy Guidance supports the development of a network of modern distribution centres linked into both the rail and trunk road systems as a main objective of government policy. Such a network of SRFIs, entirely commercially driven by the private sector, will support the transfer of freight from road to rail, help to reduce road congestion and reduce carbon emissions, and so help address climate change.
- 3.11 The Strategic Rail Freight Interchange Policy Guidance has been produced in the interim pending publication of a relevant NPS, and is to be taken into account in decision-making on applications for development consent. The Guidance states that the assessment of such applications should start on the basis that there is a need to significantly increase the number of SRFIs.
- 3.12 However, the Department for Transport published in December 2013 a consultation draft of the NPS for National Networks. It confirms the policy on the SRFIs set out in the Guidance published in 2011, which will be cancelled once the final NPS has been designated. Whilst it cannot provide the formal policy basis for

determining applications including this one until it is designated, it does contain at paragraph 2.51 a confirmation of the Government's approach to the compelling need for an expanded network of SRFIs, and the assessment principles in handling impacts.

- 3.13 For this reason, prior to the closure of the examination, I afforded all IPs the opportunity to submit any views arising from the draft NPS which they consider might have a bearing on this application (Doc Ref PrD_13). Two responses were received:
- one from the applicant welcoming the publication of the NPS in giving support to the application in their view (Doc Ref R17_5_1)
 - the other from CPRE putting forward the view that the application does not comply with paragraphs 2.37 – 2.41 of the draft NPS because there is no facility for traffic to move between DIRFT and the A14 (east) using M1 Junction 19; this means that lorry movements will take place instead on secondary roads to reach the A14 further east (Doc Ref AS_15)²⁰.

I have therefore given the draft NPS some weight in the overall assessment.

- 3.14 The National Planning Policy Framework (NPPF) was published in March 2012. It does not contain policies specifically concerning NSIPs, but I have considered the appropriate parts of the NPPF to be important and relevant to this application and therefore taken the NPPF into account in my assessment of matters arising from this application.

- 3.15 Amongst other things, the NPPF encourages local authorities to
- "...work with neighbouring authorities and transport providers to develop strategies for the provision of viable infrastructure necessary to support sustainable development, including large scale facilities such as rail freight interchanges..." (paragraph 31).*

- 3.16 For unallocated sites such as the subject of this application "where the development plan is absent, silent or relevant policies are out of date" the NPPF suggests a presumption in favour of granting development proposals unless material considerations indicate otherwise (paragraph 14).

Development Plan Policies

- 3.17 The revocation order for the East Midlands Strategy was made in March 2013 and that for the West Midlands in April 2013. These orders also revoke any saved policies contained in structure plans.

²⁰ See also paragraph 4.62 below

Whilst the Regional Spatial Strategies are considered in the Planning Statement (Doc Ref AD_218, Doc 7.3), they are no longer relevant to the assessment of the application in view of their revocation since the application was submitted. The development plan applicable to the application site as a whole therefore consists of the Daventry Local Plan and the Rugby Core Strategy.

- 3.18 Daventry Local Plan (June 1997) - the application site is not allocated for development in the Daventry Local Plan and is within open countryside where saved Policy EM16 (Hamlets and Open Countryside) applies:

"Planning permission will not normally be granted for business and general industrial development in the hamlets and open countryside. Exceptions may include proposals for small scale development relate to the re-use of buildings under the relevant policies of this Local Plan"

Those saved policies of the Daventry Local Plan which are relevant to this application include landscaping, design and transport policies.

- 3.19 Rugby Core Strategy (June 2011) - a small part of the DIRFT III application site within Rugby Borough is allocated within Policy CS4 (Rugby Radio Station SUE). This policy provides for the development of 5,000 to 6,200 homes, a target of 31 (indicative gross maximum) hectares of employment land in Use Class B1, B2 and units up to 5,000 square metres of Use Class B8 and various, specified infrastructure and services. Policy CS4 also requires a comprehensive on-site Green Infrastructure Network which links to adjacent networks and utilises existing habitats and historic landscapes where possible. Three of the Rugby Local Plan (July 2006) policies have been saved and are of relevance to this application, covering landscaping, ecology and parking.

Emerging development plan policy

- 3.20 The Daventry Local Plan will be replaced in due course by the West Northamptonshire Joint Core Strategy which covers Daventry District, Northampton Borough and South Northamptonshire District Council areas. The Joint Core Strategy is currently at Examination stage which commenced in April 2013 and resumed in March 2014. Policy E4 of the draft Core Strategy states that: -

"Further rail connected storage and distribution uses and associated rail and road infrastructure is supported in principle at DIRFT. A high standard of layout, landscaping, building design and materials will be required".

REPRESENTATIONS CONCERNING THE PRINCIPLE OF THE DEVELOPMENT

- 3.21 Both the local planning authorities support the proposed development in principle. RBC stated that having considered the information submitted, the Council does not wish to object to the proposed development (Doc Ref RR_14). DDC noted its support for proposals for a further extension of DIRFT (Doc Ref RR_30). NCC expressed its support from an economic development perspective (Doc Ref RR_13), and Harborough District Council welcomed the proposals in helping to meet future demand from the logistics and distribution sector (Doc Ref RR_33).
- 3.22 Further afield, Aylesbury Vale District Council, South Northamptonshire Council, Northampton Borough Council, Coventry City Council and Peterborough City Council raised no objections in principle (Doc Ref RR_3, 4, 24, 25 and 28). North Warwickshire Borough Council initially expressed concern about the scale of the proposal impacting on the provision of other logistics sites elsewhere in the West Midlands, and the impact of traffic on the whole length of the A5 between the M1 and M42, but subsequently confirmed that the Council's earlier concerns are significantly reduced (Doc Ref RR_2 and Doc Ref WR_23, Doc 10.3).
- 3.23 Several representations, particularly from CPRE (Doc Ref AS_9, AS_15) Clifton-upon-Dunsmore Parish Council (Doc Ref WR_3), DDC (Doc Ref RR_30 and LIR_2) and RBC (Doc Ref RR_14), drew attention to the relationship between this application for development consent and the proposed Rugby SUE to the west of the A5. Others such as North Warwickshire Borough Council expressed concerns that the wider traffic and highway impacts of the DIRFT III proposal should be properly addressed by the HA looking at those impacts along the whole of the A5 corridor and not just in the vicinity of the application site (Doc Ref WR_23, Doc 10.3).

4 FINDINGS AND CONCLUSIONS ON THE MAIN ISSUES

Introduction

4.1 Prior to holding the PM on 8 July 2013, I identified a number of principal issues for the examination having regard to the application documents submitted by the applicant and relevant representations submitted by IPs (Doc Ref PrD_3). These were:

- **combination with other development proposals**
 - the relationship between the proposed development and the adjacent Rugby SUE, both forming part of the former Rugby Radio Station site
 - the policy and development plan context for examining the application
 - the details of the application, particularly concerning a proposed new junction with the A5, rail connections, and the main warehouse buildings within the context of the main site and rail framework plans and schedule of parameters
- **transport**
 - the calculation of additional traffic generated by the proposed development, the impact on the trunk road network, the adequacy of proposals for junction improvements and mitigating transport impacts on local roads and communities adjacent to the development
 - the capacity of the rail network to accommodate the predicted additional rail flows from the development
- **heritage impacts**
 - the consequences of the development for the scale of medieval ridge and furrow cultivation which has survived as a feature of the former Rugby Radio Station site
 - the extent to which the proposed Lilbourne Meadows provide for a satisfactory retention of the existing ridge and furrow
- **landscape and visual impacts**
 - the impact of lighting from the proposed development on surrounding areas
 - the extent to which the proposed warehousing buildings would be visible from surrounding areas, including the

degree to which these would result in adverse visual impacts and the likely success of proposed mitigation

- the nature and adequacy of Lilbourne Meadows to provide a visual buffer between Lilbourne and the main development, and the mechanisms for implementation

- **ecology impacts**

- the nature and adequacy of Lilbourne Meadows to provide habitat mitigation for protected species

- **drainage and flooding**

- given the large area of hard standing proposed, the suitability of land drainage proposals, including the diversion of Clifton Brook and its tributary

- **traffic management**

- how the impact of heavy goods vehicles on the local environment can be mitigated, for example restricting/preventing the use of laybys for overnight lorry parking to reduce the consequent general degradation and appearance of the area caused by litter, low standard of maintenance and misuse of land

- **construction impacts**

- the impact from vibration during the construction phase
- the effects of earthwork operations during construction on dust emissions and reduction in air quality

- **noise**

- the impact of noise generated by the railway proposals (including on the proposed SUE development) and from HGV traffic to and from the site once the development is operational
- given that the site is proposed to be operated 24-hours a day, noise impacts generated from the main site on Lilbourne village.

4.2 No suggestions were made at the PM about additional principal issues, and in the light of this the list above is the range of issues which guided the examination.

4.3 I set out in this chapter my findings and conclusions in respect of these issues and any other matters I consider important and relevant which were raised during the examination, except

compulsory acquisition matters which are contained in chapter 6. This chapter is structured to deal with the need for the development first, which is relevant to whether the development should proceed in the policy context applicable to the proposal at this site and also to the compelling case that must be made out for the grant of compulsory acquisition powers. It then covers topics where they most logically fit with principal issues identified at the outset and so deals with: the relationship with other development proposals, transport, heritage, landscape and visual impacts, ecology, drainage and flooding, traffic management, construction impacts, noise and vibration, air quality and utilities.

THE NEED FOR THE DEVELOPMENT

- 4.4 The Need Assessment submitted by the applicant comprehensively reviews the policy support from national, regional and local planning frameworks and studies (Doc Ref AD_219, Doc 7.4). It then outlines the market demand for rail related warehouses and rail freight, noting sustained demand even during the recent economic recession and a requirement for buildings with a larger footprint. The scale of warehousing development proposed at DIRFT III during the period to 2026 would broadly equate to historic annual take up rates achieved at DIRFT I and II.
- 4.5 Three of the existing warehouses, including the most recent one at DIRFT II occupied by Tesco, are directly rail connected and have a private siding. For them, freight can arrive either in containers or more likely in pallets in conventional wagons and are unloaded directly alongside and into the warehouse. But for the majority of those warehouses which are not directly rail connected, goods arrive in container boxes which are handled at the existing rail freight interchange. Containers are removed from incoming trains by reach stackers (large mobile tractors that can lift a 45 tonne container from the train) and are then transported by road vehicles to the warehouses on the DIRFT estate. The proportion of warehouses which could be directly rail served is proposed to increase to 40% in DIRFT III. Even so, according to the Rail Operations Report (Doc Ref AD_225, Doc 7.8) the assumption is that 29 of the 32 trains per day will use the new rail freight interchange, with the remaining three directly serving rail connected warehouses.
- 4.6 Paragraph 7.3 of the Planning Statement explains why the existing rail freight interchange in the DIRFT I estate no longer provides the best facilities for the modern rail freight user (Doc Ref AD_218, Doc 7.3):
- the rail freight interchange is suffering from increasing wear and tear, and particularly the concrete handling areas between the rail tracks used by the reach stackers are breaking up

- while the reception yard was designed for full length 750 metres long trains, the 4 loading sidings are each only 300 metres long; this means that even shorter 550 metres long trains must be split and shunted into the interchange in two sections, so reducing capacity and adding cost and time
- the area for storing containers in stacks is only 2.4 hectares, which is considered small for a rail freight interchange and hinders day-to-day operations; furthermore, this area cannot be used efficiently because of the shape of the storage area
- the rail freight interchange currently operates 4 reach stackers in order to load and unload trains efficiently; it would be difficult to increase the number of reach stackers at the rail freight interchange as the size and shape of the terminal means that reach stackers would increasingly be blocking each other in, and becoming inefficient and potentially dangerous to operate.

Matching SRFI Policy Guidance Criteria

- 4.7 It is appropriate at this stage in the report to consider the applicant's assessment of the application against the characteristics of SRFI set out in the Policy Guidance referred to in paragraphs 3.8 - 3.11 above.

Scale and Design

- 4.8 The Policy Guidance specifies that a SRFI should be over 60 hectares in size and capable of handling over 4 goods trains per day²¹. The proposed DIRFT III development is far in excess of this: it has a main site area of approximately 345 hectares and would be handling a total of 32 trains and the equivalent²² of 510,000 containers per annum by 2033.
- 4.9 The DIRFT III development parameters would allow for the development of between 11 and 33 individual storage and distribution units within 8 defined building zones (Doc Ref AD_93, Doc 2.7D). The orientation and infrastructure of the development would ensure that all of the units would have access to the rail facilities across the site (with approximately 40% of the development to have the potential to be directly rail-linked as noted in paragraph 4.5 above). Specific occupiers would have preferences reflecting the nature of their operations, and DIRFT III would provide for this range of choice.
- 4.10 DIRFT III would be able to receive 775 metres long freight trains without having to break the trains down, a significant improvement on the existing situation. The new rail freight interchange would

²¹ The same as the NSIP threshold in s26 of the PA 2008

²² See footnote 24

use four rail-mounted gantry cranes to unload and load the trains, load and unload road going vehicles, and lift containers to a stack under the gantry crane.

Transport Links and Location

- 4.11 The existing DIRFT is connected directly to the WCML via the Northampton loop. The WCML is a cleared to W10 loading gauge, which exceeds the minimum W8 loading gauge specified in the Policy Guidance. A range of the country's most significant deep sea container ports - Felixstowe, Southampton, Tilbury, and Liverpool – can access DIRFT by rail on W10 cleared routes.
- 4.12 Though the application proposes the rail freight interchange would move, the rail connection to the WCML would be unchanged. The new rail freight interchange is proposed to be constructed in phase 1 of the construction programme (Doc Ref AD_59, Doc 2.15). This is in accordance with the Policy Guidance which identifies that a SRFI should seek to provide a connection to an operational rail network during the 'initial stages' of the development.
- 4.13 Vehicular access and egress to DIRFT III would be directly onto the A5 with close proximity to the A428, and the M1 and the M6 motorways. This would meet the criterion that SRFIs should be located close to the motorway and trunk road network.

Employment

- 4.14 The existing DIRFT I estate currently employs around 4,000 people with a further 2,000 people anticipated at a fully operational DIRFT II. The applicant notes that the construction of DIRFT III would add to this by generating up to 3,430 person-years of temporary construction work (equivalent to 343 full time equivalent jobs). More jobs would be created indirectly, through trade linkages between the construction of DIRFT III and local businesses, and through increased expenditure in the economy from the new workforce (Doc Ref AD_129, Doc 6.1 Chapter L).
- 4.15 In the longer term once the development is fully constructed, DIRFT III would support an estimated 8,083 jobs, or 7,710 full time equivalent jobs. Given the nature of the development – large scale, rail linked distribution warehouses – and the type of occupants likely to be attracted, job displacement from the surrounding area is predicted by the applicant's ES to be minimal at around 10%.
- 4.16 Further jobs would be created through the spending on goods, supplies and services by companies based at DIRFT III, the spending of wages by employees and by local firms supplying goods to the development. Indirect employment in the wider transport and distribution sector (e.g. train operatives and haulage firms) is predicted to be about 3,471 full time equivalent jobs in the wider region (paragraph 7.47 Doc Ref AD_218, Doc 7.3).

Overall, the scale of job creation at DIRFT III would provide a significant contribution to the 16,000 new jobs in the West Northamptonshire area in the period 2010-2026 required by the draft West Northamptonshire Joint Core Strategy (Policy S7).

- 4.17 While the extent of employment generated by the application could potentially squeeze local labour supply, in the applicant's view there is a broad correlation between the generation of new jobs, the prevalent skills of the workforce, and the likely growth in the labour market from new housing developments in the area.
- 4.18 My reservation concerned the capacity of the local area to provide sufficient labour and housing to meet the scale of employment which the application forecasts would be likely to be generated. On the advice of DDC (R1Q_6), I sought therefore the specific views of the West Northamptonshire Joint Planning Unit on these matters (Doc Ref PrD_7).
- 4.19 Officers of the Joint Planning Unit (JPU) provided a detailed response, helpfully updating the employment forecasts in the applicant's ES, and setting out the current position concerning the submitted Joint Core Strategy. With regards to employment, Policy S7 has been revised to require 19,000 jobs rather than 16,000 referred to in the applicant's ES (paragraph 4.16 above), but for a slightly longer period of 2008-2026. The JPU consider that the application is compatible with the vision and objectives of the submitted Joint Core Strategy, and that the housing provisions within the Strategy and the labour force anticipated from the expected growth will be sufficient to meet the needs required by the DIRFT III proposal. I am content with this analysis.

Conclusions on the need for the development

- 4.20 As required by the Regulations²³ the applicant has provided a comprehensive analysis of the possible alternatives to the proposed development (Doc Ref AS_220, Doc 7.5). Of the 6 sites immediately adjacent to the application site, only the rest of the former Rugby Radio Station site west of the A5 is suitable and of a similar scale the application, but this is precluded by the proposed development of the SUE. Land to the south of DIRFT II (called Kilsby North) is a possibility, but on a much smaller scale and is significantly constrained by rail access issues from the WCML Northampton loop. In a wider catchment embracing 49 sites, only five are realistic SRFI development opportunities and are mostly at very early stages of the development process. These sites are best considered as potentially complementary to the proposed development rather than as alternatives.
- 4.21 I consider the assessment to be a systematic consideration of potential alternative sites, and is a methodical and robust

²³ Schedule 4 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

approach. Overall, the assessment concludes there are no opportunities to expand DIRFT other than the application proposals and this is convincingly demonstrated in my view.

- 4.22 From the applicant's analysis of the fit of the proposed development with the criteria set out in the SRFI Policy Guidance, I am satisfied that this application matches well the physical requirements.
- 4.23 In view of the strong endorsement given to proposals for SRFIs by the Department of Transport's interim Policy Guidance and the forecasts in the Logistics Growth Review, the update provided by the consultation draft of the National Networks NPS, the NPPF, and the advanced stage of the West Northamptonshire Joint Core Strategy, my conclusion is that there is strong up to date policy support for the principle of the application, notwithstanding saved policy EM16 of the Daventry Local Plan (paragraph 3.18 above).

COMBINATION WITH OTHER DEVELOPMENT PROPOSALS

- 4.24 Given the scale and timing of the urban development envisaged by the Rugby SUE on the western side of the A5, the issue is whether there has been adequate coordination between these two substantial proposals, which are in different local planning authority areas, and indeed different county council areas.
- 4.25 The in-combination effects of both the application and the Rugby SUE are considered in the ES (Doc Ref AD_132, Doc 6.1 Chapter O), and in my view these are clearly set out. An update position concerning the planning application for the Rugby SUE, the current development framework plans together with consideration of specific impacts arising from traffic, noise and visual effects were provided by the applicant during the examination (Doc Ref R1 Q_7, Doc 9.1 A and B). My understanding is that additional information was submitted by the applicant to RBC in August 2013 in support of consultation following submission of the application R11/0699, and that RBC resolved to grant outline planning permission in January 2014.
- 4.26 The main practical consequence of the combination of both major projects for the former Rugby Radio Station site is the level of traffic impact on the strategic road network, particularly the A5. If both projects proceed, the outcome would be the provision of three new roundabouts on the A5 between Lilbourne cross roads and the existing Danes Way roundabout, which would be remodelled as part of the DIRFT III proposals. These matters are dealt with in the following section dealing with transport, particularly from paragraph 4.51 onwards.

TRANSPORT

Rail

- 4.27 The applicants note that since opening, demand for intermodal services at DIRFT has grown consistently and the Need Report describes that a total of 98,664 equivalent container units²⁴ was handled in 2010 (Doc Ref AD_219, Doc 7.4). By 2033, DIRFT III can be expected to be handling five times this: 510,000 equivalent container units per annum, and around 10% of this volume would be handled in conventional wagons.
- 4.28 It is expected that DIRFT III would handle:-
- 8 trains per day of 30 flat wagons carrying containers per train serving deep sea container ports at Felixstowe, Southampton and Tilbury
 - 8 trains per day of 30 flat wagons carrying containers per train using the Channel Tunnel
 - 13 trains per day of 25 flat wagons carrying containers per train serving domestic locations, particularly Scotland
 - 3 trains per day with varying capacity of conventional wagons including vans with sliding doors.
- 4.29 This would lead to a total of 32 trains each way per day (i.e. 64 trains per day in total) based on a worst case assumption of trains being 550 metres in length, rather than the anticipated 775 metre trains which may be in place by 2033 (Doc Ref AD_225, Doc 7.8).
- 4.30 The volumes of rail traffic forecast for DIRFT III are included in and consistent with the industry forecasts²⁵ of 132 trains per day on the southern section of the WCML. If Network Rail (NR) meets its plan to accommodate forecast industry demand, then in doing so, NR will be meeting planned demand for DIRFT III.
- 4.31 In the light of NR's position as set out in Doc Ref AD_231, Doc 8.3, reassurance was sought from the applicant and NR in the first round of questions about the capacity of the rail system to accommodate the increased rail freight movements which the proposed development would generate. While NR could not offer cast iron guarantees, their response is a reasonable one to the likely generation of rail freight traffic in the uncertainties of future market demand.

²⁴ Containers are commonly 20, 40 or 45 feet long and to enable comparisons to be made using a standard unit, container and conventional wagon volumes are expressed as Twenty Foot Equivalent Units or TEU

²⁵ Post-Recession Rail Freight Forecasts, MDS Transmodal, September 2011, quoted in the Rail Operations Report Doc Ref AD_225, Doc 7.8

- 4.32 I consider therefore that there are no overriding impediments to the proposed development from the point of view of likely freight train paths being made available when required to accommodate forecast volumes of trains and containers as demand increases (Doc Ref R1Q_7, Doc 9.1B Appendix 4).

Future rail connections

- 4.33 The proposed development of DIRFT III would use the existing connections to the Northampton loop of the WCML. These already provide direct access, both northbound and southbound, to one of Britain's most important rail freight corridors, cleared to W10 loading gauge. The reception sidings at the existing DIRFT rail freight interchange allow trains up to 775 metres long to be received and despatched, and connections to three rail connected warehouses in the DIRFT estate. The original rail layout has recently been extended to enable warehouses in the DIRFT II estate to be rail connected.
- 4.34 The rail connection to DIRFT III would involve closing the existing rail freight interchange and improving the capacity of the reception sidings to handle more trains. It would pass through DIRFT II, crossing the A428 and A5 by new bridges into the main site. Although planned to be a single line initially, the draft Order provides for a second track (Works No 1(b)) if necessary as demand increases.
- 4.35 Tesco plc submitted a representation proposing that the second rail track should be constructed at the outset in order to allow both the existing and proposed developments to operate effectively, efficiently and safely (Doc Ref WR_9). The applicant responded that the Rail Operations Report demonstrates that only one rail track would be needed at least in the early stages of implementation as traffic builds up. It would be unnecessary therefore to provide two at the commencement of the development (Doc Ref AD_225, Doc 7.8). Indeed, contingent on actual traffic growth, it may never be necessary to construct both rail tracks (Doc Ref CoWR_1, Doc 9.1C). In these circumstances, I agree it does not seem appropriate to require the second rail track to be provided at the outset of the proposed development.
- 4.36 CPRE submitted representations arguing for a rail alignment to be safeguarded through the proposed application site immediately to the west of the M1 as an apparent alternative route to the proposed HS2 (Doc Ref WR_19 and WR 20). This appears to be a speculative proposition and it is for the passage of the HS2 Bill in Parliament to consider this if appropriate. I could find no basis for requiring land to be reserved within the application site for this purpose.

Roads

Current and proposed Highway Network

- 4.37 The highway network in the vicinity of the application site includes strategic roads which are the responsibility of the HA: the M1 (to the east), the M6 (to the north), the M45 (to the south), the A5 (to the west) and the A14 (to the north-east). There are three junctions on the M1 in the vicinity of the application site, with Junctions 17 and 19 providing limited access to the M45 and M6/A14 respectively, with all movements permitted at Junction 18.
- 4.38 The section of the A5 that runs along the western boundary of the application site is a straight single carriageway road with one lane in each direction and a narrow hard shoulder. Traffic speeds tend to be high due to the nature of the road. Lorries often stop in laybys off the hard shoulder for long periods including overnight.
- 4.39 Other roads are the responsibility of the of local highway authorities - the A428 (to the south), along with local roads within Rugby (to the west) and the nearby villages. The A428 runs in a south-east/north-west direction from Northampton in the south-east, through Hillmorton and Rugby town centre and towards Coventry to the north-west. The A428 is typically a single carriageway road with one lane in each direction widening on the approaches to some junctions and permitting vehicles to pass each other at certain points. To the east, the A428 intersects with the M1 at Junction 18 in the form of a grade separated roundabout junction before bypassing Crick to the north and extending towards Northampton to the south-east.
- 4.40 There is an existing vehicular access from the A5 to the former B-station in the centre of the application site, and an access which is also a public right of way to Shenley and New House farms crossing the M1. There are three other accesses from the A5 to fields and farm buildings on the western periphery of the application site. These accesses are gated and currently used on an infrequent basis.
- 4.41 All existing accesses to the application site would be closed and replaced by two roundabout accesses from the A5. The northern access (Works No 5(a)) would involve the construction of a new three-arm roundabout and widening both the northern and southern approaches to the junction on the A5 to provide two lanes at the give way line. Two lanes would also be provided at the site access approach. It is intended that the speed limit on the A5 approaches to the junction would be reduced from the existing 60 mph to 40 mph (Doc Ref AD_57, Doc 2.14A).
- 4.42 The southern access (Works No 5(b)) would be via a new roundabout on Danes Way at the southern end of the application site. Danes Way is a short, private dual carriageway road,

extending in a north-easterly direction from a roundabout junction with the A5 towards a small three arm roundabout so providing an existing access into the DIRFT I estate. The proposals include the construction of a new, larger, four arm roundabout a short distance to the north-west of the existing Danes Way, thereby providing both continuing access to DIRFT I and to the proposed new development at DIRFT III (Doc Ref AD_58, Doc 2.14B).

- 4.43 The new northern access and remodelled Danes Way would remain private roads. However, given the nature of the use, the new access and realigned section of Danes Way would be constructed to adoptable standards.
- 4.44 The illustrative master plan (Doc Ref AD_94, Doc 2.8) shows a relatively simple internal highway network, with the main spine road connecting the northern and southern accesses, passing through the middle of the application site parallel to the A5 and the M1.

The transport assessment

- 4.45 The applicant's transport assessment (Doc Ref AD_138, Doc 6.2 Appendix D1) examines the capacity of relevant local transport infrastructure to accommodate the proposed development. The assessment has been carried out by establishing base year flows, future year traffic flows and the potential impacts of the proposed development. Thereafter, locations where the predicted changes might cause significant adverse impacts, i.e. severance, driver delay, pedestrian delay, pedestrian amenity and safety, are identified and assessed.
- 4.46 The transport assessment has been undertaken using an area wide Paramics traffic model. This was developed by the applicant in conjunction with WCC and the HA as lead authorities, since the roads most likely to be affected by the proposals are the responsibility of those authorities, with additional input from NCC where local roads may be affected. SoCGs were agreed between the applicant and the local highway authorities (Doc Ref SoCG_5, Doc 8.12A) and the HA (Doc Ref SoCG_6, Doc 8.13A). These cover:
- the methodology used in the transport assessment
 - existing conditions
 - trip generation
 - trip distribution and assignments
 - modelling
 - effects on the highway network and safety

- the range of transport objectives
- transport strategy
- the package of proposed highway improvements.

The SoCGs conclude that all matters are agreed and there are no outstanding areas of disagreement.

- 4.47 The Paramics model is bound broadly by the M1, M6 and M45 motorways and the eastern fringes of Coventry. Survey data from primarily 2009 was used in the production of the base year model. Not surprisingly, 2009 AADT²⁶ base year flows on key roads in the vicinity of the application site and nearby villages show the M1 and M6 are the busiest roads along with the A14. The A5 north of the site has a base year two-way daily flow of 12,295 vehicles of which 16% are HGVs, with the A5 between Danes Way and the A428 carrying 6,449 vehicles daily of which 24% are HGVs. These are relatively low flows for this class of road.
- 4.48 The horizon year for completion of the proposed development is 2033 which is therefore the date for the future reference case. The reference case model for 2033 takes into account planned highway schemes and traffic growth from 2009 as a result of committed development, based on the information provided by the highway authorities.
- 4.49 Potential trip generation from the proposed development has been estimated from information gathered during surveys at DIRFT I carried out in March 2011. Trips to and from the existing Eddie Stobart facility, which forms part of the DIRFT II estate on the west side of the A5, were assessed separately. These surveys indicate that approximately 22% of the traffic handling goods from containers passing through the existing rail freight interchange has an origin or destination there. It has been assumed for assessment purposes that there would be a similar proportion of internal trips associated with the proposed replacement rail freight interchange at DIRFT III.
- 4.50 Future vehicular trips have been assigned to the highway network using the Paramics model. In terms of modal split, a 20% reduction in car journeys from the baseline has been adopted. To help secure this modal shift, the applicant proposes a public transport strategy to provide improved opportunities for employees to travel to the DIRFT III development by bus from Rugby, Daventry and surrounding residential areas. The transport strategy also includes a site wide travel plan for the DIRFT III development as a whole.

²⁶ AADT – Annual average daily traffic

Development Impacts

- 4.51 The potential impact of the proposed development has been determined by adding the effects of DIRFT III to the 2033 reference case. This scenario takes into account the proposed mitigation: the public transport strategy, a number of junction improvements away from the main site, road safety measures and walking and cycling improvements as explained in paragraph 4.56 below. In order to then consider the in combination effects of the Rugby SUE in particular, a further scenario has been created. The Rugby SUE is expected to be implemented over the same period as DIRFT III and in terms of the interrelationship with transport effects it is the impact on the A5 which is most critical.
- 4.52 The three 2033 scenarios considered in the transport assessment are therefore:
- a 2033 reference case including committed and planned development
 - as above plus the completed development of DIRFT III and including proposed mitigation measures
 - as above plus the Rugby SUE and Rugby Gateway development²⁷.
- 4.53 In order to examine the effects of the increased traffic flows predicted by the Paramics model under these various scenarios I have prepared the following table extracting data from the ES for selected locations. These are typically the closest to the proposed development of DIRFT III and help to illustrate the predicted effects of additional traffic generated by the application, and also taking into account the major additional schemes of the Rugby SUE and Rugby Gateway. The table also shows the proportion of annual average daily traffic flows represented by HGVs.

Selected locations	2009 base		2033 reference		2033 reference + DIRFT III	2033 cumulative All-development
	AADT	%HGV	AADT	%HGV	AADT %HGV	AADT %HGV
A5 north of the application site	12, 295	16	17,769	16.9	20,126 20	24,081 15.4
A5 between Danes Way and the A428	6,449	24	9,435	20.8	10,296 34	10,288 31.2

²⁷ This is the Cumulative Scenario, considered in Chapter O of the ES

A428 north of Crick	10,414 10	12,682 9.5	13,384 10.1	13,998 9.8
A361 south of Kilsby	9,862 4	8,432 5.4	8,674 5.6	8,585 5.7

Source: Tables D5.1, 5.2, 6.2, (Doc Ref AD_121, Doc 6.1 Chapter D) and O4.1 (Doc Ref AD_132, Doc 6.1 Chapter O)

4.54 As might be expected, the main effect of the proposed development is on the A5, with a 13.3% increase in traffic over the 2033 reference flows in the worst case north of the application site. But this rises to 35.5% when the cumulative effects of the Rugby SUE etc are also taken into account. In view of the relatively modest level of traffic flows in the 2033 reference case on roads immediately surrounding DIRFT, according to the model the proposed development of DIRFT III would appear unlikely to lead to substantially worse traffic conditions. This is taking into account the range of offsite highway improvements proposed as part of the application.

4.55 The ES concludes that the development of DIRFT III would create negligible impacts on pedestrians, cyclists and road users on roads through villages, towns and residential areas such as Lilbourne, Crick, Catthorpe, Dunchurch, Yelvertoft, Daventry and Rugby town centre. In the vicinity of the application site and other locations such as Hillmorton, Barby and Kilsby, the impacts could range from negligible to slightly adverse. At Clifton-upon-Dunsmore, where impacts in the centre of the village are expected to be negligible, increases in traffic flows between the eastern edge of the village and the A5 may result in minor to moderate adverse impacts (Doc Ref AD_121, Doc 6.1 Chapter D). On the basis of the transport assessment which is agreed by all the highway authorities, I see no reason to refute these conclusions.

Proposed Mitigation

4.56 As well as the detailed analysis of traffic forecasts and likely impacts, the application documents set out proposals for ameliorating the forecast adverse consequences. These are a range of highway improvements outside the main site and improvements to public transport provision, listed in Works No 10 in the draft DCO:

- vehicular access to the north of the site from the A5 via a new roundabout, and to the south of the site via Danes Way (which currently provides access to DIRFT I)
- junction improvement works at the A5/A426 Gibbet roundabout, M1 junction 18 and the A5/A428 (Parklands) roundabout

- traffic calming measures in Clifton-upon-Dunsmore and Kilsby
- road safety improvements at the A5 junctions at Lilbourne and Catthorpe
- walking and cycling improvements on routes between the existing DIRFT estates and Crick (to the east) and between the proposed DIRFT III main site and Hillmorton (to the west)
- a public transport strategy to include new bus services for employees between the application site and Rugby, Daventry and other surrounding residential areas
- a site wide travel plan providing the context for specific occupier travel plans to encourage sustainable travel and a reduction in car journeys to work.

4.57 Notwithstanding the public transport strategy and highway improvements, if there are unforeseen transport consequences arising from the implementation of the proposed development, the applicant has offered a number of additional measures. These would be secured by the DCOB and would be undertaken in consultation with a Transport Review Group (TRG), a body of key transport stakeholders:

- a Highway Capacity Works Fund to finance additional capacity enhancement works, primarily within urban Rugby
- a Travel Plan Contingency Fund to provide additional bus services and enhanced pedestrian and cycle routes
- an Unforeseen Transport Impacts Fund to address any inappropriate use of roads by HGVs, through Traffic Regulation Orders, amended junction layouts and traffic management measures.

Transport impacts

4.58 The main adverse traffic and transport effects during construction of the proposed development would be controlled by a Construction Environmental Management Plan (CEMP) provided for by requirement 13 of the draft Order. This would cover matters such as haulage routes, traffic management plans, construction noise and vibration, storage of materials and lighting. Contractors would be required to minimise the potential effects of construction works on pedestrians and drivers. As a result, there would be negligible to short/medium term slight adverse residual effects on pedestrians and drivers in terms of severance, amenity and delay due to construction activity.

4.59 During the early years of implementing the proposed development, prior to the completion of off-site highway mitigation measures,

there would be a negligible to slight adverse effect on pedestrians and cyclists, and a negligible to short term slight adverse effect on road users.

- 4.60 Once the proposed development is completed in 2033, the increases in traffic flows in the vicinity of the site would result in increased delays at junctions during the peak periods but with marginal changes at other times of the day. Overall, it is anticipated that there would be a negligible to slight adverse impact on road users in the vicinity of the application site as a consequence of the development.

Transport Issues

- 4.61 I put a number of questions to the applicant about the assumptions made in the traffic model covering growth in background traffic, trip distribution and modal split. These were particularly to understand the extent to which other substantial developments in the area had been taken into account, and the combined impact of DIRFT III if consented and constructed when taken together with the SUE. These were satisfactorily answered by the applicant's responses (Doc Ref R1Q_7, Doc 9.1A and B).
- 4.62 The wider point raised by CPRE²⁸ concerning the lack of a link from the M6 northbound to the A14 eastbound was covered in the response from the HA (R1Q_3). Traffic counts and traffic modelling show that there is very low demand for these movements and the development of DIRFT III would not change this situation. The proposals for the reconstruction of junction 19 of the M1 were considered recently at a public inquiry, and the scheme was approved by the Secretaries of State in July 2013.
- 4.63 An important element of the transport assessment is achieving a 20% reduction in car journeys in relation to DIRFT III compared with the existing development. I expressed concern about the feasibility of this and the consequences for the transport system in the vicinity of DIRFT if this was not achieved. These concerns were shared by both the HA and NCC, who suggested indeed that if a 20% modal shift was not achieved, the highways mitigation would not be fit for purpose. I therefore asked the applicant to set out the consequences if only a 10% reduction in car journeys was achieved. I am satisfied that the applicant's response indicates that the modelling is robust in these circumstances and that the mitigation would be sufficient to cope with only a 10% shift to other forms of transport (Doc Ref R2Q_4 and Doc Ref R2Q_5, Doc 9.1E and F).
- 4.64 A particular strategic transport issue concerns the new junction with the A5 at the northern end of the site, proposals for which were put forward in a rather superficial way in the application.

²⁸ See also paragraph 3.13 above

More detailed plans were supplied by the applicant to explain the engineering proposals and landscaping (Doc Ref R1Q_7, Doc 9.1A). The HA has confirmed these proposals are acceptable in principle, subject to working up the details, to be secured through a s278 agreement.

- 4.65 Some representations called for the dualling of the A5 (Doc Ref RR_9 and Doc Ref AS_7). However, as the table above indicates, I am persuaded that even with both the proposed development and the Rugby SUE complete, the predicted traffic flows on the A5 would be well within the capacity of a single lane road. The combined proposals require three roundabouts on that stretch of the A5 alongside the site, and in view of DfT Circular 02/2013²⁹. I received reassurance that these are acceptable to the HA (Doc Ref R2Q_3).
- 4.66 Although traffic volumes in the villages surrounding the main site (Crick, Lilbourne, Barby, Kilsby for example) are not forecast to increase significantly as a result of the development, the representations particularly from the parish councils concentrated on the adverse impact of additional traffic and requests for highway improvements. However, few of these representations were specific about the actual improvements being sought.
- 4.67 Doubts continued to be expressed that the extent of traffic generation by the proposed development has been under estimated and if so the consequences for road safety, for example in relation to additional housing being proposed in Crick and Kilsby (Doc Ref WR_14). Representatives from the parish councils for these settlements reaffirmed their concerns at the open floor hearing. The transport assessment does not support these concerns. On the contrary, the evidence presented is that only 10% of HGV traffic using the A361/ The Ridgeway and the A5 in the vicinity of Kilsby is connected with the existing DIRFT. The table above suggests that this situation is unlikely to change significantly as a result of the proposed development.
- 4.68 Crick Parish Council expressed concern about the inadequate pedestrian facilities at the A428 bridge over the Grand Union Canal. Plainly, the very narrow footpath at this point is a problem, and is recognized by both DDC and NCC in their LIRs. But in my view, this is a wider matter rather than being attributable directly to the proposed development of DIRFT III, as the forecasts in the table above indicate, and therefore falls to the highway authority to deal with as appropriate within its prioritisation of highway improvements.
- 4.69 The range of proposed junction improvements and traffic calming measures in Clifton-upon-Dunsmore and Kilsby appear to be

²⁹ DfT Circular 02/2013 The Strategic Road Network and the Delivery of Sustainable Development

appropriate to the forecast increase in traffic and the consequent impact on key junctions, especially those with a relatively poor safety record. In addition, there is the range of measures secured by the DCOB to enable any unforeseen consequences to be dealt with subsequently.

Public rights of way

- 4.70 There are several bridleways and footpaths crossing the application site. A bridleway (FP3) crosses west to east in the centre of the site, providing a link between the A5 and a bridge over the M1, from where it continues east into Yelvertoft. A further bridleway (FP2 within the Parish of Yelvertoft and EX6 within the Parish of Lilbourne) continues north alongside the eastern boundary of the site from FP3 adjacent to the bridge over the M1, before heading north-west (by now as EX6) to meet Hillmorton Lane at the point where the latter turns north into Lilbourne.
- 4.71 A footpath (FP1 within the Parish of Yelvertoft and EX5 within the Parish of Lilbourne) connects with FP2 at a point approximately 150 metres to the north of FP3 and heads north-west and north through the site, crossing EX6 before heading north-north-west again to meet Hillmorton Lane at a point approximately 180 metres north of EX6. Walking and cycling facilities in the vicinity of the site include footways adjacent to roads within DIRFT, a cycleway alongside the A5 adjacent to DIRFT I that continues towards Junction 18 of the M1 and a footway that runs parallel and to the west of the A5 between Danes Way and Kilsby. There are no footpaths adjacent to the A5 past the site.
- 4.72 The Secretary of State may only include in the DCO a provision extinguishing public rights of way if he is satisfied either that there will be an alternative right of way provided or that an alternative right of way is not required³⁰.
- 4.73 The Access and Rights of Way Plan submitted as part of the application proposes the permanent extinguishment of sections of public footpaths and their replacement by diversions (Doc Ref AD_84, Doc 2.5). These are straightforward and acceptable to the parish councils, DDC and NCC as the local highway authority, and I therefore recommend them to the Secretary of State.

Conclusions

- 4.74 In the light of the evidence, I am satisfied that the traffic impacts of the application have been properly assessed, that the proposed range of highway improvements away from the main site are sufficient to meet the likely adverse consequences and are appropriate in the circumstances. I see no reason therefore why

³⁰ S136 PA 2008

the Order should not be confirmed on the basis of the consequences for the highway network.

- 4.75 Nonetheless, I was concerned during the examination that the timing of highway works outside the main site provided for in the application should be more explicit, and that the process for agreeing additional works if necessary to be funded through the DCOb needs to be clear and capable of responding rapidly to unforeseen circumstances. I therefore proposed that some elements of the DCOb should be transferred to the Order itself and this was agreed by the applicant in the final submitted version of the DCO (Doc Ref R17_4_8, Doc 3.1D). This is covered in detail in paragraphs 7.10 and 7.52 below.

HERITAGE

- 4.76 An assessment of archaeological and built heritage features, collectively referred to as heritage assets, within the application site and a study area surrounding it is set out in the ES (Doc Ref AD_124, Doc 6.1 Chapter G).
- 4.77 There are no sub-surface archaeological remains recorded on the application site, and since parts of the site occupy a flood plain, historic flooding is likely to have made settlement unlikely. However, the application site is bounded to the west by the Roman road Watling Street, archaeological investigations at DIRFT I and II have located and excavated evidence for an extensive Iron Age settlement, and parts of the application site were occupied by a medieval open field system comprising earthwork ridge and furrow.
- 4.78 There are no SAM on the application site but 13 SAM exist within a 5 kilometre (km) zone around the study site. There are no listed buildings on the application site and no part of it lies within a Conservation Area. However, there are 320 listed buildings and 12 Conservation Areas within the 5 km study area.

Heritage Assets

- 4.79 A 12th century motte and bailey SAM south of Lilbourne Gorse, and Dunsmore House, a Victorian Grade II listed building, are intervisible with the application site. Both would be subject to moderate adverse significant impact after completion of the proposed development as the change to the view from the structure in each case would affect its immediate setting. Rugby Radio Station 'C' building and curtilage structures dating from the mid-1920s to the west of the A5 (on the proposed SUE site) are Grade II listed and would be subject to moderate adverse significant impact after completion of DIRFT III. This is because the setting would be affected by the loss of the masts and unlisted 'B' station building, along with the effects of proposed new development.

- 4.80 In terms of heritage assets on the application site itself, the loss of the 'B' station and Shenley Farm and various farm outbuildings are considered to be of minor significance as they are undesignated. However, the 'B' station dates from the mid-1950s and was designed by the Ministry of Public Building and Works. It is very typical of telephone exchanges and similar buildings of the period. Particularly pleasing in my view is the curved wing at the front of the building containing the reception and administrative functions. Since becoming redundant in the 1990s, 'B' station has fallen into disrepair and the buildings are now in poor condition.
- 4.81 The history of the 'B' station and its significance in the overall development of the Rugby Radio Station is of considerable interest and warrants proper recording and presentation. A substantial amount of contemporary documentary material exists, some of which is contained in the heritage assessment and appendices (Doc Ref AD_159, Doc 6.2 Appendix G1). In this regard, it is understood that the intention is to create an interpretation of the history of the Rugby Radio Station in the reuse of the 'C' building as part of its role in the implementation of the Rugby SUE, and this is to be welcomed.
- 4.82 English Heritage (EH) identified the surviving medieval earthwork ridge and furrow, an undesignated heritage asset within the application site, as one of the most complete remaining survivals of this type of feature and associated meadowland in the Midlands (Doc Ref AD_159, Doc 6.2 Appendix G1). This is reflected in the SoCGs with both EH and NCC who seek a reduction in the overall loss of ridge and furrow across the site which would result from implementation of the proposed development. The applicant maintains however that an appropriate balance has been struck between the objective of maintaining ridge and furrow and the needs of the proposed development (Doc Ref AD_229 and 230, Doc 8.2A and B).
- 4.83 The ES has also assessed the cumulative impact of the loss of ridge and furrow both on the proposed development site and the adjacent Rugby SUE, a matter of concern to EH (Doc Ref AD_132, Doc 6.1Chapter O). This shows that 192 hectares of surviving ridge and furrow would be destroyed; 44 hectares (Lilbourne Meadows and Normandy Hill) would be preserved and managed, accompanied by a comprehensive earthwork survey, documentary research and field investigation of the SUE. In terms of the application site itself, 59 hectares of earthwork ridge and furrow lies within the Order lands. Of this, 16 hectares would be preserved and managed within Lilbourne Meadows and 43 hectares would be destroyed by development, but following archaeological investigation and recording (Doc Ref R1Q_7, Doc 9.1A).

Heritage Issues

- 4.84 Although there are no protected heritage assets on the application site itself, several detailed representations were put forward by bodies such as the Crick Historical Society, CLASP and the Barby Hill Archaeological Project drawing attention to a much richer local history than has been recognized hitherto. This is through the cataloguing and detailed research into undesignated heritage assets, and in the eyes of these bodies they should be accorded appropriate weight if the development proceeds (Doc Ref WR_5, 6, 7 and 14).
- 4.85 The local history bodies seek preservation of several existing historical features within the proposed development site, and a commitment to the establishment of a local interpretive centre on the site, particularly by making use of Shenley Farm rather than its demolition. These requests are disproportionate in my view as there is little firm evidence of the significance of such features to date. The draft Order contains a requirement (R15) to ensure proper archaeological recording in advance of development, which would meet the request of EH and NCC. This together with the proposals for an interpretive centre in the 'C' building I consider an appropriate approach in the circumstances.
- 4.86 The main issue to my mind is the extent of early medieval ridge and furrow surviving on the application site, and the proposals to retain at least an area within the proposed Lilbourne Meadows. The representations from EH confirmed that this is a welcome approach, but cannot compensate for the loss of much larger areas as development takes place.
- 4.87 Ridge and furrow is not an immediately obvious feature on the ground, and from my site inspections the most prominent examples lie at the northern most part of the application site within the proposed area of Lilbourne Meadows. Whilst I appreciate that the scale of loss of ridge and furrow across the application site and the adjacent SUE is substantial, the specific proposals for Lilbourne Meadows would preserve one of the best surviving elements of the medieval ridge and furrow and offer the opportunity for it to be properly interpreted. I consider these proposals strike an appropriate balance in the context of the development proceeding.
- 4.88 I have also considered the potential impact of the application on the setting of the SAM and listed buildings referred to in paragraph 4.79 above in view of the obligation to have regard to the desirability of preserving the setting in each case³¹. I do not consider that the degree of harm which would occur to the setting of the SAM, Dunsmore House and the 'C' station as a consequence of the development would be substantial for the following reasons:

³¹ Regulation 3, The Infrastructure Planning (Decisions) Regulations 2010

- the proposed ridge in Lilbourne Meadows would provide some effective screening of long distance views towards the warehousing development on DIRFT III from the SAM and Dunsmore House, though this is likely to be much less in the case of the latter in my view
- I understand that the principal historic relationship between the motte and bailey SAM south of Lilbourne Gorse is with the settlement of Lilbourne itself which is unaffected by the application proposals
- whilst the setting of the 'C' station would be affected by the proposed development of the application site looked at on its own, the proposed SUE development is subject to a resolution to grant planning permission; the practical position therefore is that impacts on its setting will be much more a consequence of the development of the SUE within which it is sited rather than from the application for DIRFT III.

4.89 I conclude that such permanent impact on heritage assets after completion of the proposed development is acceptable, and accordingly there is no reason in my view to refuse the Order on heritage grounds.

LANDSCAPE AND VISUAL IMPACTS

Current Circumstances

- 4.90 In terms of topography, the majority of the site is located within a low lying flat plain (at around 90-100 metres AOD). This area is crossed by a number of minor watercourses and ditches including the Clifton Brook and its tributary which passes through the northern part of the site. Land rises across the site from around 96 metres in the north-western corner to around 120 metres close to Shenley Farm towards the south-east of the site.
- 4.91 The broader landscape setting of the application site is provided to the west by the Hillmorton residential area at the south-eastern edge of Rugby, located upon a low ridge of land which rises to around 123 metres. To the north there are scattered farmsteads on the Dunsmore ridge; a wind turbine is located to adjacent to Dunsmore Farm and the settlement of Clifton-upon-Dunsmore lies beyond the ridge. Just to the north of the site a low, broken ridge (at around 110-115 metres) extends east to west along Yelvertoft Road to Lilbourne before rising to Lilbourne Gorse and the motte and bailey castle (around 120 metres) and Dunsmore to a high point of 126 metres close to Clifton Hall, east of Clifton-upon-Dunsmore.
- 4.92 Distantly to the north-east, the Swinford wind farm comprises 11 turbines on high land just to the north of the settlement of Swinford. The area east of the M1 comprises a predominantly open

rural landscape with scattered properties and rights of way, dominated by the recently constructed wind farm comprising 8 turbines at Yelvertoft. The settlement of Yelvertoft itself lies within a dip in the landform directly to the east.

- 4.93 Distantly to the east of the site there are areas of elevated farmland with scattered farmsteads, lanes and rights of way, parts of which are designated as a Special Landscape Area within the Daventry Local Plan. To the south-east of the site, close to the M1 junction 18, employment areas north of the settlement of Crick include Gazeley Park, which is still under construction.
- 4.94 To the south, beyond DIRFT I and II, the land is rural in character and includes the settlements of Kilsby and Barby located on the rising slopes at around 150 metres and 125 metres respectively. Beyond, the land rises more steeply to high points at around 173 metres. The WCML cuts through the landscape between the existing DIRFT I and this land before entering the Kilsby tunnel to the south.
- 4.95 The area of the application site comprises small fields put to grassland and grazing and some arable use in the south-east of the site. The fields are contained by hedgerows or security fencing. Shenley Farm is the only active farmstead within the site. Ridge and furrow grazing land provides a landscape feature within the north-east of the site to the south of Lilbourne. The Clifton Brook tributary passes through the north of the site. A substantial number of radio masts are distributed throughout the grassed fields and these together with the B Station building are significant visual elements within the site.
- 4.96 There is little public access to the site. The A5 provides the eastern boundary of the application site from which there are public right of way routes from Hillmorton Lane near Lilbourne and the bridleway to Shenley Farm crossing over the M1 to Yelvertoft.
- 4.97 The visual circumstances of the application site are succinctly described in DDC's LIR (Doc Ref LIR_2). In summary, in DDC's view, although primarily characterised by green fields and sited beyond existing nearby settlements, the application site is also close to national motorway/trunk road and rail networks and is heavily influenced by existing manmade infrastructure.

Impact of the proposed development

- 4.98 A computer modelled zone of theoretical visibility (ZTV) has been prepared to indicate the location of potential visual receptors. The assessment covers both the construction and operational stages, recognising that with a 17 year construction programme there is some overlap between these as early structural landscaping and planting becomes established. The constraints on this approach to

preparing a ZTV are explained in the ES (Doc Ref AD_125, Doc 6.1 Chapter H).

4.99 Although much of the site is currently occupied by low quality farmland and features associated with Rugby Radio Station, the applicant states that the proposed development has been designed to mitigate any adverse effects as far as possible. The main elements of mitigation proposed are:

- the Lilbourne Ridge within the wider context of Lilbourne Meadows and which would be 100-160 metres wide and up to 17 metres in height to screen the proposed built development from Lilbourne
- a bund alongside the western edge of the rail line (Works No 2) to screen it from the SUE
- strengthening of existing planting along the A5 and M1 boundaries; these are shown on the green infrastructure plan (Doc Ref AD_179, Doc 6.2 Appendix H5) which provides the framework for landscaping schemes to be submitted in accordance with requirement 8 of the Order.

4.100 The appraisal in the ES concludes that the development would result in a substantial adverse effect on the immediate landscape at Year 0 and a negligible to minor adverse effect on the landscape beyond. By retaining existing boundary vegetation and augmenting this with proposed green infrastructure, the result is likely to be a moderate adverse effect once the landscape structure planting begins to establish after a period of approximately 15 years. However, the proposals would have a negligible or minor adverse effect on surrounding landscape locations by year 15.

4.101 The visual assessment concludes that the greatest effects (moderate-substantial adverse) would be on the public bridleway (FP 3) within the site. Locations subject to moderate adverse effects are the settlements of Lilbourne and Catthorpe from where there are views towards the proposed development, Catthorpe Manor, properties on the Dunsmore ridge and on Yelvertoft Road to the east of the M1.

4.102 From more distant points there may be views of the rail bridges over the A428 and the A5, and the development of warehouses at DIRFT III may be visible. These viewpoints include locations east of the M1, properties within Crick (a view from here has been assessed as unlikely), Hillmorton, public rights of way to the south and east, users of Hillmorton Lane, Barby Lane, Crick Road and the WCML, views from Gazeley Park and very distant views from elevated land to the north, east and south. But these would be viewed against the greater mass of the existing DIRFT buildings, and so the visual effects have been assessed as neutral /

negligible. The assessment concludes there may be beneficial effects for properties on elevated land within Hillmorton.

- 4.103 At year 15 the proposed structural landscaping on the Lilbourne Ridge and adjacent to the M1 and A5 would be maturing, supplementing the retained hedgerow vegetation alongside the A5 and the M1 to the south. The greatest range of effects would occur at Lilbourne where at year 15 the maturing planting on the Ridge would present a grazed and wooded hillside to screen both the proposed development and the existing DIRFT buildings from view.
- 4.104 Only a limited number of locations would be subject to an increase in adverse visual effects between Year 0 and 15. These are the C station, Hillmorton Lane, and the WCML where the increase in visible extent of the development would not be entirely offset by the proposed landscape mitigation. Generally however, the majority of receptors would be subject to no change or slight improvement in assessed adverse effects between Year 0 and 15 due to the maturing of the proposed landscape mitigation.

Landscape and visual issues

- 4.105 In my view based on several site inspections, the significant visual features close to the application site are:
- the existing DIRFT I and DIRFT II estates comprising large scale distribution and warehouse buildings and a network of distributor and service roads, accessed directly from junction 18 of the M1; planting around the boundaries of the area is maturing and provides some containment along the edge of the M1
 - two wind turbines located within DIRFT I which create significant visual elements within the local and wider landscape context
 - the wind farm at Yelvertoft comprising 8 x125 metres turbines; although this is very prominent, it is worth noting that these turbines are half the height of the 12 highest masts on the Rugby Radio Station which were present on the site until 2007
 - Gazeley Park to the north-east of M1 junction 18.
- 4.106 Although the application site itself is not subject to any landscape protection designations, a number of issues arise from the scale and implementation of the proposed development:
- the number, scale and potential visibility of the proposed warehouses at DIRFT III, and in turn the measures for controlling design

- the consequences of the proposed development for the closest settlements of Lilbourne, Crick, Kilsby and Barby, Clifton-upon-Dunsmore, Yelvertoft and the Rugby SUE in future
- the impact of night time lighting.

These are considered in turn in the following paragraphs.

Warehousing

- 4.107 The approach adopted in the application is a development framework established by the framework plans and the schedule of parameters with maximum quantities and heights of new buildings on each of the 8 major development zones (Doc Ref AD_93, Doc 2.7D). This is to meet the desire to retain considerable flexibility in how each zone is developed so that the development overall meets the needs of particular occupiers and responds to market demands as implementation progresses.
- 4.108 The new rail freight interchange will consist of two independent handling areas, allowing one to be built in advance of the other so that capacity can be increased as demand warrants. Each handling area would comprise:
- four rail tracks each over 775 metres long where wagons carrying containers would be loaded and unloaded (therefore 8 tracks in total)
 - two road lanes allowing trucks to be positioned for loading or unloading (four road lanes in total)
 - space for up to 7 lanes of containers to be stacked up to four containers high (14 lanes in total); this provides storage space enough for 6,300 equivalent containers³²
 - up to four rail-mounted gantry cranes per handling area allowing containers to be lifted between road, rail, or container stack (8 cranes in total).
- 4.109 I asked the applicant to provide further information about the height of the gantries and the extent and heights of container storage on the main site. These appear to exceed the maxima set in the schedule of parameters for buildings and could therefore be more of a visual intrusion particularly as they are not in a fixed position. The response of the applicant was that the maximum height of the gantries is fixed by the schedule of parameters at 125.7 metres AOD (Doc Ref AD_93, Doc 2.7D). The general relationship between warehouse heights, gantries in the terminal

³² The actual number of containers that can be stored will depend on the split between 40 foot or longer containers and 20 foot containers

and container storage heights is shown on the drawing at Doc Ref R1Q_7, Doc 9.1B Appendix 3. In the light of this clarification, I am satisfied about these matters.

- 4.110 Whilst the framework plans and the schedule of parameters do establish minima and maxima of warehouse buildings within each development zone, maximum floor space, size and building height of each unit, the difficulty with this approach is not knowing exactly what is intended at this stage; the schedule of parameters provides for between 11 and 33 warehouse units for instance (Doc Ref AD_89-93, Doc 2.7). Although the parameters establish maximum building heights, the massing cannot be determined in view of the range in the number of buildings possible on each development zone.
- 4.111 In this regard, the nature and style of buildings carried out so far at DIRFT I and II provide perhaps the best examples of how development at the application site might look, and it is this experience that those living closest to the site are drawing upon in their representations about the application. DIRFT II was developed by Prologis, one of the partners in the current application, and in my view the design and local landscaping standards are exemplary for modern warehousing and distribution development, with apparent continuing high standards of maintenance of the common areas.
- 4.112 The risks are that such standards are not continued, either because plots are developed by other interests who may not have a commitment to high design standards, or maintenance itself becomes a less important consideration in the future. This would generally be contrary to the Government's policies in section 7 of the NPPF requiring good design, and the proposed criteria in paragraphs 4.26 – 4.30 of the consultation draft of the NPS for National Networks (see paragraph 3.12 above).
- 4.113 The Design and Access Statement (DAS) suggests how the design of warehouses at DIRFT III might be approached (Doc Ref AD_223, Doc 7.6). For the above reasons, my conclusion is that it is important to ensure that elements of the DAS, particularly the design guide in Chapter 7, are incorporated fully in the Order, with a reliable mechanism for ensuring regular updating. DDC supports the need for a design guide as a means of providing a certain framework against which the detailed proposals for future development at DIRFT III would be assessed. This approach has proved useful in the previous development of DIRFT I and current development of DIRFT II where design guides have been subsequently adopted as supplementary planning documents by DDC (Doc Ref LIR_2). This is a matter I return to in chapter 7 below dealing with the draft DCO.

Impact on settlements

- 4.114 Representations were made concerning the likely visual consequences of the proposed development for surrounding settlements of Crick, Kilsby and Barby. In all these cases, it seems to me that the height of proposed warehouse buildings at DIRFT III is very similar to (in fact rather less in several zones) the existing and proposed buildings at DIRFT I and II (Doc Ref R1Q_7, Doc 9.1A, question 2.3). These existing buildings would effectively screen these settlements from the new buildings as they are developed at DIRFT III, which would be further from them. I do not think therefore that the residents of these settlements would be in any worse position than at present in terms of the views towards the proposed new development.
- 4.115 Lilbourne is the closest settlement to the proposed development. My conclusion is that the proposal for the creation of Lilbourne Meadows and the ridge within it does offer the opportunity to provide a successful visual buffer between Lilbourne and the main development.
- 4.116 The completed ridge would be 126 metres wide and up to 17 metres in height. Construction of the ridge would take about two years and Lilbourne would most likely experience significant adverse effects during this period. However, it is noteworthy that the earthworks necessary for the creation of this landscape feature are programmed for the first phase of development; the subsequent landscaping and planting can be established therefore at an early stage. As the development programme is essentially working from south to north, by the time warehousing development is being constructed closest to Lilbourne this would be towards the end of the programme, when the landscape, visual and noise mitigation benefits of Lilbourne Meadows should be firmly established.
- 4.117 The creation of the lorry park at the northern end of the development would mean it is likely to be an area of activity closest to Lilbourne Meadows and therefore the village of Lilbourne. The Parish Council drew attention to a number of detailed management matters to secure the successful implementation of Lilbourne Meadows (Doc Ref RR_20). In my view, close attention would be needed to landscaping and planting details to reduce the visual impact and general disturbance of the lorry park to the residents of Lilbourne. Requirement 18 of the draft Order in particular should help achieve this objective.
- 4.118 Existing boundary vegetation screens views from the M1 adjacent to the southern part of the site. However, there are wide-open views from the M1 across the northern part of the site where roadside cover is limited. From the A5 there are intermittent views into the site through gaps in the roadside hedgerows.

- 4.119 The visual impact of the proposed development is likely to be greatest on those future residents of the SUE to the west of the A5 and therefore directly adjacent to DIRFT III. This is considered to some extent in the cumulative effects chapter of the ES (Doc Ref AD_132, Doc 6.1 Chapter O). No additional landscape or visual mitigation measures are proposed as a result of these schemes in combination beyond that proposed as part of the SUE development, some of which could be delivered as part of DIRFT III. Further, from the plans of the SUE supplied by the applicant, built development is proposed to be set back some way from the A5 (Doc Ref R1Q-7, Doc 9.1B Appendices 9 and 10).
- 4.120 The bund to be provided as part of the planning permission for the Sainsbury's development at DIRFT II and also as part of Works No 2 of the DCO would screen the proposed SUE development from the impact of the new rail track(s) on embankment between the A428 and the A5. And the plans referred to in the previous paragraph indicate that employment uses rather than residential development are intended at this particular location.
- 4.121 I consider that the range of mitigation measures above which are proposed to deal with impacts on adjacent settlements are satisfactory. Otherwise, it is for RBC and DDC to satisfy themselves that potential impacts arising from DIRFT III are mitigated as far as possible in their consideration of the current planning application for the Rugby SUE (see paragraph 4.25 above).

Lighting

- 4.122 Concern has been expressed by several parish councils, (Crick, Kilsby and Yelvertoft in particular), and NE also in relation to Libourne Meadows, about the effect of lighting within the proposed development on surrounding areas. Given it is intended to be a 24 hour operation, and that because there is no existing settlement on the application site at present there is no source of night time lighting, I appreciate these are very legitimate concerns.
- 4.123 The M1 is illuminated in this area using twin headed columns mounted in the central reserve of the carriageway. Generally, the light from this source is well controlled, but vehicles themselves result in a high level of reflected light and create sky glow in the area. The A5 is not illuminated except in the vicinity of the Danes Way roundabout to the south of the application site which is lit with relatively recent lanterns with a good control of light output.
- 4.124 A study annexed to the landscape chapter of the ES (Doc Ref AD_178, Doc 6.2 Appendix H4) acknowledges that DIRFT I (which was constructed prior to current design standards for controlling obtrusive light) is the single highest source of light pollution in the vicinity. Light spill arises from poor lighting in the car parks and wall mounted loading bay lanterns. High-pressure sodium lamps

are used throughout giving a slightly orange glare into the countryside.

- 4.125 Lighting standards for DIRFT II are substantially higher than those at DIRFT I and similar high standards are aimed for in terms of DIRFT III. The challenge will be the need to light the proposed lorry park adjacent to Lilbourne Meadows. The photomontages (Doc Ref AD_181, Doc 6.2 Appendix H7) show that the most significant adverse visual impact would be from Crack's Hill and this would most likely be translated into a night-time visual intrusion from lighting.
- 4.126 My own inspections at night time from Crick did not suggest this is a major problem in relation to the existing DIRFT development. But I can appreciate that effects vary at different times of the year, and the scale of the current application means the potential night time lighting impact could be substantial at times. On the other hand the proposed development of DIRFT III is further away from Crick than the existing DIRFT I.
- 4.127 The DAS (Doc Ref AD_223, Doc 7.6) suggests that the most modern forms of estate lighting, which minimise night-time glow by directing the maximum light downwards, would be expected to prevent the impacts that those living close to the site fear. Standards set out in the lighting study (Doc Ref AD_178, Doc 6.2 Appendix H4) provide some reassurance that the lighting standards aimed at for DIRFT III will be significantly better than at DIRFT I. These would be ensured through the implementation of requirement 16 to enable the local planning authority to approve detailed lighting proposals as the development progresses. My conclusion is that this would offer the best prospect of keeping adverse impacts from lighting to the absolute minimum.

ECOLOGY

- 4.128 The main ecological features of the application site are set out in the ES with an analysis of the range of grassland, arable land, ponds, streams, ditches and hedgerows (Doc Ref AD_123, Doc 6.1 Chapter F).
- 4.129 There are no statutory designated sites within or adjacent to the application site; the nearest is Stanford Park SSSI some 3.2 km to the north-east. Shenley Farm ponds is a non-statutory local wildlife site (LWS) within the application site. It has a good collection of aquatic and submerged plants, and a range of amphibians. Adjacent to the application site is a proposed LWS at Crick Covert, and there are several other non-statutory sites along the banks of the Grand Union Canal at Crick and Yelvertoft, and the Oxford Canal at Hilmorton and Barby.
- 4.130 The ES notes that given its size, the nature conservation value of the application site is remarkably limited with areas of ecological

interest present only in relatively discrete pockets. A large proportion consists of grassland pasture, some improved but which is generally species-poor. Arable fields are present in the southern part of the site and these have become colonised by a low number of common arable species. There are 36 ponds within the site, many of which represent small and often muddy depressions and thereby lack any significant emergent and aquatic vegetation.

- 4.131 There are three watercourses within the application site. Clifton Brook is a narrow, canalised stream approximately 1 metre wide with low flows in places. Clifton Brook tributary is a slow flowing, canalised stream approximately 2 metres wide and choked with vegetation in places. The third is a steep sided, canalised stream running beside the A5 which has a fast flow; the channel is approximately 1 metre wide with little emergent vegetation present. There are also numerous wet and dry ditches running along the hedgerows within the site.
- 4.132 The majority of the hedgerows are species-poor, being dominated by hawthorn. Grazing pressure and lack of management have resulted in many of the hedgerows becoming little more than a row of individual shrubs. However, some hedgerows are of better quality, either structurally or due to their species composition. Other minor ecological features include a small garden fronting Shenley Farm house, verges, scrub, allotments and various buildings and hard-standing.

Land use

- 4.133 The main site is managed under three farm tenancies:
- Green Farm, Lilbourne
 - Watling Street Farm, Lilbourne
 - Shenley Farm, Crick.
- 4.134 All of Watling Street Farm and Shenley Farm would be taken by the proposed development. The farming users of the Radio Station land are on short-term tenancies and have been aware of the proposed development for some years.
- 4.135 In fact, agricultural use has been severely restricted over much of the site for many years by the presence of radio masts and their supports, concrete anchors for the support cables and communication cables and mats buried in the soil. These have prevented ploughing and soil improvement, except in a few fields unaffected by masts.
- 4.136 The consequence is that the majority of soils present on the site are classed as grade 4 and sub grade 3B, and although a relatively large area of land would be lost to development, it would be of low agricultural quality (Doc Ref AD_131, Doc 6.1 Chapter N).

Habitats

- 4.137 Specific protected species surveys were carried out by the applicant for badgers, bats, otters, water voles, reptiles, breeding birds and great crested newts, of which bats and great crested newts are European Protected Species.
- 4.138 A brown long-eared bat maternity roost is present within Shenley Farm house and some trees have been identified for their potential to support roosting bats. Otherwise, the majority of the application site comprises open grassland of little value to bats in terms of foraging or navigational opportunities.
- 4.139 Both Clifton Brook and Clifton Brook tributary are being used by otters to some extent for foraging and navigational purposes. Brown hares are present on parts of the application site. Barn owls were recorded using the abandoned barn in the south of the application site for shelter and are likely to forage across the habitats within the application site. No evidence of water voles was found during the specific surveys undertaken.
- 4.140 Overall, the application site appears to support a reasonable complement of common bird species although it could not be considered as being of special ornithological interest. The woodland, trees, hedgerows and scrub provide potential nesting sites and foraging resources for birds, although opportunities are limited in the large pasture and arable fields. The presence of breeding curlew within the site is notable, since this species is now uncommon in a lowland farmland setting. Breeding skylarks have also been recorded with the majority of activity located in the southern half of the site.
- 4.141 The main site supports a medium population of great crested newts, distributed widely and relying on a series of different ponds.

Mitigation

- 4.142 The proposed development would result in the loss of the Shenley Farm ponds LWS, all semi-improved grassland, hedgerows and ponds, as well as extensive areas of improved pasture. The remaining habitats to the north of the Clifton Brook tributary and south of the watercourse would be retained as part of the proposed Lilbourne Meadows. In addition, extensive ponds and linear water features would be created within wider green infrastructure comprising sustainable drainage and landscape elements.
- 4.143 New high-quality habitats proposed to be established as part of the 78 hectares of Lilbourne Meadows would comprise:
- woodland planting along the ridge
 - woodland buffer planting along the boundary of built development

- meadow grassland
 - enhanced semi-improved grassland
 - new and reinforced hedgerows
 - new ponds as part of dedicated great reeded newt habitats and the sustainable drainage network
 - realigned Clifton Brook tributary and associated meanders, scrapes and backwater features as well as new riparian habitats (including wet woodland and reed beds)
 - other wetland features and wet grassland within the wider Clifton Brook tributary flood area
 - a new purpose-built bat house as replacement habitat for bats displaced by the demolition of the house at Shenley Farm.
- 4.144 Education and information boards about the wildlife that visitors might see and the management strategy would be provided at entrance points to Lilbourne Meadows. Way-marked routes would be set out to guide visitors on interesting walks through varied habitats.
- 4.145 Though the area of Lilbourne Meadows would be smaller than that of the habitats in the wider site to be lost, in general the existing habitats are poor and Lilbourne Meadows would secure much higher quality habitats and better ecological management for the future.
- 4.146 Elsewhere, species-rich grassland and shrub/woodland planting would be provided where possible along proposed embankments and cuttings associated with the new railway lines (Works Nos 2 and 3), and ponds and new wetland habitats provided as part of the flood compensation strategy.
- 4.147 Apart from curlew, the impacts on all other species following the development are at worst neutral and overall, impacts following mitigation and enhancements are considered to be of moderate beneficial significance. This is subject to the creation and long-term management of retained and new habitats within Lilbourne Meadows.

Protected species

- 4.148 The applicant states that the nearest European sites are Ensor's Pool SAC and the Upper Nene Valley Gravel Pits SPA/Ramsar site, each located approximately 25 km from the proposed development. It is considered therefore that the development of DIRFT III would not result in a likely significant adverse effect on these or indeed any other European designated site. Accordingly,

in line with the Habitats Regulations³³ and relevant supporting guidance and case law, no appropriate assessment of the plan / project is required (Doc Ref AD_110, Doc 5.3). NE agrees (Doc Ref WR_17) and therefore I recommend this conclusion to the Secretary of State.

- 4.149 Draft protected species licence applications have been submitted by the applicant to NE under the Habitats Regulations in respect of bats (October 2012), badgers (October 2012) and great crested newts (August 2012)

Bats

- 4.150 As noted above in paragraph 4.138, a brown long-eared bat maternity roost is present within Shenley Farm house which is to be demolished as part of the proposals. A purpose-built bat house (and a significant number of bat boxes) would be provided within Lilbourne Meadows as compensation and enhancement. A letter of comfort has been issued by NE in relation to the licence application for bats, subject to conditions requiring the submission of updated information (Doc Ref AD_238, Doc 8.8).

Badgers

- 4.151 NE issued advice highlighting where information is required concerning the badger licence application. However, the applicants subsequently concluded that the sett is no longer in use and NE agreed that if this is the case a licence would not be necessary in relation to badgers (Doc Ref SoCG_4, Doc 8.11).

Great Crested Newts

- 4.152 A medium population of breeding great crested newts use a number of ponds scattered across the site. A dedicated area would be provided within Lilbourne Meadows to provide specific habitat for the relocated great crested newt population. This habitat would be established prior to the commencement of a comprehensive phased trapping and translocation programme. A planning application for this purpose was approved by DDC in June 2013.
- 4.153 Initially, NE was not able to guarantee that a derogation licence would be issued for the great crested newts. This was because the newts were proposed to be moved out of their home range and over a major barrier. NE required confirmation that the disease status is the same for both the existing sites and the proposed new ponds in Lilbourne Meadows (Doc Ref SoCG_4, Doc 8.11). After further consideration, a letter of comfort was issued on 9 October 2013 (Doc Ref AS_8). This is subject to several tests that NE would wish to see met in a grant of a licence, including the timing of the

³³ The Conservation of Habitats and Species Regulations 2010 (as amended)

creation of new receptor pools and the submission of a habitats management and maintenance plan.

Conclusions

- 4.154 The analysis of ecological features is generally agreed by NE (Doc Ref RR_32 and WR_17). SoCGs were agreed with NE, EA and the Wildlife Trusts (Doc Ref SoCG_4, 7 and 8, Docs 8.11,17 and 16) confirming that Chapter F of the ES provides an accurate account of the application site in ecological terms for the purposes of assessment. Subject to matters to be agreed with NE covering its delivery and management through appropriate mechanisms in the long-term, Lilbourne Meadows would provide a sufficient area for the necessary mitigation and compensation required. It would be managed as a nature reserve with limited access for recreation. An overall Lilbourne Meadows management plan would be produced to ensure that new and retained habitats are safeguarded and therefore contribute to enhancing biodiversity of the area.
- 4.155 Given this level of agreement with the statutory nature conservation bodies, and also the position concerning draft protected species licence applications, the only other representation concerning the suitability of Lilbourne Meadows is NE's observations about the impact of lighting, referred to in paragraph 4.1228 above (Doc Ref WR_17). The applicant's response is that the lighting design will result in virtually no spill of illumination beyond the immediate boundary with the meadow while still providing functional lighting to the development (Doc Ref CoWR_1, Doc 9.1 C).
- 4.156 My findings on ecological issues are that proper assessment has been undertaken in respect of all relevant matters and that the mitigation proposed and agreed by NE and the EA is adequate. I conclude that the protection afforded by the requirements in the draft Order and the licensing required in respect of European Protected Species (about which NE has provided letters of comfort which state that there is no reason why licences should not be granted) is such there would be no significant adverse impact on nature conservation as a result of this proposal. I am satisfied that the duties under the NERC Act would be fulfilled, and that proper regard has been given to obligations under the Habitats Directive and in respect of biological diversity.
- 4.157 Overall, my conclusion is that loss of habitat used by a medium population of great crested newts, bats, bird species, hedgerows, grassland, ditches and ponds within the application site would be more than compensated for through high-quality new habitats proposed to be established in Lilbourne Meadows. The mechanism for achieving this is a combination of the early implementation of the proposals for Lilbourne Meadows as Works No 8 of the draft Order and the implementation of requirement 3, detailed design approval under requirements 6 and 8, and the preparation of

ecological management plans as part of requirement 10. I see no reason therefore refuse the Order on ecological grounds.

DRAINAGE AND FLOODING

- 4.158 Given the substantial area of proposed new development and hard standing, surface water drainage and flood risk are clearly very important considerations. These are assessed in the ES (Doc Ref AD_122, Doc 6.1 Chapter E), together with a comprehensive flood risk assessment (Doc Ref AD_140, 141 and 142, Doc 6.2 Appendix E2).
- 4.159 The main site lies entirely within the catchment of the River Avon and is drained by the Clifton Brook and its tributary. As noted above in paragraphs 2.9, 0 and 4.131, Clifton Brook rises to the east of Crick and flows west where it is culverted beneath the M1 emerging to flow along the edge of the east side of the A5 adjacent to the existing DIRFT II Estate. It is then culverted beneath Danes Way where it enters the site of the proposed DIRFT III and flows along the south western boundary before being diverted beneath the A5. The tributary of the Clifton Brook rises to the east of the M1 and flows in an east to west direction crossing the northern part of the application site. Where it meets the A5 it is diverted north picking up a road drain adjacent to Hillmorton Lane before being culverted beneath the A5. Both watercourses are approximately 2 - 3 metres wide, and have poor water quality. Additionally, across the site there are drainage ditches along some of the field boundaries, and small ponds (possibly ephemeral) occupy depressions.
- 4.160 As part of the previous use of the Radio Station, soil and moisture levels were required to be maintained across the site with a series of feeder channels fed by a sluice above a weir. These are now redundant and are to be removed whether or not DIRFT III proceeds. The works include the lowering of the existing culvert on the A5 and Danes Way and regrading the channel, and would provide enhanced flood protection to existing tenants of DIRFT and to the A5.
- 4.161 A range of mitigation options have been proposed to cater for the timing of DIRFT III and /or the adjacent SUE. Flood defence consents for the weir removal scheme and the mitigation options were approved by the EA in September 2011. Some of these works would also be authorised by the DCO. This would ensure that they could be done once the Order was made if they had not been carried out already in advance of DIRFT III.
- 4.162 For the purposes of the flood risk assessment for the proposed development it is assumed that all these approved works are completed. The vast majority of the built development of DIRFT III would be in flood zone 1 which means that none of the proposed buildings would have a flood risk from a 1 in 1000 year event. It is

proposed to construct some transport infrastructure within the floodplain; the lorry park is proposed to be constructed in flood zone 3 but this is acceptable given the less vulnerable classification.

- 4.163 The proposed creation of Lilbourne Meadows would mean that the floodplain in the northern area of the Order land would be left undeveloped where possible. This would be predominantly as open space, with some areas enhanced to provide environmental benefits including new habitat creation as described in the previous section.
- 4.164 It is proposed to realign the two stretches of watercourse, the Clifton Brook downstream of the A5 and the Clifton Brook tributary upstream of the A5 through Lilbourne Meadows. In each case proposed works near the watercourse provide the opportunity to restore the channel to a more natural state.
- 4.165 The environmental improvements to the hydromorphology of the Clifton Brook tributary would result in a large beneficial impact, and outweigh any minor adverse effects of new outfalls. It is likely that these river corridor improvements would contribute positively to improving the current poor status of the Clifton Brook under the Water Framework Directive classification.

Surface water drainage

- 4.166 The surface water drainage strategy is contained in the ES (Doc Ref AD_139, Doc 6.2 Appendix E1), to be taken into account in the design of sustainable drainage systems (SuDS) within the framework of the Flood and Water Management Act 2010. SuDS are proposed to minimise the risk of surface water flooding, and the runoff from the site would be managed to not exceed the existing greenfield runoff rate.

Conclusions

- 4.167 The EA set out its views in detail at the beginning of the examination, advising that the environmental issues within its remit (i.e. the flood risk assessment, the surface water drainage strategy, biodiversity proposals for Lilbourne Meadows and groundwater contamination) had been suitably considered, and that it had no objection to the draft DCO (Doc Ref RR_31). These views were confirmed in the SoCG and other submissions demonstrating that the improvement proposals for Clifton Brook and its tributary are acceptable and would meet the requirements of the Water Framework Directive (Doc Ref AD_234, Doc 8.5 and R1Q_7, Doc 9.1B Appendix 11).
- 4.168 Insofar as these proposed works (removal of the obsolete weir on the Clifton Brook and associated works, and temporary flood storage on the Clifton Brook tributary and its realignment) affect

HA land along the A5, a SoCG has been agreed (Doc Ref AS_2, Doc 8.9).

- 4.169 These surface water drainage and alleviation of flood risk measures would be given effect by article 18, Works Nos 2, 5, 8 and 9 and requirements 19 - 25 in the draft Order. The requirements were considered in some detail and revised during the course of the examination and agreed with the EA. These reflect the changing position concerning lead local flood authorities and SuDs approving bodies from the EA to the County Council under the Flood and Water Management Act 2010 (Doc Refs R2Q_2 and R17_2_10).
- 4.170 The encroachments of the proposed development into the flood risk area are small and are for essential infrastructure, and water compatible development. The only less vulnerable development that would be placed in a flood risk area in flood zone 3 is the lorry park. The EA is fully content with the proposals for Clifton Brook and its tributary. I conclude therefore that there are no reasons to refuse the application on drainage or flooding grounds.

TRAFFIC MANAGEMENT

- 4.171 The proposal gives rise to a number of traffic management considerations. First, traffic circulation within the main development site would be relatively straightforward with a main internal spine road running between the northern and southern accesses to the A5. Sufficient on-site parking for both HGVs and cars appears to be provided, albeit indirectly through the framework plans and parameters.
- 4.172 Traffic calming proposals for Clifton-upon-Dunsmore and Kilsby, and much improved pedestrian and cycle links along the A5 and the A428 to Crick are important elements of the application, and particularly as their implementation would be secured by the DCOB and requirement 5 of the Order prior to any occupation.
- 4.173 As part of the improvements to the bridleway public right of way from the A5 across the site to Shenley Farm and crossing the M1 towards Yelvertoft, a public viewing platform is envisaged which has been welcomed by those making a response on this matter. However, an outstanding point is how people wishing to visit the viewing point would be able to park cars, as there is no provision on the A5 nearby for this purpose.
- 4.174 The applicant's response is that the intention is for car parking to be provided on zone D as part of the rail hub and estate management facilities on the main site. A "club" arrangement would operate for people wanting to view the trains and the rail freight interchange similar in operation to many UK airports. This proposed way of working would allow Prologis to keep a record of those wishing to regularly attend the site, whilst provide parking

and toilet facilities (Doc Ref R1Q_7, Doc 9.1A). This appears to me to be a perfectly adequate arrangement.

HGV parking

- 4.175 The most significant representations about traffic management matters, from the parish councils in particular, drew attention to the problems which are experienced from current freight operations in the area (Doc Ref RR_7 and RR_26, Doc Ref WR_1, Doc Ref R1Q_6 and Doc Ref R2Q_1). This is typically overnight parking by HGVs in laybys and on industrial estates, which give rise to a range of antisocial activities. Not surprisingly, these are matters of concern and resentment by local people, though they are the responsibility of drivers and haulage companies generally and indeed not necessarily having any connection with the DIRFT estates.
- 4.176 From my own inspections of the area during the day and in the evening, I can well appreciate that the problem of overnight lorry parking is a persistent one and a matter of understandable aggravation to local people. There is a marked contrast between the use of the private roads within the existing DIRFT I and II estates where parking of any vehicles is comprehensively banned, and the public highway, particularly along the A5 and the A428, where substantial provision of laybys is made and which are therefore used intensively for lorry parking. As the HA point out, the purpose of making such provision is to enable lorry drivers to properly observe restrictions on the number of hours they can drive by having proper rest periods, and there is little point in having such laybys if they are not available for such use when required (Doc Ref R1Q_3).
- 4.177 The main difficulty to me seems to be an unwillingness to introduce and rigorously enforce no parking for HGVs on other less suitable parts of the public highway, and within adjoining settlements. The use of residential streets appears to be currently less attractive to lorry drivers wishing to park overnight. But if demand for overnight lorry parking continues to rise it could present some unwelcome consequences for the adjacent SUE as well as existing settlements near to DIRFT.
- 4.178 If the current laybys were properly maintained, this would perhaps help to reduce the concern felt by the local residents. The practice of HGVs parking nose to tail can be rather intimidating to other road users from parking in laybys as well, even if spaces are available. Some laybys are frankly unusable by other road users, particularly families, owing to the large amount of debris, broken glass, litter and human faeces as there is no proper availability of toilet and other services.
- 4.179 In this regard, the response of the HA that it is unaware of any public complaints and has no proposals for management control of

these existing laybys is disappointing (Doc Ref R1Q_3) and suggests that few site inspections by HA staff are carried out. I conclude that the parish councils and local authorities need to continue to bring these operational problems before the HA rather more vigorously.

- 4.180 Unless this problem is tackled it seems to me there is a threat to maintaining the high design standards aimed for in DIRFT III by a degradation of the environment which surrounds it. Allowing laybys and the environment of the public highway generally to remain in this poor state would also compromise those objectives of the transport strategy that seek to encourage public transport, walking and cycling.
- 4.181 For these reasons, the proposals recently considered by DDC for the expansion of the existing truck stop at the Night Owl service area north of the application site on the east side of A5 are welcome as they would result in an increased number of HGV parking spaces in the area (Doc Ref LIR_2).

The proposed Lorry Park

- 4.182 The application provides for a lorry park at the northern end of the site, for the specific use of HGVs using DIRFT III and to be available to DIRFT users as a whole. Some representations were made suggesting that the lorry park should be provided in its entirety at the outset of the development. Whilst I can see the point being made, I also accept that the operation of this lorry park would not be a public facility available to all HGV drivers. In any event, the lorry park cannot be built until the northern access to the A5 and internal estate roads are constructed. These are intended for years 3 - 5 of the 17 year construction programme, so actual provision of the lorry park would be some years away from the commencement of development. Until then, the current problems being experienced by local people are only likely to get worse.
- 4.183 The proposal to develop the lorry park in phases as demand and use of the development picks up I consider is a reasonable one, though I am left somewhat unconvinced by the applicant's response concerning the proposed operational arrangements (Doc Ref R2Q_4, Doc 9.1E). There seems to be no intention to require HGV users of DIRFT to use the lorry park; rather, it would be an available service for those who wish to use it. However, the development itself can reasonably claim to be making provision within the site for HGVs which are using it, and this would mean that at least one large element of lorry parking demand in the vicinity can be catered for within the boundaries of the application site itself.

Conclusions

- 4.184 I accept that HGV lorries in transit have every right to continue to park in laybys provided for the purpose on the public highway. The challenge therefore is to encourage standards of maintenance and operation in the public realm to match those within the private DIRFT estates, and to vigorously control HGV parking on residential and other unsuitable roads. As far as the stretch of A5 within the Order limits at least is concerned, it is subject to requirements 4, 5 and 6 which provide an opportunity to seek physical improvements as the development is implemented.
- 4.185 I look to the HA and the local highway authorities to achieve much higher standards of management of current authorised HGV parking in laybys on the A5 and the A428 particularly, and to properly control unauthorised HGV parking in the wider vicinity. The scale of the proposed development at DIRFT III could substantially exacerbate this problem if it is not dealt with

CONSTRUCTION IMPACTS

- 4.186 Construction impacts are assessed topic by topic in the ES (Doc Ref AD_118-132, Doc 6.2 as a whole); Chapter C and the appendices contain an overview of the construction methodology envisaged (Doc Ref AD_120, 136 and 137, Doc 6.1 Chapter C, Doc 6.2 Appendices C1 and C2).
- 4.187 It is currently anticipated that construction of the scheme will take approximately 17 years. Works are likely to be broadly continuous with, for example, elements of earthworks, landscaping and infrastructure provision overlapping. However for the purposes of assessment the works have been divided into four broad phases between 2014 and 2031.
- 4.188 The main elements of each phase are shown on the phasing plans (Doc Ref AD_59 -62, Doc 2.15). Major construction aspects of the proposal are of course the development itself (Works Nos 1-9) and highway improvements outside the main site (Works No 10), but some structures of are of particular significance:
- the northern access from the site to the A5 (Doc Ref AD_58, Doc 2.14B); the HA has confirmed its agreement to the more detailed drawings supplied for the northern access (Doc Ref R1Q_7, Doc 9.1B Appendices 1A and 1B) subject to appropriate arrangements for detailed design and approval (Doc Ref SoCG_6, Doc 8.13A, and Doc Ref R1Q_3)
 - the rail bridges crossing the A5 (Doc Ref AD_12, 15 and 16, Doc 2.10C, F and G); SoCGs were agreed with the HA covering the proposed rail Bridge A under the A5 (Doc Ref AD_235, Doc 8.6A) and rail Bridge D over the A5 (Doc Ref

AD_236, Doc 8.6B), and with NCC covering rail Bridge B over the A428 (Doc Ref AD_237, Doc 8.7)

- the western rail embankment carrying Works No 2 (Doc Ref AD_19, Doc 2.10J) is the same as that permitted by DDC as part of the planning permission for the Sainsbury's development in DIRFT III (Doc Ref R17_2_1, Doc 9.1H)
- structures in connection with improvement works to the Clifton Brook and its tributary (Doc Ref AD_23, Doc 2.11D); these are agreed with the EA under a SoCG (Doc Ref AD_234, Doc 8.5)
- earthworks to the eastern boundary of the site with the M1 (Works No 9c); these are agreed with the HA through a SoCG (Doc Ref AD_228, Doc 8.1), the Statement of Intent (Doc Ref R2Q_7, Doc 10.4) and by requirement 11 of the draft Order.

4.189 In view of the agreements between the applicant and the main bodies involved, the HA and EA, I am satisfied with the construction arrangements for these major elements of the application.

Construction Environmental Management Plan

- 4.190 The broad principles of a site wide CEMP are set out in the ES (Doc Ref AD_137, Doc 6.2 Appendix C2). As part of the tendering process, contractors would be required to submit a statement demonstrating how they would comply with the CEMP.
- 4.191 Construction traffic routes would be agreed with the relevant highway authorities, designed to avoid unnecessary trips through Rugby town centre and surrounding villages. Appropriate measures to mitigate noise, vibration and dust effects would be identified; pollution prevention measures would be specified in the CEMP to isolate environmentally damaging substances and prevent of their release. These measures would be agreed in consultation with the EA and the relevant utilities provider. An emergency plan would be implemented outlining procedures to follow in the instance of any accidents involving spillages.
- 4.192 A site waste management plan would be developed by each contractor in accordance with prevailing legislation to detail how wastes would be disposed of and managed during demolition and construction.
- 4.193 Controlling aspects of construction would be through the preparation of the CEMP for each phase of the authorised development and the earthworks strategy contained in requirements 13 and 14, and construction hours, noise, vibration and contamination risk in requirements 27, 28, 29, 32 and 33.

- 4.194 In view of the comprehensive construction arrangements for the implementation of the development and their agreement by the relevant bodies, I see no reason why the application should not be approved on this account.

NOISE AND VIBRATION

- 4.195 A comprehensive assessment of existing noise and vibration conditions and the impact of the proposed development on the surrounding area is set out in the ES (Doc Ref AD_127, Doc 6.1 Chapter J). At present, and for the foreseeable future, the background noise sources near the proposed DIRFT III development originate from road traffic on the nearby A class roads, the M1 and rail traffic on nearby railway lines. Although further from the proposed development than the M1, the only existing significant source of vibration in the vicinity of the development are trains on the Northampton loop, located close to the south-western boundary of the site.
- 4.196 The proposed development has the potential to generate noise and vibration from the following activities:
- change in road traffic flows on existing roads
 - additional train movements
 - the operation of gantry cranes and the movement of heavy goods vehicles and trains into, within and out of the site.
- 4.197 Noise mitigation measures have been included in the design of the proposed development and incorporated into noise prediction models. These mitigation measures consist of:
- Lilbourne Ridge - the landscape feature to be constructed as part of Lilbourne Meadows to the north of DIRFT III to mitigate noise and reduce the visual impact of development for residents of Lilbourne
 - the railway spur embankment - a bund to the north of the railway spur (Works No 2) to mitigate the propagation of train noise northwards into the proposed SUE development site
 - a 350 metre long, 3.5 metre high noise barrier constructed for the DIRFT II zone 1 development.

Impacts during Construction

- 4.198 Noise and vibration would be minimised to within required levels and therefore impacts are considered in the ES to be acceptable. However, due to its location, Nortoft Lodge Farm is anticipated to experience a substantial noise impact for some periods during the construction of the rail spur.

Impacts after Completion

- 4.199 Noise impacts from changes in road traffic flows as a consequence of the proposed development have been predicted to be a worst case of minor adverse impacts in 2033. Additional trains on the existing railway network would not result in a significant increase in the level of existing noise and vibration.
- 4.200 Once completed, noise emissions from the 24 hour operation of the development are expected to create less than a marginal significant impact compared to existing background levels of noise, provided the recommended mitigation measures are put in place. However, even with the proposed noise bunds and barriers, noise impacts are considered to be moderate adverse at Lilbourne Lodge and Meadows Farm during the daytime, and Nortoft Lodge Farm, Meadows Farm, 41 Hillmorton Lane and Lilbourne Lodge during the night-time (Doc Ref AD_127, Doc 6.1 Chapter J).

Noise issues

- 4.201 Looked at in combination with construction of the SUE, noise limits are likely to be exceeded during construction of the railway spur embankment and night-time construction of the A5 rail bridge. Further to a question I put about this matter, the applicant notes that Bridge D would be built early on in the phasing of works and that it is unlikely that any development of the SUE would have taken place in the vicinity when Bridge D is being constructed (Doc Ref R1Q_7, Doc 9.1A).
- 4.202 Representations were made by Yelvertoft Parish Council (RR_18), Kilsby Parish Council (Doc Ref WR_1), Barby and Olney Parish Council (Doc Ref WR_2) and Crick Parish Council (Doc Ref WR_8) concerning noise impacts, largely highlighting experiences from the existing DIRFT operations rather than raising matters about the proposed development.
- 4.203 The applicant's response (Doc Ref CoWR_1, Doc 9.1C) is that Crick is located approximately 1.5 km to the west of the proposed DIRFT III site, Kilsby more than more than 2 km to the south and Barby 4 km to the south-west. These separation distances combined with specific noise mitigation measures such as the integrated noise bund on the elevated section of the rail spur (Works No 2), along with the screening provided by both the existing and proposed DIRFT buildings means that the noise impact on Crick, Kilsby and Barby would be minimal. DIRFT III would result in the closure of the existing rail freight interchange, located at the southern edge of DIRFT I, so reducing future levels of activity and hence noise generation from the existing operation.
- 4.204 Lilbourne Parish Council drew attention to noise levels currently experienced from the adjacent M1 and requesting appropriate mitigation of noise generated from the application site once

operational, for example from public address systems and vehicle reversing alarms (Doc Ref RR_20). In this regard, requirement 30 of the draft DCO provides that broadband reversing alarms are to be employed on mobile plant.

- 4.205 DDC highlighted the potential for noise arising from the proposed lorry park (Doc Ref WR_16). A barrier is proposed along the full length of the western boundary and extending approximately 150 metres to the east along the northern boundary. As a result, noise levels arising from the operation of the lorry park in the Lilbourne Meadows area are anticipated to be in the order of 50 dB LAeq,T and therefore within acceptable limits (Doc Ref AD_127, Doc 6.1 Chapter J).
- 4.206 A SoCG was agreed with DDC and RBC (Doc Ref SoCG_1, Doc 8.15) covering noise and vibration methodology, impacts, mitigation and residual effects during the construction and operational stages and setting out proposed requirements in the draft Order to cover these matters³⁴. These are requirements:
- 13 – Construction Environmental Management Plans
 - 14 – earthworks
 - 27 – construction hours
 - 28 – construction noise limits
 - 29 – construction vibration limits
 - 30 – operational noise limits
 - 31 – complaints monitoring
 - 32 and 33 – contamination risk
- 4.207 The applicant considers the powers offered by the s61 process (Control of Pollution Act 1974), where the local authority can impose conditions and has powers to stop construction activities if conditions are not complied with, provide sufficient assurance that impacts on individual properties would be minimised.
- 4.208 I have taken into account paragraph 123 of the NPPF which states that planning decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development, and mitigate and reduce to a minimum other adverse impacts arising from noise from new development including through the use of conditions. In my view, the proposed requirements provide for adequate control by the two local

³⁴ Modified slightly by a subsequent representation from DDC (Doc Ref WR_16)

planning authorities of construction hours of working, noise and vibration, control of noise once the development is operational and a complaints monitoring regime.

AIR QUALITY

- 4.209 The ES includes an assessment of baseline air quality and the potential effects on local air quality as a result of the proposed development (Doc Ref AD_128, Doc 6.1 Chapter K). The main impacts are likely to be:
- dust from demolition of a small number of farm buildings
 - dismantling numerous radio antennae remaining on the former Radio Station site
 - earthworks (including the creation of Lilbourne Ridge) during construction
 - increased pollution at existing sensitive receptors close to roads likely to be affected by development traffic
 - on-site emission sources such as diesel engines, car parks and HGV loading and unloading areas.
- 4.210 However, assuming appropriate mitigation measures are implemented through the CEMP provided for in requirement 13 of the draft Order, air quality impacts during the construction stage are likely to be at most of negligible significance.
- 4.211 In terms of operational impacts, the results of the assessment in the ES indicate that the proposed development is predicted to have at most a negligible effect on local air quality at 8 receptors in 2033 (of which the most significant location is the IBIS hotel in the DIRFT II estate) and an imperceptible effect at all other receptors.
- 4.212 The cumulative effect taking into account of the adjacent SUE development is a prediction of at most a negligible impact on annual average NO₂ concentrations in 2033. The greatest predicted impact is at the site of the former Halfway House public house.
- 4.213 A SoCG was agreed with DDC and RBC (Doc Ref SoCG_2, Doc 8.14) covering air quality methodology, impacts, mitigation and residual effects. As with noise and vibration impacts, the preparation of the CEMP for each stage of the development provided for by requirement 13 should provide sufficient controls during the construction of the proposed development.

UTILITIES

- 4.214 The ES contains a review of the current and proposed utility infrastructure position (Doc Ref AD_130, Doc 6.1 Chapter M). There are existing electricity supplies to DIRFT I and II of course;

otherwise supply to the application site is limited to serving the farmhouses and the former B station. Western Power Distribution confirmed that over and above locally available capacity a new primary substation would be needed within the proposed development boundary, together with 11kV cabling infrastructure and distribution substations (Doc Ref RR_17). The proposed location of the new primary substation is shown on the illustrative master plan within zone D (Doc Ref AD_96, Doc 2.8B) and is provided for as part of Works No 4 in the draft Order.

- 4.215 Anglian Water is the only water undertaker for the area of the proposed development and had no issues to raise (Doc Ref WR_10). Severn Trent Water as the statutory sewerage undertaker confirmed that it has capacity in its existing infrastructure to treat foul flows (Doc Ref AD_122, Doc 6.1 Chapter E). There are no adopted foul or surface water sewers located within the proposed site boundary. Foul flows from the DIRFT III site would drain to the Newbold waste water treatment works via a new off-site sewer approximately 5 km in length. Requirement 26 of the draft Order would require the approval of a foul water drainage strategy by the relevant planning authority prior to the commencement of the authorised development.
- 4.216 Consultation with National Grid Gas plc (NGG) has confirmed that its existing medium pressure network currently has sufficient capacity to supply the proposed development.

Underground pipelines and cables

- 4.217 An existing 0.45 metres diameter high pressure gas main, the Rothershorpe to Churchover pipeline, crosses the M1 and enters the application site on the eastern boundary at the mid-point of the proposed development. This is protected to 3 metres either side of the pipe by an existing legal easement dating from 1967 (Doc Ref AD_209, Doc 6.2 Appendix M1). A diversion of this gas main would be required to accommodate the proposed development, but it is intended to retain a 6 metres easement. On completion of the diversionary work, the redundant section of the gas main would be removed.
- 4.218 Representations were received from Eversheds on behalf of NGG objecting to the provisions of the draft Order seeking the powers to divert this pipeline (Doc Ref RR_27 and Doc Ref WR_15). The Health and Safety Executive (HSE) also drew attention to this pipeline falling within its consultation requirements for a major hazardous installation, but stated that provided all necessary work was carried out in accordance with the Pipeline Safety Regulations 1966, HSE would be unlikely to advise against the development (Doc Ref RR_10).
- 4.219 Negotiations took place between the applicant and NGG during the examination (Doc Ref R1Q_4 and Doc Ref CoRR_1), and with HSE

(Doc Ref CoRR_2, Doc 10.1), leading to the inclusion of protective provisions in the draft Order (Schedule F) to NGG's satisfaction. Eversheds on behalf of NGG confirmed withdrawal of their objection before the closure of the examination (Doc Ref AS_13).

- 4.220 There is an active existing 0.28 metres diameter high pressure chalk slurry pipeline (and an inactive slurry pipeline running adjacent to the live pipeline) in the ownership of CEMEX UK Operations Ltd. This runs through the site in parallel to the 0.45 metres diameter high pressure gas pipeline, crossing the M1 from the east into the site, two thirds of the way up the eastern site boundary. Both pipes then run parallel to the M1 to the north. No change is proposed to the active pipeline, but where necessary because of the proposed development, sections of the abandoned cement slurry pipeline would be removed (Doc Ref AD_130, Doc 6.1 Chapter M).
- 4.221 There are numerous underground BT cables running between the former Radio Station buildings (both within the application site as well as land proposed for the SUE to the west of the A5) which link to the existing masts and equipment. This infrastructure would be decommissioned and removed prior to the commencement of construction.
- 4.222 Apart from Eversheds on behalf of NGG, no representations were received concerning underground pipelines and cables on the application site.

Ground contamination

- 4.223 There is no evidence of significant or extensive ground or groundwater contamination on the application site. Based on the results of limited monitoring, it is concluded that gas protection measures would not be needed for the proposed development (Doc Ref AD_126, Doc 6.1 Chapter I). Requirements 32 and 33 provide for a scheme to deal with site contamination prior to commencement of the authorised development.
- 4.224 Public Health England (PHE) raised an initial concern about public health impacts arising from the proposed development, particularly in connection with exposure to electromagnetic fields and requesting further information (Doc Ref RR_29). The applicant responded by identifying where in the ES relevant material is provided (Doc Ref CoRR_2, Doc 10.1), and PHE accepted that the proposed development is unlikely to pose a significant risk to public health (Doc Ref R2Q_8).

5 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

- 5.1 My overall conclusion on the case for granting development consent for this application³⁵ is based on an assessment of those matters which I consider are both important and relevant to the decision, as well as the LIRs submitted to the examination³⁶.
- 5.2 In chapter 3 of this report I set out the policy context I consider is both important and relevant to my assessment of the application, and I have referred to specific parts of relevant policies in concluding on issues examined in chapter 4.
- 5.3 I have set out the reasons for my conclusions on each of the matters in chapter 4 which in summary are:
- there is a clear need for the application which is supported by policy guidance from the Department for Transport and the consultation draft of the relevant National Policy Statement
 - there appear to be no capacity difficulties on the rail network in handling the forecast volumes of rail freight
 - the relationship with the adjacent proposed sustainable urban expansion of Rugby has been properly considered during the preparation of the application
 - the main consequence of the development is likely to be traffic generation; whilst the proposals for mitigation through junction improvements to the A5 and the A428, traffic calming schemes and a comprehensive transport strategy to encourage more non-car journeys to work are appropriate to the forecast increase in HGV traffic, there are reservations about the consequences if the expected modal shift targets are not achieved
 - continuing doubts, particularly on the part of the parish councils surrounding the application site, are arguably as a consequence of irritation caused by existing overnight lorry parking and the condition of laybys along the public highway which the requirements in the Order would help to improve
 - specific lorry parking provision proposed in the application would help to address additional parking requirements generated by the project
 - arrangements in the DCOb for dealing with unforeseen transport impacts are appropriate

³⁵ Not here referring to the case for the inclusion of compulsory acquisition powers in the DCO

³⁶ As required by s105 PA 2008

- proposals for modifying footpaths and bridleways to accommodate the proposed development are acceptable
- there is an enthusiastic local interest in the human history of the site; the main impact on heritage is the loss of medieval ridge and furrow, but permanent impact on heritage assets after completion of the proposed development is acceptable
- in the context of the constraints imposed by the framework plans and schedule of parameters and the intention to seek much lower levels of night time lighting, the likely impacts on the landscape and views from the surrounding areas would be limited
- the proposals for the ridge in Lilbourne Meadows offer the prospect of substantial amelioration of noise and visual impact on Lilbourne as the closest settlement to the proposed development
- the track record of the applicant in the development of DIRFT II suggests that high design standards are capable of being achieved for the proposed development, together with unusually high standards of landscaping and maintenance of the common parts of the development
- if these standards can be ensured in the implementation of DIRFT III, it has the potential to be exemplary in terms of design and appearance
- impacts on ecology are limited, and the creation of new habitats at Lilbourne Meadows would enable not only any adverse effects to be compensated, but an overall improvement in current conditions to be achieved
- proposals for handling surface water drainage within the site, and improvements to the Clifton Brook and its tributary appear to deal satisfactorily with flooding and drainage consequences
- construction impacts can be controlled by the preparation of Construction Environmental Management Plans for each stage of the authorised development
- noise, vibration and air quality impacts during construction and the operational stages of the proposal appear to be limited, and there are adequate mechanisms in Order to control problems which arise
- there are no apparent utility constraints on future development of the site.

- 5.4 In conclusion therefore, balancing the adverse impacts of the proposed development against the need for the project to be delivered and other benefits, I consider there is a clear justification in favour of granting development consent for the alteration of the Daventry International Rail Freight Interchange.

6 COMPULSORY ACQUISITION

- 6.1 The draft Order provides for the compulsory acquisition of rights only in connection with the proposed changes to Danes Way, rights under or over streets, and the rights of statutory undertakers in stopped up streets (articles 20 - 24).
- 6.2 Nearly all the land within the main site is owned by the applicant as the Rugby Radio Station Limited Partnership (BT and Aviva Investors), or Prologis UK Limited or related companies concerning those elements of existing DIRFT I and II at the southern end of the site, including Danes Way. Land not in the applicant's ownership in the main site is owned by the Secretary of State for Transport:
- the A5 from Hillmorton Lane to the existing Danes Way roundabout (Doc Ref AD_68 and 82, Docs 2.2C and 2.4I)
 - a small triangle of land in the extreme north-west corner of the main site between the A5 and Hillmorton Lane (Doc Ref AD_68, Doc 2.2C)
 - the A5 crossing of the existing railway at Bridge A (Doc Ref AD_66, Doc 2.2A)
 - a section of the A428 where Bridge B crosses (Doc Ref AD_87, Doc 2.6B).
- 6.3 None of the land required to undertake the highway improvements away from the main site is in the ownership of the applicant, being existing highway land belonging to either Warwickshire or Northamptonshire County Councils or the Secretary of State for Transport.
- 6.4 The Land Plans show three areas of Crown land within the main site (Doc Ref AD_65, Doc 2.2):
- the A5 from just south of Hillmorton Lane to the existing Danes Way roundabout
 - a small triangle of land in the extreme north-west corner of the main site between the A5 and Hillmorton Lane
 - the A5 crossing of the existing railway at Bridge A
- and in connection with the highway works where the Strategic Road Network is involved:
- A5 Gibbett roundabout (Doc Ref AD_74, Doc 2.4A)
 - M1 junction 18 (Doc Ref AD_75, Doc 2.4B)
 - A5 Lilbourne junction (Doc Ref AD_77, Doc 2.4D)

- A5 Catthorpe junction (Doc Ref AD_78 Doc 2.4E)
 - A5 Kilsby (Doc Ref AD_80, Doc 2.4G)
 - A5 Parklands roundabout at the A428 (Doc Ref AD_81, Doc 2.4H)
- 6.5 The HA has confirmed on behalf of the Secretary of State that there is no objection to the use of Crown land in connection with the proposed development. This is subject to appropriate requirements or legal agreements attached to the Order which would ensure that the traffic mitigation provisions are delivered at the agreed stages of the development (Doc Ref SoCG_6, Doc 8.13A).
- 6.6 The only representation made during the examination in connection with land ownership matters came from Mr Michael Atkin. He raised an oral objection during the second DCO hearing to the applicant's ownership of land previously held by his family and seeking the application of the Crichel Down rules (Doc Ref HG_8). From subsequent written submissions I received from him (Doc Ref AS_11 and R17_3_1) and the applicant (Doc Ref R17_3_2, Doc 9.1J), it is apparent is that this is a long-standing dispute, but which has been brought to a conclusion as far as I can see by a decision of the High Court on 30 January 2013 dismissing Mr Atkin's claim as totally without merit.
- 6.7 In view of this, whatever force there might be in Mr Atkin's argument that BT should be subject to the Crichel Down rules, and whether he is seeking the return of his family's land at no cost or the opportunity to repurchase the land at current market value (i.e. as the rules advise), are not matters I can consider further in this examination. I note however that Mr Atkin is continuing to pursue his complaint with the Department for Communities and Local Government (Doc Ref AS_14).
- 6.8 The draft Order includes provisions at article 20 which would extinguish the rights described in the Book of Reference (BoR) and shown on the Land Plans. These are rights enjoyed by the operators of existing warehouses on DIRFT I to use Danes Way. This private street would be reconfigured as part of the southern access to the proposed development at DIRFT III, and all existing users of the DIRFT estate (i.e. operators on both DIRFT I and II) would be entitled to use the new access when constructed. This would enable the whole DIRFT estate to operate on a consistent basis within HMRC rules enabling certain categories of road vehicles to use rebated fuel.
- 6.9 The draft Order does not propose powers of compulsory acquisition in respect of any Crown Land or of any land or rights over Special Category Land. Article 7 of the draft Order would restrict the compulsory acquisition powers to the applicant only.

- 6.10 The Statement of Reasons (Doc Ref AD_102, Doc 4.1) and the BoR (Doc Ref AD_104, Doc 4.3) set out the areas of land subject to extinguishment of rights and the purpose for which powers are proposed to be taken. The request for compulsory acquisition powers relates to three small parts of the main site shown on the Land Plans, all of which are in the ownership of the applicant as noted above:
- Land Reference No 1A to 1L covering just under 7000 square metres of land comprising Danes Way from the A5 to DIRFT I; the existing rights of operators on DIRFT I are to pass and repass over Danes Way and to use and connect into utilities and services in this private street
 - Land Reference No 2 covering 444 square metres of land adjacent to the end of Danes Way with rights for an existing operator for the purpose of building and maintaining roadways and laying surface media
 - Land Reference No 3 covering 270 square metres of land between Danes Way and Unit A of DIRFT I with rights for the passage of water and soil, and maintenance of drains and sewers.
- 6.11 The reasons for acquisition of the rights relating to the first two areas of land are to enable the realignment of Danes Way to provide access from the A5 to both DIRFT I and III. The redundant part of existing Danes Way would then be closed. It is necessary to acquire all of the rights over the length of Danes Way identified so that new rights can be granted for the benefit of the whole DIRFT estate.
- 6.12 The reasons for the acquisition of rights relating the third area of land are that a private rising main is routed under the existing Clifton Brook along the highway verge and outfalls to a private gravity foul water drain on the south-west side of the A5 south of the A5/Danes Way Roundabout. The proposed works to regrade the Clifton Brook would include the lowering of the invert level at which the rising main exits the valve chamber so that it can be relaid to pass under the lowered level of the Clifton Brook. It would be necessary therefore to relay the private rising main.

THE APPLICANT'S JUSTIFICATION FOR SEEKING COMPULSORY ACQUISITION POWERS

- 6.13 Section 122 of the PA 2008 provides that compulsory acquisition is justified only if the land is required for the development to which the consent relates, is required to facilitate or is incidental to the development, is replacement land given in exchange under s131 and s132, and that there is a compelling case in the public interest for it.

- 6.14 The applicant argues that the land included in the BoR is required in order to carry out the development to which the DCO relates. No more rights than is necessary are proposed to be taken. The purpose of using compulsory acquisition powers is legitimate and the applicant has specific purposes for how the Order lands would be used.
- 6.15 In terms of a compelling case in the public interest the applicant relies on the need case articulated in the Need Report (Doc Ref AD_219, Doc 7.4) and Planning Statement (Doc Ref AD_218, Doc 7.3). In addition, there is little if any private loss which needs to be outweighed. On the contrary, the revised southern access arrangements shown on Doc Ref AD_57, Doc 2.14A would benefit all the parties who are subject to the compulsory acquisition proposals. The requirements of s122 are therefore complied with.
- 6.16 Regard has been had also to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. This protects the rights of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the conditions provided by relevant national and international laws. Any interference with possessions must be proportionate and in determining whether a particular measure is proportionate, a "fair balance" should be struck between the demands of the general interest and the protection of the individual's rights.
- 6.17 The compulsory acquisition provisions of the draft Order have the potential to infringe the human rights of those benefiting from rights over Danes Way and in respect of the rising main. However, in the case of Danes Way an alternative more beneficial route would be provided and regarding the private rising main, the interference with that right is minimal.
- 6.18 Accordingly, the applicant asserts that although Convention rights are likely to be engaged, the proposals would not conflict with them and would be proportionate in that there is a compelling case in the public interest for the proposals which outweighs in this instance the impact on individual rights.

CONCLUSIONS ON THE CASE FOR COMPULSORY ACQUISITION POWERS

- 6.19 The applicant notes in the Statement of Reasons (Doc Ref AD_102, Doc 4.1) that it has attempted to acquire the rights required by negotiation and private treaty and that at October 2012 discussions are on-going which it is anticipated will be successful. The compulsory acquisition powers are being sought on a precautionary basis given the number of interests involved.
- 6.20 No update to the position on negotiations was provided during the examination, but no objections were received to the proposed

compulsory acquisition powers. No requests were received for a compulsory acquisition hearing and consequently none took place.

- 6.21 I am satisfied from the Funding Statement that the applicant has the financial resources to meet any compensation arising from the acquisition of rights over the three areas of land subject to compulsory acquisition powers. I also note that the Funding Statement indicates that in practice it is not anticipated any compensation will be payable.
- 6.22 I have considered the application documents and the compulsory acquisition matters in the light of s122 and s123 of the PA 2008, relevant guidance, the Regulations³⁷ and the Human Rights Act 1998.
- 6.23 In this case, s123 of the PA 2008 is satisfied because a request for the compulsory acquisition of rights was included in the application for development consent.
- 6.24 Section 122 of the PA 2008 requires that the Secretary of State is satisfied the rights are required, and that a compelling case in the public interest has been made for the compulsory acquisition. In determining whether that compelling case exists the public interest must be balanced against private loss.
- 6.25 In order to conclude that a compelling case has been made for compulsory acquisition, I must also be of the view that development consent should be granted for the proposal because the compulsory acquisition powers are required to bring about that development.
- 6.26 I have concluded that development consent should be granted for the reasons set out in chapters 4 and 5. One of the reasons is that in my view there is a clear need for this project to be delivered. This reason is also very important to the applicant's case that there is a compelling case in the public interest to include compulsory acquisition powers in the draft DCO.
- 6.27 I am satisfied that all of the rights subject to the proposed powers of compulsory acquisition are required to carry out the development. This is having considered in particular the Land Plans (Doc Ref AD_65 and 75, Doc 2.2 and 2.4B), the Statement of Reasons (Doc Ref AD_102, Doc 4.1), the BoR (Doc Ref AD_104, Doc 4.3) the description of the authorised development in Schedule A of the draft Order, and the Works Plans (Doc Ref AD_69 and 73, Doc 2.3 and 2.4).
- 6.28 I am clear that whilst agreements might be in place in due course this does not take away the need for the powers in the draft Order

³⁷ The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010

because the project must be planned and carried out without risk of one or more parties holding it up or preventing it from being delivered.

- 6.29 I have considered the rights under the Human Rights Act 1998 (Convention rights Article 1 of the First Protocol, Article 6 and Article 8) of those affected by the proposed compulsory acquisition.

RECOMMENDATION ON INCLUDING COMPULSORY ACQUISITION POWERS IN THE DCO

- 6.30 For the reasons set out in this chapter I am satisfied that the case has been made that all of the land included in the BoR and Land Plans is required either for the development, or to facilitate it, or as incidental to it.
- 6.31 I am also of the view that a compelling case in the public interest has been made out: there is a clear need for this project to proceed, its delivery would be jeopardised in the absence of the compulsory acquisition powers contained in the draft Order, and the interference with persons and affected land interests is proportionate to the benefits that would be brought about by the development.
- 6.32 I recommend that the compulsory acquisition powers included in the draft Order in respect of the rights relating to the land detailed in the BoR are appropriate if the Secretary of State is minded to grant development consent for this application.

7 DRAFT DEVELOPMENT CONSENT ORDER

- 7.1 The application included a draft Order (Doc Ref AD_100, Doc 3.1), accompanying EM (Doc Ref AD_101, Doc 3.2), and a draft DCOB (Doc Ref AD_227, Doc 7.9B).
- 7.2 I held three hearings examining the draft Order; indeed these were the only IS hearings. In each case I provided a detailed agenda in advance, and followed with a letter requesting and proposing various amendments for consideration at the next hearing. I am grateful to the applicant for the diligence in considering a large number of detailed drafting amendments I suggested and responding to these. The detail is set out in the correspondence listed as part of the application documents relating to each revision of the draft Order, and the discussion is available in the recordings of the hearings.
- 7.3 In total, four revisions to the draft Order were submitted by the applicant (together with consequent amendments to the EM and the DCOB). The final version of the Order provided at the end of the examination is therefore the applicant's preferred draft (Doc Ref R17_4_8, Doc 3.1D).
- 7.4 I report in this chapter on any points in the draft Order which were contentious, or to explain any significant changes which I recommend to the final draft Order contained in Appendix F. If I have made no mention of particular articles or other draft Order provisions the Secretary of State can be clear that I am satisfied they are appropriate for an alteration to a rail freight interchange, and in my view the reasons for seeking the powers have been adequately explained in the version of the EM updated and submitted at the end of the examination (Doc Ref R17_4_1, Doc 3.2C).

MAIN ISSUES

- 7.5 The main matters considered during the hearings, and which therefore represent the most significant changes to the draft Order between that submitted with the application (Doc Ref AD_100, Doc 3.1) and the final version (Doc Ref R17_4_8, Doc 3.1D), are as follows:
- definition of the undertaker, given that the intention is that warehousing plots would be transferred from the applicant to third parties during the development phase: such parties would become the beneficiary and the undertaker for the purposes of the Order
 - the relationship between the Order and the DCOB, particularly concerning the mechanism for carrying out transport improvements in accordance with the progress of development

- clarifying precisely what Plans would be certified and what Works would be authorised by the Order
- in view of the framework approach to future development, involving setting maximum limits through parameters and a flexible implementation regime, how standards of good design could be ensured
- the approach to seeking any future changes to the approved Order through the mechanism of the TCPA, rather than the PA 2008.

7.6 The following paragraphs deal with each of these issues in turn relating to the particular part of the draft Order where they appear.

Article 7

7.7 As this will be essentially a commercial development, the intention is to be able to transfer the benefit of the Order from the applicant to warehousing operators as development takes place. The exceptions are the compulsory acquisition powers, which are solely for the benefit of the applicant, and the responsibility to provide copies of the relevant plans for certification under article 29, which again is to be exclusively the responsibility of the applicant.

7.8 I consider it is appropriate that the responsibility for reviewing and updating the DAS and seeking the approval of the relevant planning authorities should also be one which is for the applicant alone. Otherwise, the prospect would be that the responsibility falling on the undertaker would be dissipated amongst a number of different interests. This would not only put at risk in practical terms how such a review would be initiated, but certainly pose a question mark over its continuing coherence as a mechanism for maintaining consistent design standards for the benefit of the whole Order land itself. For this reason, I recommend that requirement 6 is amended as discussed in paragraph 7.13 below and the obligation of requirement 6 (1) in my recommended version of the draft Order at Appendix F is included in article 7 to bear solely on the applicant.

7.9 In no situation would the approval of the Secretary of State be needed for the transfer of the benefit of the provisions of the Order. This is unusual in the light of most DCOs submitted so far, but in view of the explanation given at the first DCO hearing (Doc Ref HG_4), given the nature of this particular NSIP I am content that this is reasonable.

Requirement 5

7.10 In my view, the design and phasing of access and highway works are central matters to the Order to demonstrate how adverse effects of the development programme on the transport system

can be mitigated by the appropriate construction of highway works. As submitted, these matters were part of the accompanying obligation offered to the two County Councils and two District Councils, but not the HA. I therefore requested that these provisions should be transferred from the proposed DCOb and contained within the draft Order itself. The applicant has done so in the final version of the draft Order at requirement 5, with the exception of Works Nos 10(f) and (g) which remain in the DCOb as they may be provided by way of a financial contribution rather than being carried out by the undertaker. I am content with this outcome.

Works and Plans

- 7.11 Detailed discussions took place during the hearings about the drafting of the description of the Works in Schedule A of the draft Order setting out the authorised development, and the approved development plans listed at the beginning of Schedule B to be subject to the requirements. I am satisfied that as drafted, these now adequately represent the authorised development which would be approved and controlled by the Order.

Design standards

- 7.12 I consider it entirely appropriate that the design guide contained in Chapter 7 of the DAS (Doc Ref AD_223, Doc 7.6) should provide the overall approach to securing what I expect to be a high standard of built development. For that reason I asked that requirement 6 should be amended to specifically provide for this. In addition, I also asked that a review process should be included in the requirement to enable the design guide to be kept up-to-date, and to be approved formally by the relevant planning authorities.
- 7.13 As submitted, this requirement is now broadly satisfactory in my judgement, but in order to ensure its relationship with article 7 is clearly expressed, I propose that it is redrafted into two sub-paragraphs. Sub-paragraph 6(1) should be changed to make it more positive in terms of a four yearly review process. These proposed amendments are shown in the recommended version of the draft Order at Appendix F.

Handling changes to the Order post approval

- 7.14 A main issue arising from the submitted draft Order (Doc Ref AD_100, Doc 3.1) was the proposed inclusion of powers in articles 5 and 8. The purpose of these is to:
- ensure that any planning permission granted under the TCPA within the Order limits would not constitute a breach of the Order and give rise to criminal liability under s161 of the PA 2008

- enable the requirements in Schedule B of the Order to be modified subsequently by treating them as conditions attached to a planning permission capable of being handled by the local planning authority under the TCPA, rather than changing the Order through the mechanisms of the PA 2008
- enable non-material changes to the approved Order to be authorised by the local planning authority rather than the Secretary of State.

7.15 The reasoning for this approach as set out in the EM (Doc Ref R17_4_1, Doc 3.2C) and the Planning Statement (Doc Ref AD_218, Doc 7.3) is to seek as much flexibility in the Order as would be available were an outline planning permission to be granted for the proposal under the TCPA. The proposed development is on a substantial scale which will take in the region of 17 years to complete. It is also a development which is intended to meet a market requirement but for which (as yet) no specific occupiers are identified as is typical at this stage of the planning process for this type of proposed development. In addition, the logistics market is very dynamic and the requirements of occupiers are constantly changing in order to meet market demands.

7.16 The EM states at paragraphs 6.1 and 6.2 that it is essential therefore that the Order provides confidence that future occupiers will be able to operate competitively. Unless such flexibility can be secured in the structure of the Order, the applicant argues the development will not satisfactorily compete against alternative large scale warehousing schemes which have the benefit of flexible outline planning permissions.

7.17 These matters were explored in considerable detail during discussion at the three hearings into the draft Order. The applicant stressed the need for a "level playing field". The size and scale of the proposed development of DIRFT III means it is well above the threshold requiring development consent through the PA 2008. The option of submitting a planning application under the TCPA is not available therefore. The applicant's arguments set out in Doc Ref R17_1_1, Doc 9.1D and Doc Ref R 17_2_2, Doc 9.1I are that:

- this application is different to others submitted so far for development consent, in as much as the proposed development is multi-purpose and it would have a variety of occupants
- in order to meet the needs of future occupiers as market demands change, it might become necessary to vary or exceed the parameters (principally in Works No 4) which place limits on the height and quantity of warehousing development (Doc Ref AD_93, Doc 2.7D)

- the process for changing a DCO post consent is not fit for purpose because the length of time and complexity involved in seeking amendments to a confirmed Order is essentially the same as submitting a fresh application
 - without the powers sought in articles 5 and 8, the Order is unsuitable for handling the realities of future commercial and warehousing development; this application for development consent is the first where these issues have arisen.
- 7.18 Under article 5(2) as proposed, any planning permission issued within the area of the Order limits after the coming into effect of the Order would not constitute a breach of the terms of the Order within s161 of the PA 2008. The reason for the provisions of article 8(3) and (4) is to enable any future changes to the authorised development in the Order to be permitted by means of a planning application to the relevant local planning authority under the TCPA without requiring changes to the Order itself and the approval of the Secretary of State.
- 7.19 DDC supported this approach, suggesting that the DCO should not be a fetter on the Council in carrying out its normal planning functions within the Order lands, and on adjacent sites in DIRFT I and II (HG_4, HG_8, Doc Ref R17_1_2, Doc 9.1D(d)).
- 7.20 I required an explanation of why the draft Order including the requirements precluded the flexibility the applicants were seeking, and therefore I requested a submission from the applicant to explain their reasoning for the drafting of articles 5 and 8 (Doc Ref PrD_6). This is provided at Doc Ref R17_1_1, Doc 9.1D. It sets out the applicant's justification, supported by Counsel's opinion. The general approach was also supported by DDC (Doc Ref R17_1_2, Doc 9.1D(d)). These matters were discussed in considerable detail at the second IS hearing, in the light of which I offered the applicant a further opportunity to provide additional written justification which was submitted as Doc Ref R 17_2_2, Doc 9.1I.

Discussion of the issues

- 7.21 From the submissions made by the applicant, and the scrutiny during the three hearings into the draft Order, I consider there are different sets of circumstances which need to be considered in deciding whether these proposed articles are justified.
- 7.22 The first is where planning permission has already been granted which overlaps with the Order limits. The main example is the recent planning permission granted for Sainsbury's on zone 3 of DIRFT II which does indeed overlap with the proposed Works No 2 in the draft Order (Doc Ref R17_2_1, Doc 9.1H). This has enabled the alternatives present in the application as submitted to be firmed up during the course of the examination in favour of the western rail alignment in the draft Order. The applicant argues that

the implementation of the development approved by the planning permission, for example where changes to conditions attached to the planning permission might need to be sought after the Order has been granted, might then conceivably conflict with elements of the Order. If so these could render the developer liable to the criminal sanctions under s161 of the PA 2008 as a breach of the Order.

- 7.23 Similarly, there may be some future development on DIRFT I and II immediately adjacent to or overlapping with the Order lands where the interaction between development permitted under such a planning permission and that authorised by the Order might be complex to administer.
- 7.24 Second, there may be circumstances where the type of development contemplated within the area of the Order lands is outside the provisions of the PA 2008 and therefore can only be considered under the TCPA. Examples are hotel development or housing which might be appropriate as part of the warehousing development on the main site. Conditions attached to such a planning permission might conceivably differ from the requirements contained in the approved Order, and again would risk breaches of the Order giving rise to criminal sanctions.
- 7.25 The third is to accommodate future development within the Order lands falling within the NSIP category covered by s26 of the PA 2008 but which does not accord with the approved development in the Order, even bearing in mind the flexibility provided by the framework plans and schedule of parameters. Whilst the PA 2008 provides a mechanism for amending an approved Order, the applicant argues this is not suitable for a commercial scheme. The solution is to treat such proposed changes as a planning application for determination by the local planning authority rather than seeking to amend the Order.
- 7.26 Fourth, in a similar way, in order to enable the approved requirements in Schedule B of the Order to be varied, they would be treated as planning conditions so that future changes to them would be handled by the local planning authority.
- 7.27 Finally, non-material changes to the development granted by the Order should be treated as if the Order was a planning permission under the TCPA, and so such changes would be capable of being authorised by the local planning authority, not the Secretary of State.
- 7.28 I have some sympathy with the first two situations, where an existing planning permission overlaps with the Order lands, and where subsequent development is contemplated which can only be approved by way of a planning application. This is the situation that article 5(2) seeks to address. In practical terms though, given the existence of an approved Order with the discharge of

requirements the responsibility of the same local planning authority which is also handling planning applications under the TCPA, the scope for such serious differences leading to the potential for breaches would appear to be slim.

- 7.29 I appreciate that if article 5(2) is agreed to, it could provide powers beyond just these situations and in fact enable undertakers to seek a development different to that approved by the Order through a planning permission from the local planning authority, provided of course it is below the thresholds for the NSIP established in Part 3 of the PA 2008.
- 7.30 But it does seem to me that putting beyond doubt that a planning permission granted under the TCPA would not constitute a breach of the Order and therefore removing the risk to the developer being subject to criminal sanctions is a reasonable proposition in the particular circumstances of this application. I accept therefore that article 5 as drafted is an appropriate approach.
- 7.31 However, I do not take the same view in relation to the other situations in paragraphs 7.25 - 7.27, which are the reasons for the proposed provisions of article 8 (3) and (4). Sub-paragraphs (1) and (2) of article 8 are now the standard approach in DCOs to handling the requests for approval of requirements by the local planning authority, such that the applicant has a right of appeal against a decision issued by the local planning authority in discharging requirements imposed by the Order. I have no difficulty therefore with these.
- 7.32 The proposition contained in sub-paragraphs (3) and (4) of article 8 is that once granted, the development consent should be treated as a planning permission. This is on the basis that it would be much easier for the applicant (and any other interested party enjoying the benefits of the Order as an undertaker) to seek approval for any subsequent changes to the requirements and for non-material changes to the development consent.
- 7.33 I am surprised that the applicant sees the DCO as essentially a handicap, given the objectives of the PA 2008 and particularly in view of the considerable flexibility which the Order as drafted would grant having been prepared within a "Rochdale Envelope" framework. Provided the application has been drafted with sufficient headroom in the parameters (and bearing in mind the consequences for the environmental impact assessment of the original application if subsequent development is substantially different from it) then it seems to me there is considerable scope for the applicant to implement the proposed development consent enabling changing market circumstances and developer preferences to be accommodated.

- 7.34 These matters are recognised in the draft NPS³⁸. If the development consent granted by the Order does become inconsistent with the needs of prospective or future occupiers then it may well point to situation where the Order would need to be amended. In these circumstances, the application to change the development consent may need to be accompanied by further environmental information to supplement the original ES³⁹. However, I judge that this situation is not likely to arise for some time in the circumstances of this application for DIRFT III.
- 7.35 In my view, the overarching consideration is that the PA 2008 already provides a mechanism for enabling subsequent alterations to be made to an approved DCO⁴⁰. I can appreciate the applicant's argument that this is a complex approach in a situation where the proposed changes are material ones, requiring virtually a fresh application. But there is a less onerous procedure in respect of non-material changes.
- 7.36 As far as I am aware, no Order has yet reached the stage where changes to it have been sought, so the anticipated complexities are speculation and could well prove to be less difficult than suggested. But even if these are well founded fears which are demonstrated in practice through a number of cases, the appropriate step is for Parliament to amend the provisions of the PA 2008. In this regard, the Government has recently published a discussion document reviewing possible changes to the PA 2008 regime, including how changes are made to Orders once consent is granted⁴¹. However, these do not alter the applicant's view about the need for article 8 (3) and (4) in the draft Order (paragraph 15 Doc Ref R17_2_2, Doc 9.1I and Doc Ref R17_4_4).
- 7.37 I note the support from DDC for the applicant's approach, but I have not been convinced that the Council fully appreciates the nature of a development consent, such that an Order is more than just a consideration to be taken into account in its normal day-to-day planning activities under the TCPA (Doc Ref R17_1_2, Doc 9.1D(d)).
- 7.38 I am not persuaded that this Order if approved would be so inoperable that it requires to be circumvented by essentially treating it as a planning permission. For these reasons, I propose that sub-paragraphs (3) and (4) of article 8 should be deleted from the draft Order. I have no objections to the provisions of sub-paragraph (5). These conclusions are reflected in my recommended version of the DCO at Appendix F.

³⁸ Paragraph 2.41 of the consultation draft National Policy Statement for National Networks published in December 2013

³⁹ Paragraph 4.16, *ibid*

⁴⁰ At s153 and Schedule 6, and The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011

⁴¹ Reviewing the Nationally Significant Infrastructure Planning Regime, Department for Communities and Local Government, December 2013

Permitted development

- 7.39 For similar reasons, I am concerned about the inclusion of Schedule G in the draft Order, providing for a separate range of permitted works in addition to the authorised development. The justification for this in paragraph 6.10 of the EM is to ensure that the undertaker is not at a disadvantage in seeking to attract occupiers to the site. The applicant's argument is that future operators would expect to enjoy the provisions of permitted development under the TCPA and that these need to be provided for as a category of permitted works specifically within the Order⁴².
- 7.40 In addition, as permitted development rights are by definition not matters which are generally required to be controlled, these should be explicitly outside the authorised development and so not subject to the numerical constraints of the parameters or the design controls imposed by the requirements (paragraph 7.8 of the EM).
- 7.41 I suggested to the applicant that the Order as drafted in terms of the maintenance provisions under article 6 and the definition of "maintain" in article 2, together with the range of site wide associated development to be authorised as set out following Works No 10, particularly (p), would provide sufficient flexibility for accommodating minor works, albeit within the framework of the ES (Doc Ref PrD_9, HG_8 and HG_9).
- 7.42 The applicant's response seems to me to pose a difficulty in terms of seeking to enable a quantum of development to be permitted explicitly in addition to the ceilings established by the parameters (Doc Ref R17_2_9, Doc 9.1G). This would mean that such development would be in excess of the maximum assessed in the ES, and therefore in contradiction of the applicant's acknowledgement that the Rochdale Envelope approach requires that the environmental assessment should consider the maximum development contemplated (paragraph 6.4 of the EM). Putting Schedule G outside the requirements also opens up the possibility of minor building works being carried out in the face of the design standards established by requirement 6.
- 7.43 Whilst this proposed development consent is somewhat different to other recent applications, there is no acknowledgement of this need for permitted development rights within the PA 2008, nor has any other draft DCO sought such provisions as far as I am aware. For the same reasons set out in paragraphs 7.33 -7.38 above, I have therefore come to the conclusion that the permitted works proposed in article 3(1) (b) and Schedule G should be deleted from the draft Order, and these conclusions are reflected in my recommended version of the Order at Appendix F.

⁴² Paragraph 2.7 of the EM (Doc Ref R17_4_1, Doc 3.2C) states that Schedule G of the draft DCO equates to Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) (see Article 3(1)(b))

DCO PROVISIONS

Articles

- 7.44 The revised final draft Order contains 31 articles, providing for amongst other things, the powers to construct and use the authorised development, street works and compulsory acquisition. Detailed amendments were made by the applicant during the examination including to article 2 covering the definitions, and the benefit of the Order in article 7.

Schedules

- 7.45 The Schedules were amended during the examination to ensure accurate references to the authorised development in Schedule A and the approved development plans in Schedule B, that public rights of way were included and to provide protective provisions for statutory undertakers in Schedule F. I am satisfied that all of the Schedules should be included, with the exception of Schedule G.

Requirements

- 7.46 Specific references are given throughout this report and particularly in relevant sections in chapter 4, to the requirements which are proposed in Schedule B of the draft Order to mitigate the adverse impacts of the development. They provide for consultation with and approval of further details by appropriate bodies in connection with carrying out the development.
- 7.47 I am satisfied that all of the proposed requirements in Schedule B should be included in the draft Order, are necessary, relevant to the proposed development to be authorised, enforceable and reasonable in all other respects. I also consider the requirements are drafted in a clear manner, and in a style generally accepted as appropriate. However, in several instances I do not consider they meet the test of being sufficiently precise in establishing the relationship between the details to be submitted and the approved development plans. I consider that the details should be clearly in accordance with the authorised development, and therefore I propose that the word “broadly” should be deleted from requirement 3, and the word “generally” from requirements 6 and 8.
- 7.48 Many requirements contain what are often referred to as “tailpiece clauses” enabling alternatives to details for approval by the relevant planning authority to be considered on request from the applicant. I am aware that some recent confirmed Orders⁴³ have not accepted that such elements of requirements should be included, and accordingly I drew the applicant’s attention to this

⁴³ For example the report of the Examining Authority and the Secretary of State’s decision letter dated 30 October 2013 concerning the Proposed M1 Junction 10A (Grade Separation) Order

matter at the third DCO hearing (HG_11). The applicant's response is set out in the final paragraph of a letter dated 13 December 2013 (Doc Ref R17_4_4).

- 7.49 I have some sympathy with this, given the contention that tailpiece clauses would be bound by the scope of the authorised development in articles 3 and 4 of the draft Order. But I am concerned that the inclusion of words "unless otherwise agreed in writing by the relevant planning authority" implies that the relevant details approved pursuant to the applicable requirement could be substituted by something quite different.
- 7.50 There is a distinction in my view between generally enabling amendments to previously approved details within the constraints of the requirement itself which are unlikely to cause any difficulty, and the inclusion of the tailpiece phrase above which goes much further. In some cases though, it seems to me the flexibility of the tailpiece phrase is justified in this Order: landscaping standards in requirement 9, where the approval of a statutory body is involved for example in part of requirement 11, and also in requirements 26, 27 and 29 dealing with foul water drainage, construction hours and vibration.
- 7.51 However, in other cases I am not persuaded that tailpiece amendments should be included and these cover requirements 6, 7, 8, 10, 11, 12, 13, 14, 16 and 33. In coming to the conclusion that they should be deleted, I have taken into account the comments from IPs on the drafting of requirements and those bodies who have roles as consultees during approval of subsequent details under requirements.

DEVELOPMENT CONSENT OBLIGATION

- 7.52 Also accompanying the draft Order was a draft obligation given by applicant as a unilateral undertaking to the local authorities, and I considered this as part of the IS hearings. An engrossed version of the final DCO dated 16 December 2013 was supplied at the end of the examination, offered to DDC, NCC, RBC, and WCC (Doc Ref R17_4_7, Doc 7.9F). The main provisions of the obligation are as follows:
- no more than 1.65 million square feet of warehousing can be occupied on DIRFT III until the phase one rail works have been constructed and are available for use. The phase one rail works are:
 - four western transshipment sidings
 - the engine release track
 - western loading lane

- western container storage area
- sufficient of the rail terminal entry/exit gateway to serve the operation of the above; and
- sufficient rail track and associated work to serve the above
- a local employment scheme prioritising the use of local labour in both the construction and operation of the development
- the provision of an education and interpretation facility for logistics and related construction
- carrying out the traffic management works in Clifton-upon-Dunsmore and Kilsby (Works No 10(f) and (g)) or making a payment instead
- implementation of a site wide travel plan included with the obligation to encourage the use of non-car transport to access the site; occupier travel plans will be subsequently approved, which are required to comply with the site wide travel plan
- the travel plan to be overseen by a Transport Review Group and the appointment of a Transport Co-Ordinator and Occupier Travel Plan Administrators
- funds for:
 - subsidy of bus services (£2 million)
 - a Travel Plan Contingency Fund - for additional measures to assist in progressing towards a full occupation modal share target (£1 million)
 - an additional Highway Works Fund - a contribution to the funding of any additional highway improvement works to accommodate the impact of traffic arising from the development (£1 million) and
 - an Unforeseen Transport Impacts Fund - to fund means to address any unforeseen transport impacts arising out of the traffic generated by the development (£500,000).

7.53 I consider the DCOb meets the tests in paragraph 204 of the NPPF and I recommend that the Secretary of State takes this into account in reaching a decision on the draft Order.

RECOMMENDATION CONCERNING THE ORDER

7.54 I am satisfied that the description of the authorised development in Schedule A of the draft Order comprises development falling within the terms of s26 and s115 of the PA 2008 and further that the

provisions and requirements in the draft DCO fall within the terms of s120 of the PA 2008.

- 7.55 I recommend that should development consent be granted by the Secretary of State for the alteration of The Daventry International Rail Freight Interchange, the final form of the draft Order I recommend attached in Appendix F is appropriate.

8 CONCLUSIONS AND RECOMMENDATIONS

- 8.1 In coming to my overall conclusions, I have had regard to the matters listed in s105 of the PA 2008 as amended, including the LIRs submitted by DDC and NCC.
- 8.2 I conclude, for the reasons stated in this report, that subject to the modifications to the draft Order that I propose, the adverse impacts of the proposed development would not outweigh its benefits.
- 8.3 I have also considered the request for powers of compulsory acquisition to be included in any Order that is made and conclude that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the applicant in respect of rights relating to the areas of land shown on the Land Plans and as described in the BoR.

RECOMMENDATION

- 8.4 For the reasons set out above, as the Examining Authority under s83 of the Planning Act 2008, I conclude that development consent for the Daventry International Rail Freight Interchange Alteration should be granted and therefore recommend the Secretary of State to make an Order under s114 of the Planning Act 2008 in the form at Appendix F.

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APPENDIX A - THE EXAMINATION

The table below lists the main 'events' occurring during the examination:

	Examination Event	Dates
1	Start of the examination	9 July 2013
2	Issue of: <ul style="list-style-type: none"> ▪ Procedural timetable ▪ Examining Authority's (ExA) first written questions 	15 July 2013
3	Accompanied site visit	19 July 2013
4	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> ▪ Comments on relevant representations (RRs) already received ▪ Written representations (WRs) by all interested parties ▪ Local Impact Report(s) (LIR) from local authorities ▪ Responses to the ExA's first written questions ▪ Statements of Common Ground from the applicant ▪ Revised version of the draft Development Consent Order (DCO) from the applicant 	14 August 2013
5	First hearing on draft DCO	30 August 2013
6	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> ▪ Comments on WRs and responses to comments on RRs ▪ Comments on LIRs ▪ Comments on responses to the ExA's first written questions 	13 September 2013
7	Issue of the ExA's further written questions	20 September 2013
8	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> ▪ Responses to the ExA's further written questions ▪ Requests for any Issue Specific hearings, compulsory acquisition and open floor hearings 	11 October 2013
9	Second hearing on draft DCO	22 October

		2013
10	Notification by the ExA of date, time and place of: <ul style="list-style-type: none"> ▪ Third hearing on draft DCO ▪ Open floor hearing 	24 October 2013
11	Deadline for receipt by the ExA of any comments on responses to the ExA's further written questions	1 November 2013
12	Deadline for submission to the ExA of the final draft DCO and completed s106 undertaking(s)	18 November 2013
13	Third and final draft DCO hearing	27 November 2013
14	Open floor hearing	27 November 2013
15	Close of examination	8 January 2014

As a result of a number of letters issued to the applicant requesting further information about the draft DCO, several deadlines were established, additional to the examination timetable above:

- 27 September 2013 in response to Rule 17 letter issued on 3 September 2013, following the first DCO hearing
- 13 December 2013 in response to Rule 17 letter issued on 3 December 2013
- 20 December 2013 in response to Rule 17 letter issued on 13 December 2013

APPENDIX B – PROCEDURAL DECISIONS

The table below lists the main procedural decisions taken by the ExA

Date	Procedural Decision
20 March 2013	Acceptance of the application for examination
11 June 2013	Invitation to attend the preliminary meeting and draft proposals for conducting the examination
15 July 2013	Confirmation of the examination timetable and publication of first written questions
5 August 2013	Notification of the first DCO hearing
3 September 2013	Request for further information
20 September 2013	Publication of second written questions and notification of the second DCO hearing
24 October 2013	Notification of third DCO hearing and Open floor hearing
29 October 2013	Request for further information from the applicant relating to the draft DCO, and subsequent change to deadlines in the examination timetable
3 December 2013	Request for final draft DCO
13 December 2013	Request for comments on the draft National Networks NPS
8 January 2014	Close of the examination

APPENDIX C - THOSE IN ATTENDANCE OF HEARINGS AND OTHER EVENTS HELD DURING THE EXAMINATION

Attendees at the Preliminary Meeting held on 8 July 2013

Name	Organisation
Paul Hudson	Examining Authority
Susannah Guest	Planning Inspectorate
Iwan Davies	Planning Inspectorate
Morag Thomson	Marrons
Julie Russell	Marrons
Martyn Jarvis	Prologis
Robin Woodbridge	Prologis
Chris Lewis	Prologis
James Wright	Prologis
Justin Gartland	Nathaniel Lichfield and Partners
Simon Aley	Daventry District Council
Eamon McDowell	Daventry District Council
Rob Sim-Jones	Northamptonshire County Council
Verity Chilver	Northamptonshire County Council
Ben Hunter	Northamptonshire County Council
David Neale	Warwickshire County Council
Nick Dauncey	Warwickshire County Council
Chris Down	Churchover Parish Council
Jim Goodger	Crick Parish Council
Grenville Hatton	Barby Hill Archaeological Project
Juliet Clarke	National Grid Gas plc (Eversheds)
Vicky Sterling	National Grid Gas plc
Tim Allen	English Heritage
Neil Hansen	Highways Agency
Cllr Catherine Lomax	Daventry District Council
Andrew Lowe	Tesco plc
Mark Sullivan	CPRE Warwickshire

Attendees at the Accompanied Site Visit held on 19 August 2013

Name	Organisation
Paul Hudson	Examining Authority
Susannah Guest	Planning Inspectorate
Iwan Davies	Planning Inspectorate
Robin Woodbridge	Prologis
Chris Lewis	Prologis
Eamon McDowell	Daventry District Council
Jim Goodger	Crick Parish Council (for visit to Crick only)

Attendees at the First DCO Hearing held on 30 August 2013

Name	Organisation
Paul Hudson	Examining Authority
Susannah Guest	Planning Inspectorate
James Bunten	Planning Inspectorate
Morag Thomson	Marrons Shakespeares
Julie Russell	Marrons Shakespeares
Robin Woodbridge	Prologis
Chris Lewis	Prologis
James Wright	Prologis
Hugh Scanlon	Nathaniel Lichfield and Partners
David Bird	Vectos
Simon Aley	Daventry District Council
Eamon McDowell	Daventry District Council
Neil Hansen	Highways Agency
Paul Cawthorne	JMP Consulting
Chris Bond	Northamptonshire County Council
Cllr Catherine Lomax	Daventry District Council
Samantha Haywood	Yelvertoft Parish Council
Grenville Hatton	Barby Hill Archaeological Project
Jim Goodger	Crick Parish Council/History Society

Attendees at the Second DCO Hearing held on 22 October 2013

Name	Organisation
Paul Hudson	Examining Authority
Emre Williams	Planning Inspectorate
James Bunten	Planning Inspectorate
Morag Thomson	Marrons Shakespeares
Julie Russell	Marrons Shakespeares
Kate Harris	Marrons Shakespeares
Robin Woodbridge	Prologis UK Ltd
David Bird	Vectos
Simon Aley	Daventry District Council
Eamon McDowell	Daventry District Council
Neil Hansen	Highways Agency
Paul Cawthorne	JMP Consulting
Ben Hunter	Northamptonshire County Council
Debbie Carter-Hughes	Northamptonshire County Council
Cllr Catherine Lomax	Daventry District Council
Michael Atkin	
Samantha Haywood	Yelvertoft Parish Council
Grenville Hatton	Barby Hill Archaeological Project
Jim Goodger	Crick Parish Council/History Society

Attendees at the Third DCO Hearing held on 27 November 2013

Name	Organisation
Paul Hudson	Examining Authority
Emre Williams	Planning Inspectorate
Morag Thomson	Marrons Shakespeares
Julie Russell	Marrons Shakespeares
Chris Lewis	Prologis
Robin Woodbridge	Prologis
David Bird	Prologis
Hugh Scanlon	Nathaniel Lichfield and Partners
Simon Aley	Daventry District Council
Eamon McDowell	Daventry District Council
Neil Hansen	Highways Agency
Paul Cawthorne	JMP Consulting
Ben Hunter	Northamptonshire County Council
Catherine Simmonite	Highways Agency
Nicola Boln	Goodman
S Lee	Goodman

Attendees at the Open Floor Hearing held on 27 November 2013

Name	Organisation
Paul Hudson	Examining Authority
Emre Williams	Planning Inspectorate
Speakers:	
Jim Goodger	Crick History Society
Phil Dunkley	Crick Parish Council
Michael Atkin	
Attendees:	
Morag Thomson	Marrons Shakespeares
Julie Russell	Marrons Shakespeares
Robin Woodbridge	Prologis
Eamon McDowell	Daventry District Council
Charles Smedley	Kilsby Parish Council
Anne Cole	Kilsby Parish Council
Christopher Rydon	

APPENDIX D - EXAMINATION DOCUMENTS

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Relevant Representations	RR_X
Additional Submissions	AS_X
Written Representations	WR_X
Local Impact Reports	LIR_X
Statements of Common Ground	SoCG_X
Comments on Relevant Representations	CoRR_X
Comments on Written Representations	CoWR_X
Comments on Local Impact Reports	CoLIR_X
Responses to ExA's Written Round of Questions	RXQ_X
Responses to Rule 17 Letters	R17_X_X
Hearings	HG_X

Doc Ref	Doc Name	Date Received/Sent
APPLICATION DOCS		
Application Form		
AD_1	<u>Doc 1.1 - Application Form (DIRFT III)</u>	22/02/2013
AD_2	<u>Doc 1.2 - Letter Accompanying Original Application</u>	22/02/2013
AD_3	<u>Doc 1.2A - Letter To Accompany Resubmission</u>	22/02/2013
AD_4	<u>Doc 1.3 - Newspaper Notices Report</u>	22/02/2013
AD_5	<u>Doc 1.4 - Site Notices Information</u>	22/02/2013
AD_6	<u>Doc 1.5 - Document List</u>	22/02/2013
AD_7	<u>Doc 1.6 Applicant's Original S.55 Checklist</u>	22/02/2013
AD_8	<u>Doc 1.7 Pre-Acceptance Submission Update</u>	22/02/2013
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AD_10	<u>Doc 2.10A - Rail Framework plan - Sheet 1</u>	22/02/2013
AD_11	<u>Doc 2.10B - Rail Framework Plan - Sheet 2</u>	22/02/2013
AD_12	<u>Doc 2.10C - Bridge A</u>	22/02/2013
AD_13	<u>Doc 2.10D - Bridge B (withdrawn 11/10/2013)</u>	22/02/2013
AD_14	<u>Doc 2.10E - Bridge B Viaduct (withdrawn 11/10/2013)</u>	22/02/2013
AD_15	<u>Doc 2.10F - Bridge B2</u>	22/02/2013
AD_16	<u>Doc 2.10G - Bridge D</u>	22/02/2013
AD_17	<u>Doc 2.10H - Bridge E</u>	22/02/2013
AD_18	<u>Doc 2.10I - Rail Embankment Eastern option</u>	22/02/2013

	<u>(withdrawn 11/10/2013)</u>	
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AD_20	<u>Doc 2.11A - West Footbridge</u>	22/02/2013
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AD_22	<u>Doc 2.11C - Flow Control Structure</u>	22/02/2013
AD_23	<u>Doc 2.11D - Clifton Brook Realignment</u>	22/02/2013
AD_24	<u>Doc 2.11E - Bridleway Details Plan</u>	22/02/2013
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AD_29	<u>Doc 2.11J - Long Dole Culvert</u>	22/02/2013
AD_30	<u>Doc 2.11K - Danes Way Culvert</u>	22/02/2013
AD_31	<u>Doc 2.11L - Western Alignment (withdrawn 11/10/2013)</u>	22/02/2013
AD_32	<u>Doc 2.11 metre - Eastern Alignment</u>	22/02/2013
AD_33	<u>Doc 2.12 - Lilbourne Ridge Contours and Sections</u>	22/02/2013
AD_34	<u>Doc 2.13 - Key Plan</u>	22/02/2013
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PrD_4	<u>Rule 8 letter - Examination Timetable and Procedural Decisions</u>	15/07/2013
PrD_5	<u>Notification of first Draft Development Consent Order Hearings</u>	05/08/2013
PrD_6	<u>Rule 17 following DCO hearing 30 August 2013</u>	03/09/2013
PrD_7	<u>Notification of Second Round Questions and Notification of second DCO hearing</u>	20/09/2013
PrD_8	<u>Issue Specific and Open Floor Hearing notification</u>	24/10/2013
PrD_9	<u>Rule 17 and amendment to timetable notification letter</u>	29/10/2013
PrD_10	<u>Rule 17 request for further information - Applicant</u>	08/11/2013
PrD_11	<u>Rule 17 request for further information - Mr Atkin</u>	08/11/2013
PrD_12	<u>Rule 17 letter requesting final DCO from the applicant</u>	03/12/2013
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AoC_3	<u>AoC-0003 Adequacy of Consultation: Milton Keynes Council</u>	25/02/2013
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AoC_6	<u>AoC-0006 Adequacy of Consultation: South Northamptonshire Council</u>	27/02/2013
AoC_7	<u>AoC-0007 Adequacy of Consultation: Gloucestershire County Council</u>	27/02/2013
AoC_7	<u>AoC-0008 Adequacy of Consultation: Northampton Borough Council</u>	04/03/2013
AoC_8	<u>AoC-0009 Adequacy of Consultation: Peterborough City Council</u>	01/03/2013
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RR_1	<u>Tesco Stores Ltd</u>	11/04/2013
RR_2	<u>North Warwickshire Borough Council</u>	18/04/2013
RR_3	<u>Aylesbury Vale District Council</u>	25/04/2013
RR_4	<u>South Northamptonshire Council</u>	09/05/2013
RR_5	<u>The Ramblers Association</u>	14/05/2013
RR_6	<u>Churchover Parish Council</u>	14/05/2013
RR_7	<u>Kilsby Parish Council</u>	15/05/2013
RR_8	<u>Barby & Onley Parish Council</u>	15/05/2013
RR_9	<u>Clifton-upon-Dunsmore Parish Council</u>	16/05/2013
RR_10	<u>Health and Safety Executive</u>	16/05/2013
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RR_16	<u>Newton and Biggin Parish Council</u>	17/05/2013
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RR_21	<u>Crick History Society</u>	18/05/2013
RR_22	<u>Barby Hill Archaeological Project</u>	19/05/2013
RR_23	<u>M A Sullivan</u>	20/05/2013
RR_24	<u>Northampton Borough Council</u>	20/05/2013
RR_25	<u>Coventry City Council</u>	20/05/2013
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RR_27	<u>National Grid Gas plc</u>	20/05/2013
RR_28	<u>Peterborough City Council</u>	20/05/2013
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AS_2	<u>Doc 8.9 Flood Management etc. SOCG</u>	08/07/2013
AS_3	<u>Doc 2.9C Illustrative Rail Alignment Sheet 1 of 3</u>	08/07/2013
AS_4	<u>Doc 2.9D Illustrative Rail Alignment Sheet 2 of 3</u>	08/07/2013
AS_5	<u>Doc 2.9E Illustrative Rail Alignment Sheet 3 of 3</u>	08/07/2013
AS_6	<u>Doc 2.9F Network Rail Maintenance Access</u>	08/07/2013
AS_7	<u>Additional submission - Parry Walters</u>	26/09/2013
AS_8	<u>Natural England</u>	10/10/2013
AS_9	<u>Additional submission - CPRE Warwickshire</u>	16/10/2013
AS_10	<u>Additional submission - Natural England</u>	15/10/2013
AS_11	<u>Additional submission- Michael Atkin.msg</u>	01/11/2013
AS_12	<u>Additional submission - Cllr Catherine Lomax</u>	18/11/2013
AS_13	<u>Additional submission- Eversheds obo National Grid Gas</u>	13/12/2013
AS_14	<u>Additional Submission 2 - Michael Atkin</u>	07/01/2014
AS_15	<u>Additional submission 2 - CPRE Warwickshire</u>	08/01/2014
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WR_3	<u>WR 3 Written Representation - Mary Barratt Clifton-upon-Dunsmore Parish Council</u>	14/08/2013
WR_4	<u>WR 4 Written Representation - Churchover Parish Council</u>	14/08/2013
WR_5	<u>WR 5 Written Representation - Jim Goodger Crick Historical Society</u>	14/08/2013
WR_6	<u>WR 6 Written Representation -Grenville Hatton Barby Hill Archaeological Project</u>	14/08/2013
WR_7	<u>WR 7 Written Representation - David Hayward CLASP</u>	14/08/2013
WR_8	<u>WR 8 Written Representation - CJ Goodger Crick Parish Council.pdf</u>	14/08/2013
WR_9	<u>WR 9 Written Representation - Andrew Lowe Tesco Stores plc</u>	14/08/2013
WR_10	<u>WR 10 Written Representation - Anglian Water</u>	14/08/2013
WR_11	<u>WR 11 Written Representation -Tim Allen English Heritage</u>	14/08/2013
WR_12	<u>WR 12 Written Representation -Environment Agency</u>	14/08/2013
WR_13	<u>WR 13 Written Representation - Northamptonshire County Council</u>	14/08/2013
WR_14	<u>WR 14 Written Representation - Councillor Catherine Lomax</u>	14/08/2013
WR_15	<u>WR 15 Written Representation -</u>	14/08/2013

	<u>Eversheds National Grid Gas plc.</u>	
WR_16	<u>WR 16 Written Representation - Karen Bell Daventry District Council</u>	14/08/2013
WR_17	<u>WR 17 Written Representation - Natural England</u>	14/08/2013
WR_18	<u>WR 18 Written Representation - BNP Paribas Real Estate Royal Mail</u>	14/08/2013
WR_19	<u>WR 19 Written Representation - MA Sullivan.msg</u>	14/08/2013
WR_20	<u>WR 20 Written Representation - MA Sullivan CPRE Warwickshire.msg</u>	14/08/2013
WR_21	<u>Doc 3.3 and 3.1A WR 21 Written Representation - Marrons Rugby Radio Station Partnership Limited</u>	14/08/2013
WR_22	<u>Doc 7.9C WR 22 Written Representation - Marrons Rugby Radio Station Partnership Limited</u>	14/08/2013
WR_23	<u>Doc 10.3 WR 23 Written Representation - Marrons Rugby Radio Station Partnership Limited</u>	14/08/2013
Local Impact Reports		
LIR_1	<u>LIR 1 Local Impact Report Northamptonshire - County Council</u>	14/08/2013
LIR_2	<u>LIR 2 Local Impact Report - Daventry District Council</u>	14/08/2013
SoCG		
SoCG_1	<u>Doc 8.15 SoCG 1 Statement of Common Ground on Noise between Daventry DC, Rugby BC and Rugby Radio Station Limited Partnership.pdf</u>	14/08/2013
SoCG_2	<u>Doc 8.14 SoCG 2 Statement of Common Ground on Air Quality between Daventry DC, Rugby BC and Rugby Radio Station Limited Partnership.pdf</u>	14/08/2013
SoCG_3	<u>Doc 8.10 SoCG 3 Statement of Common Ground on Rail between Network Rail and Prologis UK.pdf</u>	14/08/2013
SoCG_4	<u>Doc 8.11 SoCG 4 Statement of Common Ground on Ecology and Nature Conservation between Natural England and Rugby Radio Station Limited Partnership and Prologis UK</u>	14/08/2013
SoCG_5	<u>Doc 8.12 SoCG 5 Statement of Common Ground on Highways between Northamptonshire County Council, Warwickshire County Council, Rugby Radio Station Limited Partnership and Prologis UK.pdf (superseded by Doc 8.12A)</u>	14/08/2013
SoCG_6	<u>Doc 8.13 SoCG 6 Statement of Common Ground on Highways between Highways Agency and Rugby Radio Station Limited Partnership and Prologis UK (superseded by Doc 8.13A)</u>	14/08/2013
SoCG_7	<u>Doc 8.17 SoCG 7 Statement of Common Ground on Ecology and Nature Conservation between Environment Agency and Rugby Radio Station Limited Partnership and Prologis UK</u>	14/08/2013
SoCG_8	<u>Doc 8.16 SoCG 8 Statement of Common Ground on Ecology and Nature Conservation between The Wild Trust for Bedfordshire, Cambridgeshire and Northamptonshire and Rugby Radio Station Limited</u>	14/08/2013

	<u>Partnership and Prologis UK.pdf</u>	
Comments on RRs		
CoRR_1	<u>CoRR 1 Comments on Relevant Representations Eversheds LLP National Grid Gas plc.</u>	14/08/2013
CoRR_2	<u>Doc 10.1 and 10.2 CoRR 2 Comments on Relevant Representations Rugby Radio Station Partnership Limited and Prologis UK</u>	14/08/2013
Responses to the ExA's First Questions		
R1Q_1	<u>R1Q 1 Response to ExA's First Questions - John O'Neill Environment Agency</u>	14/08/2013
R1Q_2	<u>R1Q 2 Response to ExA's First Questions - Sarah Esworthy Newton and Biggin Parish Council</u>	14/08/2013
R1Q_3	<u>R1Q 3 Response to ExA's First Questions - Highways Agency</u>	14/08/2013
R1Q_4	<u>R1Q 4 Response to ExA's First Questions - National Grid Gas plc.</u>	14/08/2013
R1Q_5	<u>R1Q 5 Response to ExA's First Questions - Natural England</u>	14/08/2013
R1Q_6	<u>R1Q 6 Response to ExA's First Questions - Daventry District Council</u>	14/08/2013
R1Q_7	<u>Doc 9.1A and 9.1B R1Q 7 Response to ExA's First Questions - Rugby Radio Station Limited Partnership and Prologis UK</u>	14/08/2013
DEADLINE 2 – 13.09.13		
Comments on WRs		
CoWR_1	<u>Doc 9.1C CoWR 1 – Applicant's responses to WR, LIRs and First Written Questions</u>	13/09/2013
Comments on responses to ExA's first questions		
Co1Q_1	<u>Doc 9.1C Co1Q 1 – Applicant's responses to WR, LIRs and First Written Questions</u>	13/09/2013
Comments on LIR		
CoLIR_1	<u>Doc 9.1C CoLIR 1 – Applicant's responses to WR, LIRs and First Written Questions</u>	13/09/2013
DEADLINE 3 – 27.09.13		
Response to r17 letters dated 03.09.13		
R17_1_1	<u>Doc 9.1D Applicant's Response to Request for Further Information under Rule 17</u>	27/09/2013
R17_1_2	<u>Doc 9.1D(d) Daventry District Council response to request for Further Information under Rule 17</u>	27/09/2013
DEADLINE 4 –		

11.10.13		
Response to ExA's further questions		
R2Q_1	Crick Parish Council	11/10/2013
R2Q_2	Environment Agency	11/10/2013
R2Q_3	Highways Agency	11/10/2013
R2Q_4	Doc 1.5C, 3.1B, 3.2A, 3.3A, 8.12A, 8.18 and 9.1E - Marrons Shakespeares on behalf of Rugby Radio Station Limited Partnership and Prologis UK Ltd (part 1)	11/10/2013
R2Q_5	Doc 9.1F Marrons Shakespeares on behalf of Rugby Radio Station Limited Partnership and Prologis UK Ltd (part 2)	11/10/2013
R2Q_6	Doc 7.9D and 8.13A Marrons Shakespeares on behalf of Rugby Radio Station Limited Partnership and Prologis UK Ltd (part 3)	11/10/2013
R2Q_7	Doc 10.4 Marrons Shakespeares on behalf of Rugby Radio Station Limited Partnership and Prologis UK Ltd (part 4)	11/10/2013
R2Q_8	Public Health England	11/10/2013
R2Q_9	West Northamptonshire Joint Planning Unit	11/10/2013
DEADLINE 5 - 18.11.13		
Response to r17 letter dated 29.10.13		
R17_2_1	Doc 9.1H Applicant's response to r17 - 29.10.13 appendices	18/11/2013
R17_2_2	Doc 9.1I Applicant's response to r17 - 29.10.13	18/11/2013
R17_2_3	Doc 3.1C(i) FINAL Revised Development Consent Order (tracked)	18/11/2013
R17_2_4	Doc 3.1C(ii) FINAL Revised Development Consent Order (clean)	18/11/2013
R17_2_5	Doc 3.2B FINAL Revised EM	18/11/2013
R17_2_6	Doc 3.3B FINAL Revised Table of Revisions made to the draft	18/11/2013
R17_2_7	Doc 7.9E(i) FINAL Revised Draft Development Consent Obligation	18/11/2013
R17_2_8	Doc 7.9E(ii) FINAL Revised Draft Development Consent Obligation	18/11/2013
R17_2_9	Doc 9.1G FINAL Response to r17 - 29.10.13	18/11/2013
R17_2_10	Environment Agency response to the ExA request for further information (Questions 19 20 and 21)	18/11/2013
Response to r17 letters dated 08.11.13		
R17_3_1	R17_1 Mr Atkins	18/11/2013
R17_3_2	Doc 9.1J FINAL Response to r17 - 08.11.13	18/11/2013
DEADLINE 6 - 13.12.13		

Response to r17 letter dated 03.12.13		
R17_4_1	<u>Doc 3.2C Exp memo FINAL</u>	16/12/2013
R17_4_2	<u>Doc 3.1D(i) DCO Tracked FINAL</u>	16/12/2013
R17_4_3	<u>Doc 7.9F Completed DCOb -</u>	16/12/2013
R17_4_4	<u>Letter to ExA 13.12.13</u>	16/12/2013
R17_4_5	<u>Letter to ExA - 16 12 13</u>	16/12/2013
R17_4_6	<u>Doc 3.3C Table of Revisions to the DCO FINAL</u>	16/12/2013
R17_4_7	<u>Doc 7.9F Engrossment DCOb FINAL</u>	16/12/2013
R17_4_8	<u>Doc 3.1D(ii) DCO clean FINAL</u>	16/12/2013
R17_4_9	<u>Doc 1.5E Final Document List</u>	08/01/2014
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R17_5_1	<u>Response to ExA's rule 17 letter dated 13 December 2013 - Nathaniel Lichfield and Partners on behalf of the applicant</u>	19/12/2013
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HG_13	<u>Applicant's written submission to the third DCO Issue Specific hearing</u>	27/11/2013

APPENDIX E - ABBREVIATIONS

AP	Affected Person
BoR	Book of Reference
CA	Compulsory Acquisition
CEMP	Construction Environmental Management Plan
DAS	Design and Access Statement
DCO	Development Consent Order
DCOb	Development Consent Order Obligation
DfT	Department for Transport
DDC	Daventry District Council
DIRFT	Daventry International Rail Freight Terminal – this comprises the existing rail freight interchange (or rail port), DIRFT I, DIRFT II and the proposed DIRFT III as shown on the Location Plan (Doc Ref AD_9, Doc 2.1)
DIRFT I Estate	The existing warehousing development on land shaded blue on the Location Plan
DIRFT II Estate	The warehousing development (both existing and permitted but yet to be constructed) on the land shown shaded green on the Location Plan
DIRFT III	The proposed main development shown as the Order Limits and shaded pink the Location Plan, plus elements of offsite highway works listed in Works No 10 of the draft DCO
DIRFT Rail Freight Interchange	The existing rail freight interchange currently located within the DIRFT I Estate and shown shaded pink and hatched blue on the Location Plan
DIRFT Rail Freight Interchange Expansion	The land upon which the rail freight interchange is to be relocated and further warehousing to be provided, defined as the Main Site in the draft DCO.
EA	Environment Agency
ES	Environmental Statement
ExA	Examining authority
HA	Highways Agency
IP	Interested Party
LIR	Local Impact Report
LWS	Local Wildlife Site
NCC	Northamptonshire County Council
NE	Natural England
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
PA 2008	Planning Act 2008 as amended by the Localism Act 2011

PM	Preliminary Meeting
RBC	Rugby Borough Council
SUE	Sustainable Urban Extension
SAM	Scheduled Ancient Monument
SoCG	Statement of Common Ground
(S)RFI	(Strategic) Rail Freight Interchange
TCPA	Town and Country Planning Act 1990
WCML	West Coast Main Line
WCC	Warwickshire County Council
WR	Written Representation

APPENDIX F - PROPOSED DEVELOPMENT CONSENT ORDER

STATUTORY INSTRUMENTS

201[] No. []

INFRASTRUCTURE PLANNING

**The Daventry International Rail Freight Interchange Alteration
Order 201X**

Made - - - - - [] 201X

Coming into force - - - - - [] 201X

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PREAMBLE

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under the Planning Act 2008 (a).

(a) 2008 c29 as amended by Localism Act 2011 (c.20), the Marine and Coastal Access Act 2009 (c.23), the Growth and Infrastructure Act 2013.

The development which is the subject of the application is a nationally significant infrastructure project within the terms of section 26 of the Planning Act 2008.

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the Act;

The single appointed person, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, in accordance with section 83 of the Act has reported to the Secretary of State who has, following consideration of that report, determined to make an Order giving effect to the proposals comprised in the application [with modifications which in its opinion do not make any substantial change in the proposals].

Preliminary

Citation and Commencement

1. This Order may be cited as the Daventry International Rail Freight Interchange Alteration Order 201X and will come into force on [] 201X.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1990 Act” means the Town and Country Planning Act 1990(d);
- “the 1991 Act” means the New Roads and Street Works Act 1991(e);
- “the 2008 Act” means the Planning Act 2008(a);

-
- (a) 1961 c.33. Section 2 was repealed by SI2009/1307. There are other amendments to the 1980 Act which are not relevant to this Order.
 - (b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 30, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
 - (c) 1980 C.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1 (2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1 (3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3), of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
 - (d) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
 - (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(3) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

“access and rights of way plan” means the plan certified as the access and rights of way plan by the Secretary of State for the purposes of this Order;

“ancillary matters” means any matters authorised by the Order which are not development within the meaning of section 32 of the 2008 Act;

“apparatus” for the purposes of articles 11 and 24 has the same meaning as in Part 3 of the 1991 Act;

“associated companies” has the same meaning as in the definition of associated bodies corporate contained in section 256 Companies Act 2006;

“authorised development” means the development described in Schedule A and any other development authorised by this Order, and any works carried out pursuant to the requirements ~~with the exception of the permitted works;~~

“development consent obligation” means the development consent obligation entered into pursuant to Section 106 of the 1990 Act dated ~~16 December 2013~~ [†] in respect of the authorised development and any subsequent amendment thereof;

“the book of reference” means the book of reference 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 the 1980 Act;

“DIRFT I Estate” means the land shaded blue on the Location Plan (Document 2.1)

“the framework plans” means the Main Site and Rail Corridor Plans (Documents 2.7A – C) the Schedule of Parameters (Document 2.7D) the Rail Framework Plans (Documents 2.10A and 2.10B) and the Highway Works Framework Plans (Documents 2.13A, B, D – F) certified as the framework plans by the Secretary of State for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the Main Site and Rail Land Plans (Documents 2.2A – C) and the Highway Mitigation Land and Works Plans (Documents 2.4A, B, D – J) certified as the land plans by the Secretary of State for the purposes of this Order;

“maintain” includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace or improve the authorised development and any derivative of “maintain” must be construed accordingly;

“main site” means that part of the land within the Order limits lying to the east of the A5 and north of the existing DIRFT I Estate;

“Order land” means the land shown on the land plans which is within the Order limits in respect of which rights are to be acquired and described in the book of reference;

“the Order limits” means the limits shown on the works plans represented by a red line within which the authorised development may be carried out;

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

~~“permitted works” means the works set out in Schedule G.~~

“public footpath scheme” means a scheme agreed between the highway authority and the undertaker containing the specification for the public footpaths/bridleways which are to be permanently or temporarily provided within the main site;

“railway” has the same meaning as in section 235 of the 2008 Act;

“rail alignment plans” means the illustrative rail alignment plans (Documents 2.9 C – E);

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- (a) 2008 c.29 as amended by the Localism Act 2011 (c.20), the Marine and Coastal Access Act 2009 (c.23), the Growth and Infrastructure Act 2013 and SI2010/277.
- (b) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“rail served warehousing” means warehousing to which goods can be delivered by rail either directly or by means of another form of transport;

“relevant highway authority” means the County Council or the Highways Agency who have jurisdiction for the highway to which the provisions of this Order apply;

“relevant planning authority” means the district planning authority for the area in which land to which the provisions of this Order apply is situated and in respect of the requirements means the district planning authority in whose administrative district the part of the authorised development to which the requirement relates is located;

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

“relocation works” means work executed, or apparatus provided, under paragraph (2) of article 24;

“requirements” means the requirements set out in Schedule B to this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a);

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

“Transport Review Group” the body to be established pursuant to paragraph 5 of Part 2 of Schedule 1 of the development consent obligation;

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

“undertaker” means Rugby Radio Station Limited Partnership and Prologis UK Limited and their associated companies or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person subject to article 7;

“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 Main Site and Rail Works Plans (Document 2.3A-C) and the Highway Mitigation Land and Works Plans (Documents 2.4A, B, D-J) certified as the works plans by the Secretary of State 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 air-space above its surface.

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

(4) References in this Order to numbered works are references to the works as numbered in Schedule A.

(5) All areas described in square metres in the book of reference are approximate.

Principal powers

Development consent granted by the Order

3. (1) The undertaker is granted the following development consent:

- (a) ~~consent~~ for the authorised development to be carried out subject to the provisions of the Order within the Order limits and subject to the requirements; ~~and~~
- (b) ~~consent for the permitted works subject to the restrictions in Schedule G.~~

(2) In addition the undertaker is granted consent for the ancillary matters.

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numbering

(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

Parameters of authorised development

4. The authorised development will be carried out within the parameters shown and described on the framework plans and in carrying out 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) in respect of the rail deviate vertically from the levels shown on the rail alignment plans to the extent of the limits of deviation shown on those plans.

Authorisation of use

5.—(1) Subject to the provisions of this Order and to the requirements the undertaker and any persons authorised by them may operate and use the authorised development and the existing rail infrastructure within the Order land for the purposes of a rail freight terminal and warehousing and any purposes ancillary thereto.

(2) If planning permission is issued pursuant to the 1990 Act or any successor enactments for development any part of which is within the Order limits following the publication of this Order then the carrying out or use of the development pursuant to that permission will not constitute a breach of the terms of this Order.

Maintenance of authorised development

6. Subject to the requirements 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.

Benefit of Order

7. The provisions of articles 20-24 and ~~29-29~~ and requirement 6(1) have effect solely for the benefit of Rugby Radio Station Limited Partnership and Prologis UK Limited and their associated companies.

Application and modification of legislative provisions

8.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a relevant planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act;
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a relevant planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a relevant planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

~~(3) For the purposes of applications for variation and or removal of the requirements and appeals in respect thereof the requirements are deemed to be imposed as if they were conditions imposed upon the grant of planning permission pursuant to section 72 of the 1990 Act (Conditional grant of planning permission) and the development consent granted by this Order was a planning permission granted under the 1990 Act and the provisions of section 73 (Determination of~~

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~~applications to develop land without compliance with conditions previously attached) of the 1990 Act and section 78 of the 1990 Act (right of appeal in relation to planning decisions) will apply accordingly.~~

~~(4) Non material changes to the development consent granted by this Order may be authorised by the relevant planning authority and for such purposes section 96A of the 1990 Act (Non material changes to planning permission) applies to this Order as if it was a planning permission granted under the 1990 Act and the requirements were conditions attached to such a planning permission and development in accordance with such changes so authorised will be deemed to be in accordance with this Order.~~

~~(5)~~(3) The provisions of section 174(3) of the 2008 Act are disapplied and where a development consent obligation related to this Order is to be modified or discharged then the appropriate authority pursuant to section 106A (11) of the 1990 Act will be the relevant planning authority or relevant highway authority by whom it is enforceable.

Defence to proceedings in respect of statutory nuisance

9. The defence of statutory authority provided by section 158(1) and (2) of the 2008 Act does not apply to civil or criminal proceedings for nuisance brought in respect of the carrying out of the authorised development or anything else authorised by the granting of this Order.

Streets

Power to alter layout, etc., of streets

10.—(1) Subject to paragraph (2), 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 limiting the scope of this paragraph, the undertaker may—

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

(2) Before reinstating any street which has been temporarily altered under this article, the undertaker shall restore the street to the reasonable satisfaction of the relevant street authority.

(3) The powers conferred by paragraph (1) can not be exercised without the consent of the relevant street authority; but such consent may not be unreasonably withheld.

Street works

11.—(1) The undertaker may with the prior agreement of the relevant street authority (such agreement not to be unreasonably withheld), for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule C (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct and maintain the bridges and tunnels referred to in Works Nos 1, 2 and 3; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) (d) and (e) .

(2) The prior agreement of the relevant highway authority required under sub-paragraph (1) will not be required where the street works are carried out pursuant to an agreement entered into under section 278 of the 1980 Act.

Permanent stopping up of streets

12.—(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 columns (1) and (2) of Parts 1 and 2 of Schedule D (streets to be stopped up) to the extent specified, by reference to the letters shown on the access and rights of way plan, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule D (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed and is open for use; 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 subsequently maintained by the undertaker 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) No street specified in columns (1) and (2) of Part 2 of Schedule D (being a street to be stopped up for which no substitute is to be provided) may be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned.

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

- (a) all rights of way over or along the street so stopped up will be 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.

(6) This article is subject to article 24 (apparatus etc. of statutory undertakers).

Public rights of way – diversion and stopping up

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

- (a) stop up each of the public rights of way specified in columns (1) and (2) of Part 1 of Schedule E (public rights of way to be permanently stopped up within the main site) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plan, in column (3) of that Part of that Schedule; and
- (b) temporarily stop up each of the public rights of way specified in columns (1) and (2) of Part 2 of Schedule E (being public rights of way to be temporarily stopped up) to the extent as may be from time to time agreed with the highway authority.

(2) No public right of way specified in columns (1) and (2) of Part 1 of Schedule E (public rights of way to be stopped up within the main site) may be wholly or partly stopped up under this article unless the permanent or temporary diversion routes as may from time to time be agreed by the highway authority have first been provided by the undertaker, to the reasonable satisfaction of the highway authority.

(3) The diversion route provided under paragraph (2), or such alternative temporary or permanent diversion route as may from time to time be agreed by the highway authority, will be subsequently maintained by the undertaker with appropriate clear signage of the diverted or temporarily diverted route until the completion and opening of the public rights of way within the Order limits specified in column (4) of Schedule E to the reasonable satisfaction of the highway authority.

Status of public rights of way created

14. With effect from the date of satisfaction by the highway authority that the public rights of way specified in columns (1) and (2) of Schedule E have been created or improved to the standard required in the public footpath scheme the public rights of way in question will be deemed to have the status in column (4) of that Schedule.

Temporary stopping up of streets

15.—(1) During and for the purposes of carrying out the authorised development, the undertaker may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) The undertaker may not temporarily stop up, alter or divert any street without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent can not be unreasonably withheld.

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

Access

16. The undertaker may, for the purposes of the authorised development and with the agreement of the relevant highway authority (such agreement not to be unreasonably withheld), form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires .

Agreements with highway authorities

17.—(1) A relevant highway authority and the undertaker will enter into agreements with respect to—

- (a) the construction of any new street, including any structure carrying the street over or under a railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (d) any stopping up, alteration or diversion of a street as part of or to facilitate the authorised development; or
- (e) the carrying out in the street of any of the works referred to in article 11 (street works).

prior to the carrying out of the works to which the agreements relate.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and relevant highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

(3) This article does not apply to streets within the main site which are intended to be private streets.

Supplemental powers

Discharge of water

18.—(1) 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 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 pursuant to paragraph (1) will be determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) The undertaker may 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 can not be unreasonably withheld.

(4) The undertaker may 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 shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker may not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker will 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) This article does not permit any activity listed in paragraph 3(1) of Schedule 21 of the Environmental Permitting (England and Wales) Regulations 2010.

(8) In this article—

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

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order 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;

^(a) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.

- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigations of land and making of trial holes.

(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, who is not the undertaker, and occupier of the land.

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

- (a) will, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the relevant street authority,

but such consent can not be unreasonably withheld.

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

Powers of acquisition

Compulsory acquisition of rights

20.—(1) The undertaker may acquire compulsorily the existing rights described in the book of reference and shown on the land plans.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under the Order are extinguished in so far as their continuance would be inconsistent with the carrying out and use of the authorised development—

- (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 on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Where the undertaker acquires an existing right over land under paragraph (1), the undertaker can not be required to acquire a greater interest in that land.

Time limit for exercise of authority to acquire rights compulsorily

21. After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and

- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(b) applies as if this Order was a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, will have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there will be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is –

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated”

(4) In that section, in subsection (2), for “(1)(b)” there will be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections(5) and (6) there will be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if-

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration) —

- (a) in subsection (1), after “publication” there will be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) will be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” will be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of rights under this Order.

Rights under or over streets

23.—(1) The undertaker may with the agreement of the relevant street authority enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(a) 1981 c.66. Sections 2, 6 and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

(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) shall 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, may be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation will not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Apparatus and rights of statutory undertakers in stopped up streets

24.—(1) Where a street is stopped up under article 12 (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 12 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 will —

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory 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 shall pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory 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 that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or laid at the same depth as the existing apparatus, then the amount payable to the statutory utility will be reduced by a sum equivalent to those additional costs.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not 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 shall 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)) shall, 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 statutory 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 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

Miscellaneous and general

Operation and use of railways

25.—(1) The undertaker may operate and use the railway and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993^(a) (the provision of railway services).

Charges

26. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, or for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

Felling or lopping of trees

27.—(1) Subject to sub-paragraph (4) the undertaker may fell or lop any tree or shrub near any part of the authorised development, 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), the undertaker will do no unnecessary damage to any tree or shrub and will 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, shall be determined under Part 1 of the 1961 Act.

(4) The provisions of this article do not apply without the agreement of the relevant planning authority to any tree identified to be retained in the landscaping scheme approved pursuant to requirement 8.

^(a) 1993 c.43. This Act has been amended by the Transport Act 2000 (c.38), the Railways and Transport Safety Act 2003 (c.20) and the Railways Act 2005 (c.14). There are other amendments to this act which are not relevant to this Order.

(5) The provisions of this article do not apply without the agreement of the relevant highway authority to any tree within a highway.

Protections of Interests

28. Schedule F to this Order has effect.

Certification of plans etc

29.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the land plans;
- (c) the access and rights of way plan;
- (d) the works plans;
- (e) the framework plans; and
- (f) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of Notices

30.—(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 (6) 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 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 that 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.

^(a) 1978 c.30.

(5) Where a notice of other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement can 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) 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 takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article may 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.

Arbitration

31. Any difference under any provision of this Order, unless otherwise provided for, will 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 tribunal.

SCHEDULE A

AUTHORISED DEVELOPMENT

The alteration of the existing Daventry International Rail Freight Interchange to provide:-

Works No 1

Within the area of land described on the works plans as Works No. 1 –

Reconfiguration of the existing rail track at the Daventry International Rail Freight Interchange and new rail track provision from the connection with the Northampton Loop Line to connect with Work~~s~~ No. 2 south of the A428 highway as shown indicatively on the Rail Framework Plan Documents 2.10B and rail alignment plans 2.9C and 2.9D (Sheet 2A) and including:

- (a) removal of sidings and provision of new reception sidings and rail track modifications along with additional points and crossings and associated rail infrastructure;

- (b) provision of a second rail track including enlarged rail tunnel beneath the A5 highway (Bridge A1) (Document 2.10C);
- (c) creation of private vehicle access for Network Rail in the general location shown on Document 2.9F;
- (d) creation of private parking area for Network Rail in the general location shown on Document 2.9F;
- (e) removal of Network Rail's existing vehicle access to the main line;
- (f) all necessary earthworks; and
- (g) acoustic barrier, retaining wall and cutting slope.

Works No 2

Within the area of land described on the works plans as Works No. 2 –

New rail tracks to connect the existing and new rail tracks described in Works No. 1 with the new tracks to be provided by Works No. 3, from south of the A428 highway to the immediate west of the A5 highway as shown indicatively on the Rail Framework Plan Document 2.10A and rail alignment plan 2.9D (Sheet 2B) and including:

- (a) provision of a new rail track and associated rail infrastructure on embankment including bund to screen adjacent development to the west broadly as shown on Document 2.10J;
- (b) provision of a rail overbridge to cross the A428 (and all necessary substructure including footpaths, abutments and wingwalls) comprising a single bridge with double track (Bridge B2) as shown on Document 2.10F.
- (c) provision of access bridge for maintenance over realigned Clifton Brook the general arrangement of which is shown on Document 2.11D;
- (d) superstructure and substructure (including foundations, abutments and wingwalls) for rail bridge over the A5 highway as shown on Document 2.10G (Bridge D);
- (e) provision of a second rail track (in addition to (a) above) and associated rail infrastructure;
- (f) landscaping along western edge of Works No. 2; and
- (g) provision of flood plain compensation; construction of watercourse bridging structure over realigned Clifton Brook to carry rail embankment; landscaping incorporating habitat enhancement and realignment of Clifton Brook all as shown on Document 2.11L.

Works No 3

Within the area of land described on the works plans as Works No. 3 –

A new rail freight terminal and rail tracks to connect with the new rail tracks described in Works No. 2 from the immediate west of the A5 highway as shown indicatively on Document 2.9E and including:

- (a) rail overbridge to cross the A5 highway and substructure including foundations, abutments and wingwalls as shown on Document 2.10G (Bridge D);
- (b) rail tracks and associated rail infrastructure;
- (c) a rail freight terminal to be built in phases including but not exclusively
 - (i) rail sidings to load/unload freight;
 - (ii) freight storage area;
 - (iii) rail mounted gantry cranes and associated crane rails and related electricity substation and other lifting equipment;
- (d) cripple siding, rail freight terminal fuelling and maintenance areas;

- (e) intermodal terminal entry/exit gateway including loading lanes, container inspection facility, gatehouses and parking areas;
- (f) HGV stacking area;
- (g) internal roads;
- (h) staff amenity building;
- (i) bridleway bridges over railway as shown on Documents 2.11E, 2.11F, 2.11G, 2.11H and 2.11I and provision of rail bridge over internal estate road as shown on Document 2.10H (Bridge E);
- (j) viewing area for the public; and
- (k) maintenance, customs and administration buildings.

Works No 4

Within the area of land described on the works plans as Works No. 4 –

Rail served warehousing and buildings, including

- (a) warehouses and ancillary offices in accordance with the parameters specified for each zone identified as Zones A – G on the framework plans (Documents 2.7B and 2.7D) including service yards and vehicle parking and in respect of the warehousing incorporating resource recovery units, combined heat and power and roof mounted photo voltaics;
- (b) rail freight terminal building and vehicle parking for rail freight terminal operations, staff and visitor welfare, office accommodation, estate management services, security, customs and education/training facility;
- (c) ancillary buildings, maintenance buildings and workshops;
- (d) vehicle maintenance units;
- (e) earthworks and earth retaining structures;
- (f) container storage;
- (g) rail tracks and associated rail infrastructure;
- (h) incidental landscaping, drainage infrastructure and mains services; and
- (i) primary electricity substation.

Works No 5

Within the area of land described on the works plans as Works No. 5 –

Site accesses and principal on-site private roads including

- (a) realignment of Danes Way and removal of existing roundabout on Danes Way and provision of new roundabout access to provide the southern access (including the re-modelling of the access to Plot E1 of the DIRFT I Estate) as shown on the access and rights of way plan the general arrangement of which is shown on Document 2.14A;
- (b) provision of a new roundabout on the A5 to provide the northern access as shown on the access and rights of way plan the general arrangement of which is shown on Document 2.14B;
- (c) provision of estate roads (including roads crossing any bridleway or footpath), footways, cycleways and verges;
- (d) removal of the redundant low crest weir adjacent to and upstream of the A5 culvert on the Clifton Brook at Long Dole and Dole and replacement flood alleviation as shown on Documents 2.11J and 2.11K or as varied as agreed in writing with the Environment Agency;
- (e) minor amendments to A5/Danes Way Roundabout; and

- (f) incidental landscaping, drainage infrastructure and main services relating to provision of (a) to (e) above.

Works No 6

Within the area of land described on the works plans as Works No. 6 –

Retention of existing rail hub building; removal of four transshipment sidings; provision of a rail locomotive refuelling tank; new warehousing and parking within Zone H as shown on the framework plan Document 2.7A .

Associated development within the meaning of s115(2) of the 2008 Act and comprising:

Works No 7

Within the area of land described on the works plans as Works No. 7 –

A lorry park as shown on the framework plan Document 2.7B and including:

- (a) lorry parking;
- (b) driver welfare facility including toilets and showers ;
- (c) noise barrier and landscaping; and
- (d) vehicle parking.

Works No 8

Within the area of land described on the works plans as Works No. 8 –

Strategic open space (to be known as Lilbourne Meadows) as shown on the framework plan Document 2.7C and including:

- (a) curlew habitat creation;
- (b) areas of relevant ridge and furrow;
- (c) area of retained semi improved grassland;
- (d) creation of water bodies, wetland habitat and marginal reedbed planting;
- (e) great crested newt habitat creation;
- (f) provision of bat house incorporating maintenance equipment store;
- (g) flood control structure, attenuation storage bund, culverting and surface water outflow;
- (h) landscaping including landscaped ridge to screen development zones as shown indicatively on Document 2.12;
- (i) realignment of the Clifton Brook Tributary;
- (j) provision of permissive footpaths as shown indicatively on the access and rights of way plan (Document 2.5);
- (k) physical works for the provision of new and diverted public footpaths and bridleway as shown on the access and rights of way plan (Document 2.5);
- (l) provision of bridges crossing the Clifton Brook Tributary the general arrangements which are shown on Documents 2.11A, 2.11B and 2.11C;
- (m) provision of bird hides; and
- (n) boundary treatments and additional planting.

Works No 9

Within the area of land described on the works plans as Works No. 9 –

- (a) strategic landscaping, including retention of existing landscaping and provision of new landscaping;
- (b) surface water drainage system including attenuation;
- (c) works required for the protection of the M1 motorway boundary slopes and provision of gates on the bridleway FP3 in position A shown on the access and rights of way plan (Document 2.5); and
- (d) internal estate road and bridleway bridge over internal estate road if required.

Works No 10

Within the Order limits identified on Documents 2.4A, B, D - J –

Highways works comprising:

- (a) A5/A426 Gibbet ~~Hill~~ Roundabout – widening and signalisation of A5 (north) approach, A426 (north-east) approach and A5 (south) approach, with additional widening to A426 (south-west) approach and exit, widening of circulating carriageway and associated traffic management measures the general arrangement of which is shown on Document 2.13A;
- (b) M1 Junction 18 – signalisation of the A428 (west) and M1 (north) off-slip approaches the general arrangement of which is shown on Document 2.13B;
- (c) A5 Lilbourne crossroads – improved signage, carriageway markings, anti-skid surfacing, and associated traffic management measures the general arrangement of which is shown on Document 2.13D;
- (d) A5 Catthorpe Crossroads – improved signage, carriageway markings, anti-skid surfacing, and associated traffic management measures the general arrangement of which is shown on Document 2.13E;
- (e) A5/A428 (Parklands) Roundabout – amendments to signing and carriageway markings on A428 (west) approach the general arrangement of which is shown on Document 2.13F;
- (f) traffic management Clifton-Upon-Dunsmore – traffic calming measures as shown illustratively on Document 2.13G;
- (g) traffic management Kilsby – traffic calming measures as shown illustratively on Document 2.13H;
- (h) pedestrian/cycle link from DIRFT to Crick – scheme to improve cycle and pedestrian connectivity between Crick and the authorised development as shown illustratively on Document 2.13I; and
- (i) improvements to a pedestrian/cycle link from DIRFT to Hillmorton – scheme to improve cycle and pedestrian connectivity between the authorised development and Hillmorton as shown illustratively on Document 2.13J or such alternative pedestrian/cycle link agreed with the Transport Review Group.

And in connection with Works 1 – 10 described above further site wide development within the Order limits including the provision of:-

- (a) weighbridges;
- (b) internal estate roads, maintenance accesses, footways and access to Crick Covert (between points 1 – 2 as shown on the access and rights of way plan);
- (c) cycle parking facilities;
- (d) bunds, embankments, swales, landscaping and boundary treatments, earthworks and earthwork retaining structures;
- (e) the provision of footways, cycleways, bridleways and footpath linkages;
- (f) water supply works, foul drainage provision, foul pumping stations, surface water management systems, balancing ponds (surface and underground), attenuation and culverting;

- (g) connections to mains services and provision of utilities infrastructure including secondary substations and gas pressure reducing stations;
- (h) diversion of high pressure gas main, other pipelines and services;
- (i) demolition of existing buildings and structures within the Order limits and as identified on the framework plans;
- (j) security fencing;
- (k) temporary concrete batching plants;
- (l) temporary construction compounds and materials and aggregate store;
- (m) public art;
- (n) lighting;
- (o) gatehouses and CCTV; and
- (p) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised development and which are within the scope of the environmental impact assessment recorded in the Environmental Statement.

SCHEDULE B REQUIREMENTS

Interpretation

1. “access works” means Works Nos 5(a) and 5(b);

“the approved development plans” means the:

- (i) Main Site and Rail Corridor Framework Plans (Sheet 1) (Document 2.7A);
- (ii) Main Site and Rail Corridor Framework Plans (Sheet 1) (Document 2.7B);
- (iii) Main Site and Rail Corridor Framework Plans (Sheet 1) (Document 2.7C);
- (iv) Schedule of Parameters (Document 2.7D);
- (v) Rail Framework Plans (Sheet 1) (Document 2.10A);
- (vi) Rail Framework Plans (Sheet 2) (Document 2.10B);
- (vii) Highway Works Framework Plans (Gibbet Roundabout) (Document 2.13A);
- (viii) Highway Works Framework Plans (M1 J18) (Document 2.13B);
- (ix) Highway Works Framework Plans (Lilbourne Junction) (Document 2.13D);
- (x) Highway Works Framework Plans (Catthorpe Junction) (Document 2.13E); and
- (xi) Highway Works Framework Plans (A5/A428 Parklands) (Document 2.13F);

“authorised buildings” means any building erected as part of the authorised development;

“commence” means the carrying out of any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground or drainage conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

“design and access statement” means the document certified as the design and access statement following submission pursuant to article 29;

“the environmental statement” means the document certified as the environmental statement following submission pursuant to article ~~29~~ 29;

“Highways Agency” means an Executive Agency of the Department for Transport (~~DfT~~) responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport;

“highway works” means Works ~~Nos~~Nos 10(a) – (e) and (h) – (i);

“lead local flood authority” means Northamptonshire County Council;

“occupation” means occupation of the authorised buildings other than for the purpose of constructing fitting out commissioning or site security;

“phase” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority pursuant to requirement 3 (phases of development);

“phase one rail works” means the following works all of which are within Works No. 3:

- (i) four western transhipment sidings;
- (ii) the engine release track;
- (iii) western loading lane;
- (iv) western container storage area;
- (v) sufficient of the rail terminal entry/exit gateway to serve the operation of the above; and
- (vi) sufficient rail track and associated work to serve the above.

“relevant bodies” means in respect of each of the access works and the highway works the bodies referred to in respect of each of those works in the fourth column of the tables in requirement 5 and the term relevant body is to be construed accordingly; and

“RRS urban extension” means the urban extension on land to the west of the A5 opposite the main site which is the subject of a planning application to Rugby Borough Council (reference R11/0699);

“weir removal project” means the removal of the A5 weir, replacement of the A5 and Danes Way culverts and regrading of the channel in accordance with the agreement reached with the Environment Agency and consented under section 109 of the Water Resources Act 1991 with consent numbers UT201100212, UT201100214 and UT201100215 or any varied consents issued by the Environment Agency or variation to the works agreed in writing with the Environment Agency.

Time Limit

2. The authorised development must commence no later than the expiration of five years beginning with the date that this Order comes into force.

Phases of development

3. No phase of the authorised development may commence until a written scheme setting out all the phases of the authorised development which will be ~~broadly~~ in accordance with the phasing plan submitted with the application (Document 2.15) has been submitted to and approved by the relevant planning authority. The written scheme will include phasing details of:

- earthworks;
- ecological mitigation;
- rail infrastructure;
- roads within the main site;
- surface water and foul drainage;
- development plots;
- landscaping; and
- mains services.

~~The phasing and the written scheme may be subject to alteration by prior approval in writing by the relevant planning authority. The authorised development must be carried out in accordance with the phasing and the written scheme as approved from time to time in writing by the relevant planning authority. -~~

Design and phasing of access and highways works

4. The details of each item of the access works and highway works must be submitted to and approved in writing by the relevant body pursuant to article 17 prior to the commencement and construction of each of those works. The details may be subject to alteration by prior approval in writing of the relevant body.

5. The access works and the highway works must be carried out in accordance with details first submitted to and approved by the relevant bodies pursuant to requirement 4 and the undertaker will use reasonable endeavours to complete such works by no later than the triggers set out in the table below or such alternative later triggers as are agreed by the relevant bodies.

Part 1 Access Works

<i>(1)</i> <i>Item</i>	<i>(2)</i> <i>Works</i>	<i>(3)</i> <i>Trigger</i>	<i>(4)</i> <i>Relevant Body</i>
1.	Southern Access (General Arrangement Plan Document 2.14A) (Works No. 5(a)).	Prior to any occupation.	Daventry District Council.
2.	Northern Access (General Arrangement Plan Document 2.14B) (Works No. 5(b)).	Prior to the phase one rail works coming into use.	Highways Agency.

Part 2 Highway Works

<i>(1)</i> <i>Item</i>	<i>(2)</i> <i>Highway Works</i>	<i>(3)</i> <i>Trigger</i>	<i>(4)</i> <i>Relevant Body</i>
3.	A5/A426 Gibbet Hill Roundabout (Highway Works Framework Plan Document 2.13A) (Works No. 10(a)).	Prior to the occupation of more than 305,000 square metres of gross internal floorspace of the authorised buildings.	Highways Agency/Warwickshire County Council.
4.	M1 Junction 18 (Highway Works Framework Plan Document 2.13B) (Works No. 10(b)).	Prior to the occupation of more than 305,000 square metres of gross internal floorspace of the authorised buildings.	Highways Agency.
5.	A5 Lilbourne Crossroads (Highway Works Framework Plan Document 2.13D) (Works No. 10(c)).	Prior to any occupation.	Highway Agency.

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|----|--|---|--|
| 6. | A5 Catthorpe Crossroads (Highway Works Framework Plan Document 2.13E) (Works No. 10(d)). | Prior to any occupation. | Highways Agency. |
| 7. | A5/A428 Roundabout (Parklands) (General Arrangement Plan Document 2.13F) (Works No. 10 (e)). | Prior to any occupation | Highways Agency/
Northamptonshire County Council |
| 8. | Pedestrian/Cycle Link to Crick (illustratively shown on Document 2.13I) (Works No. 10(f)). | Prior to any occupation. | Highways Agency/
Northamptonshire County Council. |
| 9. | Improvements to the pedestrian/cycle link to Hillmorton (illustratively shown on Document 2.13J) (Works No. 10(i)) or such alternative pedestrian/cycle link agreed with the Transport Review Group to reflect the development of the RRS urban extension. | Prior to the provision of Northern Access (item 2 above). | Warwickshire County Council. |

Detailed Design Approval

6. —(1) The design guide contained in chapter 7 of the design and access statement will be reviewed and updated at four yearly intervals by the undertaker in agreement with the relevant planning authorities.

~~6. (2) The details of each phase of the authorised development must generally be in accordance with the approved development plans and the design guide contained in chapter 7 of the design and access statement as reviewed from time to time unless otherwise agreed in writing by the relevant planning authority. The design guide contained in chapter 7 of the design and access statement can be reviewed and updated at four yearly intervals by the undertaker in agreement with the relevant planning authorities. The details of each phase will include details of the following where they are located within that phase:~~

- rail infrastructure (including bridges and tunnels);
- embankments;
- vehicular circulation routes;
- cyclepaths, footpaths and bridleways (including bridges);
- surface and foul drainage;
- vehicle parking;
- built development design and layout;
- roads within the main site;
- intermodal area;
- fuelling and maintenance areas;
- public viewing area;
- freight storage area (including containers);
- weighbridges;
- gatehouses;
- security fencing;

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- substations;
- public transport infrastructure; and
- noise barriers.

7. No phase of the authorised development can commence until the above relevant details of that phase have been submitted to and approved in writing by the relevant planning authority. The authorised development ~~shall~~must be carried out in accordance with the details as approved from time to time ~~unless otherwise agreed in writing~~ by the relevant planning authority.

Provision of Landscaping

8. No phase of the authorised development can commence until a written landscaping scheme for that phase (including the strategic landscaping included within that phase) has been submitted to and approved by the relevant planning authority. The landscaping scheme is to be ~~generally be in~~ accordance with the Green Infrastructure Plan contained in Appendix H5 of the environmental statement and must include details of all proposed soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importation of materials and other operations to ensure plant establishment;
- (c) details of existing trees to be retained, with measures for their protection during the construction period;
- (d) retained historic landscape;
- (e) implementation timetables; and
- (f) arrangements for future maintenance

The scheme may be subject to alteration by prior approval in writing of the relevant planning authority. The authorised development must be carried out in accordance with the details as approved from time to time ~~unless otherwise agreed in writing~~ by the local planning authority.

Implementation and maintenance of landscaping

9.—(1) All landscaping works (including those in Works 8 and 9) must be carried out in accordance with the detailed landscaping scheme approved under requirement 8 and to a reasonable standard in accordance with the relevant recommendations of British Standard 4428 unless otherwise agreed in writing by the relevant planning authority.

(2) The landscaping works must be implemented in accordance with the implementation timetables and maintained in accordance with the arrangements approved under requirement 8.

(3) Any tree or shrub planted as part of an approved landscape scheme that, within a period of ten years after planting is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise agreed in writing by the relevant planning authority.

Ecological Management Plan

10.—(1) No phase of the authorised development can commence until a written ecological management plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority. The management plan may be subject to alteration by prior approval in writing of the relevant planning authority.

(2) The ecological management plan will include an implementation timetable and must be carried out as approved from time to time ~~unless otherwise agreed in writing~~ by the relevant planning authority.

M1 Boundary Slopes

11.—(1) Prior to the commencement of development of Works No. 9(c) the details of the boundary slopes within the Order land abutting the M1 motorway comprising Works No. 9(c) (addressing landscaping and ground stability issues) must be submitted to and approved in writing by the relevant planning authority. The development shall be carried out in accordance with the details approved from time to time ~~unless otherwise agreed in writing by the relevant planning authority.~~

(2) The details of the boundary slopes to be approved by the relevant planning authority under this requirement must reflect the preliminary assessment and methodology for geotechnical assessment set out in the Statement of Intent (Document 10.4) unless otherwise agreed in writing with the Highways Agency.

(3) Before approving any details or giving any agreement under this requirement the relevant planning authority must first consult the Highways Agency.

Fencing and other means of enclosure

12. No phase of the authorised development shall commence until written details of all proposed permanent fences, walls or other means of enclosure for that phase have been submitted to and approved in writing by the relevant planning authority. The development shall be carried out in accordance with the details as approved from time to time ~~unless otherwise agreed in writing by the relevant planning authority.~~

Construction Environmental Management Plan

13. No phase of the authorised development may commence, including for the avoidance of doubt any preparatory earthworks or site levelling but excluding archaeological soil movement and ecological mitigation works, until a Construction Environmental Management Plan (CEMP) for that phase of development, drafted in accordance with the principles set out in the environment statement has been submitted to and approved in writing by the relevant planning authority. The plan will include:

- (a) details of the methods to control noise and vibration arising from construction activities. These measures include:
 - ~~p~~Proposals for monitoring of construction noise;
 - ~~p~~Proposals for monitoring vibration; and
 - ~~p~~Proposals for the introduction of mitigation measures or alternative working practices where the measurements exceed acceptable limits;
- (b) details of the methods to be used to control dust and other emissions from the site;
- (c) details of all temporary fencing, temporary buildings, compound areas and parking areas including arrangements for their removal following completion of construction;
- (d) details of areas to be used for the storage of plant and construction materials and waste;
- (e) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution;
- (f) details of temporary lighting arrangements;
- (g) measures to ensure that construction vehicles do not deposit mud on the public highway including public rights of way;
- (h) a scheme for the routing of construction heavy goods vehicles accessing the site;
- (i) details of mitigation measures to protect biodiversity interests within the site during the construction phases; and
- (j) advisory signage at public access points advising of possible hazards including the potential for sudden noise.

The Construction Environmental Management Plan may be subject to alteration by approval in writing of the relevant planning authority. All construction works must be carried out in accordance with the Construction Environmental Management Plan as approved from time to time ~~unless otherwise agreed in writing by the relevant planning authority.~~

Earthworks

14. No phase of the authorised development, excluding for the avoidance of doubt archaeological soil movement and ecological mitigation works, can commence until details of the earthworks strategy relating to that phase of development including the extent of any material to be temporarily stored within the site and details of any surplus material to be removed from the site for disposal have been agreed with the relevant planning authority. All earthworks must be carried out in accordance with the ~~agreed earthworks strategy unless otherwise agreed in writing by the relevant~~ planning authority.

Archaeology

15.—(1) No phase of the authorised development may take place until the implementation of a programme of archaeological work in accordance with a written scheme of investigation in respect of that phase which has been approved in writing by the relevant planning authority. This written scheme will provide for the investigation of areas of archaeological interest identified by the evaluation surveys which established the base line conditions in the environmental statement (Document 6.2) and include the following components, completion of each of which will trigger the phased discharging of the requirement:

- (a) approval of a Written Scheme of Investigation;
- (b) fieldwork in accordance with the agreed Written Scheme of Investigation;
- (c) completion of a Post-Excavation Assessment report and approval of an approved Updated Project Design: to be submitted within six months of the completion of fieldwork, unless otherwise agreed in advance with the relevant planning authority; and
- (d) completion of analysis, preparation of site archive ready for deposition at a store approved by the relevant planning authority, production of an archive report, and submission of a publication report: to be completed within two years of the completion of fieldwork, unless otherwise agreed in advance in writing with the relevant planning authority.

(2) The programme of archaeological work may be subject to alteration by approval in writing by the relevant planning authority.

Lighting Details

16.—(1) Prior to the commencement of each phase of the authorised development, details of the proposed external lighting in that phase must be submitted to and approved in writing by the relevant planning authority.

(2) The approved lighting scheme must be implemented and maintained as approved from time to time during operation of the authorised development and no external lighting other than that approved pursuant to this requirement shall be installed ~~unless otherwise agreed in writing by the relevant planning authority.~~

(3) The details submitted pursuant to this requirement shall include details of any lighting on any gantry cranes.

(4) Any means of illumination shall be shielded or designed so that the source of illumination is not directly visible from adjoining highways and railway.

Building Sustainability

17.—(1) No development of a warehouse unit may take place until a BREEAM Pre-Assessment Report based upon the BREEAM 2011 method (or equivalent) has been submitted to and approved in writing by the relevant planning authority demonstrating that that unit is expected to achieve at least a BREEAM 2011 “Very Good” rating (BREEAM Industrial 2008 “Excellent”).

(2) The authorised development must be carried out in accordance with the details in the BREEAM Pre-Assessment Report (or equivalent) and a certificate shall be provided within three months of completion or occupation (whichever is the sooner) of each warehouse confirming that the measures in respect of that warehouse committed to within the Pre-Assessment Report have been implemented.

Lorry Park

18.—(1) Prior to commencement of construction of the lorry park a management plan for its operation (which for the avoidance of doubt shall be for the benefit only of occupiers of the authorised development unless otherwise agreed by the undertaker) must be submitted to and approved by the relevant planning authority. The management plan should include details (approved under requirements 3, 6 and 7) of the phases of its construction; the layout and landscaping of the parking areas; any noise mitigation measures; and details of a register to be kept to record all vehicles using the lorry park. The lorry park will thereafter be retained for the duration of the use of the authorised development and shall be laid out and operated in accordance with the approved management plan as approved from time to time.

(2) The management plan may be subject to alteration by prior approval in writing by the relevant planning authority.

Flood Risk and Surface Water Drainage

19. No part of the authorised development which encroaches upon the existing floodplain of the Clifton Brook Tributary shall be implemented until the completion of the weir removal project. The flood management works required to facilitate or mitigate the weir removal project are exempt from this floodplain encroachment requirement.

20. The proposed Clifton Brook Tributary Flood Storage Scheme will be constructed as part of the authorised development in advance of the removal of the A5 weir element of the weir removal project unless another mitigation option approved by the Environment Agency has already been implemented. The proposed flood storage scheme will comprise the construction of a flood storage bund and flow control structure across the full width of the floodplain at Lilbourne Meadows. The bund must be set to a level of 95.5m AOD and tie into the ~~Lorry Park~~ lorry park, which will be set at a minimum level of 95.5m AOD. The details of the proposed Clifton Brook Tributary Flood Storage Scheme must accord with the agreement reached with the Environment Agency and consented under section 23 of the Land Drainage Act 1991 with consent number UT201100216 or any varied consents issued or variation to the works agreed in writing with the Environment Agency for the ~~Head Local Flood~~ Authority.

21. The authorised development must be carried out in accordance with the mitigation measures detailed within Section 6 of the Flood Risk Assessment submitted with the application at appendix E2 of the environmental statement (Document 6.2) or be carried out in accordance with any variation to the above agreed in writing with the Environment Agency, the ~~Head Local Flood~~ Authority or the SUDS ~~Approving~~ Body

22. The rail embankment within the floodplain to the west of the A5 (Works No. 2(a)) must not be commenced until such time as the detailed design of the Clifton Brook rail embankment crossing structure has been submitted to, and approved in writing by, the relevant planning authority. The elements of the authorised development which encroach or impact upon the Clifton Brook Tributary must not be commenced until such time as the detail of the relevant bridging structure and flow control structure have been submitted to and approved in writing by the relevant planning authority. The details must also include:

- (a) Clifton Brook Tributary flow control structure, which must be constructed in accordance with the details shown within the Flood Defence Consent UT201100216 or other details agreed in writing by the relevant planning authority;
- (b) three bridges (bridleway, footbridge and maintenance) over the Clifton Brook Tributary – except for the footbridge over the flow control structure these must be clear span bank top to bank top structures and will be constructed in accordance with the details of Documents 2.11A, 2.11B and 2.11C or other details agreed in writing by the relevant planning authority;
- (c) Clifton Brook rail embankment crossing - this must be a clear span structure (Armco arch or similar) with the soffit level above the channel set a minimum of 600mm above the 1:100yr plus 20% (for climate change) flood level;
- (d) access bridge over the Clifton Brook - this must be a clear span bank top to bank top structure in accordance with the details shown on Document 2.11D or other means of access to be agreed with the relevant planning authority.

The scheme must be implemented as above or in accordance with any variation to the above agreed in writing with the Environment Agency or Head Local Flood Authority. Items (a) and (b) shall be fully operational, prior to the occupation of any element of the authorised development which encroaches or impacts upon the Clifton Brook Tributary.

23. No phase of the authorised development can commence until a surface water drainage scheme for that phase based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development in accordance with the Surface Water Drainage Strategy submitted with the application at appendix E1 of the environmental statement (Document 6.2) has been submitted to and approved in writing by the relevant planning authority or such other approval process that is put in place under the Flood and Water Management Act 2010. The scheme will include:

- (a) limiting the surface water run-off generated by all rainfall events up to the 1:100 year plus 20% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
- (b) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 1:100 year plus 20% (for climate change) critical rain storm;
- (c) detailed design (plans, cross sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and the outfall arrangements;
- (d) details of how the scheme shall be maintained and managed after completion.

The scheme must subsequently be implemented in accordance with the approved details or in accordance with any variations to the details agreed in writing by the relevant planning authority prior to the completion of the authorised development.

24. Prior to the commencement of any element of the authorised development which directly affects a watercourse or floodplain, a construction working method statement for such element to cover all works in, over under or within 8 metres of the top of the bank of either watercourse or their floodplains shall be submitted to and agreed in writing by the relevant planning authority. Thereafter the development must be carried out in accordance with the approved scheme and any subsequent amendments agreed in writing with the relevant planning authority.

25. Any element of the authorised development which directly affects any floodplain must not be commenced until such time as the floodplain compensation scheme has been submitted to and approved in writing by the relevant planning authority. Except for the floodplain compensation scheme itself no above ground part of the authorised development in any floodplain may be commenced until the relevant compensation scheme has been implemented in full. The scheme shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed in writing by the relevant planning authority.

Foul Water Drainage

26. Prior to the commencement of the authorised development, which for the avoidance of doubt excludes earthworks, archaeology works or ecological mitigation works, a foul water drainage strategy must be submitted to and approved in writing by the relevant planning authority. Except where it is constructed in accordance with the approved foul water drainage strategy, no phase of the authorised development may commence until written details of the foul water drainage system have been submitted to and approved by the relevant planning authority. Unless otherwise agreed in writing by the relevant planning authority, such details must be implemented as approved from time to time.

Construction Hours

27.—(1) Subject to (2) below construction and demolition works (which for the purposes of this requirement shall not include archaeological investigations, landscaping works and any non-intrusive internal fit-out works but shall include start up and shut down and deliveries) shall not take place other than between 07:30 and 19:00 hours on weekdays and 08:00 and 13:00 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by the relevant planning authority. Outside the above periods the following working is permitted:

- (a) pre-planned construction works to highway or rail infrastructure requiring possessions where first notified to the relevant planning authority and local residents;
- (b) emergency works; and
- (c) works which do not cause noise that is audible at the boundary of the Order limits

(2) Notwithstanding (1) above no piling operations shall take place after 18:00 hours unless otherwise agreed by the relevant planning authority.

(3) Any emergency works carried out pursuant to requirement 27(1)(b) must be notified to the relevant planning authority within 72 hours of their commencement.

Construction Noise

28.—(1) For normal daytime construction and demolition works carried out on weekdays between 07:30 and 19:00 and on Saturdays between 08:00 and 13:00, the noise level measured at a noise sensitive receptor must not exceed $L_{eq, 12hour}$ 75 dB(A) wherever practicable. Where this is not practicable prior approval through Section 61 of ~~The~~the Control of Pollution Act 1974 (COPA) must be obtained.

(2) Measurements of construction and demolition noise must be undertaken in accordance with BS 5228:2009 – “Code of Practice for Noise and vibration control on construction and open sites” (Part 1 – Noise) at a noise sensitive receptor. Noise levels shall be measured weekly during the stages of construction including ground works, piling, road/rail construction stages unless complaints are received in which case the procedures in requirement 31 shall be followed.

(3) Subject to health and safety requirements, broadband reversing alarm must be employed on mobile plant.

Construction Vibration

29. Unless otherwise agreed with the relevant planning authority all construction works must comply with the guideline vibration limits below. Measurements must be undertaken at any occupied building within or outside of the Order limits within a distance of 25m from piling or any works likely to cause elevated levels of ground borne vibration to ensure compliance with the guideline limits. Measurements must be undertaken in accordance with BS 5228:2009 – “Code of Practice for Noise and vibration control on construction and open sites (Part 2 – Vibration)” and BS7385:1993 – “Evaluation and measurement for vibration in buildings (Part 2 – Guide to damage levels from ground-borne vibration)”.

Type of Building	Peak Particle Velocity	Peak Particle Velocity
	(mms^{-1}) – Day (07:00 to 23:00)	(mms^{-1}) – Night (23:00 to 07:00)
Any permanently occupied residential building	1.0 – 1.5	0.5
Any occupied commercial / industrial building	2.0 – 2.5	1.0

Note: daytime and night-time hours are for reference only as construction activities including piling are controlled elsewhere.

Noise During the Operational Phase

30.—(1) No part of the authorised development may be brought into use until a written scheme has been submitted to and approved in writing by the relevant planning authority, ~~for authority for~~ the monitoring of noise generated during the operational phases of the development. The scheme must specify the locations from where noise will be monitored, the method of noise measurement (which shall be in accordance with BS4142: 1997 for fixed plant noise and Calculation of Railway Noise 1995, equivalent successor standards or other agreed measurement methodologies appropriate to the circumstances) and identify maximum noise levels appropriate to each location. The written scheme must also specify the periods within which monitoring of operational noise shall take place. The written scheme must be implemented to establish baseline noise conditions. This monitoring programme will be subject to periodic (annual) reviews to establish the frequency of noise monitoring and the need for continued monitoring.

(2) Prior to installation, details of all mechanical and ventilation plant must be submitted to and approved by the relevant planning authority. Any fixed plant or ventilation equipment shall be installed and operated in accordance with manufacturers' instructions at all times.

(3) Subject to health and safety requirements, broadband reversing alarms must be employed on mobile plant.

Monitoring of Complaints

31. In the event that justified complaints for noise nuisance are received by a relevant planning authority, the applicant will unless otherwise agreed with the relevant planning authority, at its own expense, employ a consultant approved by the relevant planning authority to carry out an assessment of noise from the development, whether relating to noise from construction or operation of the site. The assessment will be carried out to an appropriate methodology agreed with the relevant planning authority and the results of the assessment will be submitted to the relevant planning authority within 28 days of the assessment. Those results must include a comparison of measured data with the requirements, all data which was collected for the purposes of the assessment and certificates of the measuring instrument's calibration.

Contamination Risk

32. Prior to the commencement of the authorised development (or such other date or stage as may be agreed in writing with the relevant planning authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the relevant planning authority:

- (a) a preliminary risk assessment;
- (b) a site investigation scheme based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
- (c) a remediation strategy based on (a) and (b) giving full details of the remediation measures required and how they are to be undertaken;

- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for contingency action.

The scheme may be subject to alteration by prior approval in writing by the relevant planning authority and must be fully implemented in accordance with the details as approved from time to time.

~~33. Unless otherwise agreed with the relevant planning authority a~~ verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation ~~shall~~must be submitted to and approved in writing by the relevant planning authority. The report must include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It must also include any plan for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action as identified in the verification plan and for reporting to the relevant planning authority.

SCHEDULE C

STREETS SUBJECT TO STREET WORKS

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>
Daventry District	Danes Way – whole length within the Order limits.
Daventry District	A428 and A361 – length within the Order limits.
Rugby Borough	A428 and A426 – length within the Order limits.

SCHEDULE D

STREETS TO BE PERMANENTLY STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New street to be substituted</i>
Daventry District	Danes Way	The length of street shown coloured orange on the access and rights of way plan.	The length of street coloured light blue the access and rights of way plan.
Daventry District	Crick Covert Right of Way	The temporary right of way between points 1 and 3 shown coloured green on the access and rights of way plan.	A private right of way between points 1 and 2 shown on the access and rights of way plan along the estate roads to be constructed as

part of Works No. 5 to
allow access to Crick
Covert.

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>
Daventry District	Shenley Farm access	Full length of access from the A5 highway to Shenley Farm as shown between the points marked V and X on the access and rights of way plan.
Daventry District	New House Farm access	Full length of access from the A5 highway to New House Farm as shown between the points marked W and X on the access and rights of way plan.
Daventry District	B Station access	Full length of access from the A5 highway to B Station as shown between the points marked T and U on the access and rights of way plan.
Daventry District	Existing farm track	Full length of track between the points R and S shown on the access and rights of way plan.

SCHEDULE E

PUBLIC RIGHTS OF WAY TO BE STOPPED UP

PART 1

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Public right of way to be stopped up</i>	<i>Extent of stopping up</i>	<i>New public right of way to be substituted</i>
Parish of Yelvertoft	Bridleway FP3	Existing bridleway between the points marked A and B on the access and rights of way plan shown with a dashed red line.	New bridleway between the points marked A and B on the access and rights of way plan shown with a dashed blue line being a 3 metre surface width within a 5 metre corridor unless otherwise

Parishes of Yelvertoft and Lilbourne	Bridleway EX6 (part) FP2 (part)	Existing bridleway between the points marked A and D on the access and rights of way plan shown with a dashed red line.	agreed in writing with the relevant highway authority. A new combined footpath and bridleway between the points marked A and D on the access and rights of way plan shown with a dashed blue line being a 3 metre surface width within a 5 metre corridor unless otherwise agreed in writing with the relevant highway authority.
Parishes of Yelvertoft and Lilbourne	Footpath EX5 (part) FP1 (part)	Existing footpath between the points marked C and E on the access and rights of way plan shown with a dashed pink line.	A new combined footpath and bridleway between the points marked C and E on the access and rights of way plan shown with a dashed blue line being a 3 metre surface width within a 5 metre corridor unless otherwise agreed in writing with the relevant highway authority.

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Parish of Yelvertoft	Bridleways FP2 and FP3 and Footpaths FP1.	The length within the Order limits as agreed pursuant to article 13.
Parish of Lilbourne	Bridleway EX6 and Footpath EX5.	The length within the Order limits as agreed pursuant to article 13.
Parishes of Yelvertoft and Lilbourne	New bridleway and footpaths provided as part of the authorised development.	The length within the Order limits as agreed pursuant to article 13.

SCHEDULE F

PROTECTIVE PROVISIONS

1.Application

The provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and National Grid Gas Plc.

2. Interpretation

(1) In this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory function in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid for the purpose of gas supply;

“commence” has the same meaning as in paragraph 1 of Schedule B (requirements);

“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, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Gas plc;

“plan” or “plans” include 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;

“the undertaker” has the meaning given to it in article 2 of this Order.

3. Acquisition of land

Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker shall not acquire any apparatus or override any easement or other interest of National Grid otherwise than by agreement.

Removal of apparatus

4.—(1) If, in the exercise of the agreement reached in accordance with paragraph 3 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (8) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to National Grid 56 days’ advance 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 National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account 5(1) below) the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) 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, National Grid shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to it of any such facilities and rights as are referred to in sub-paragraph (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.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and shall be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by it.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under 5(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

6.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 4(2) or otherwise, the undertaker shall submit to National Grid a plan.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall be detailed including a material statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its

system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and National Grid shall give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) 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 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 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 shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker shall comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HSG 47 Avoiding Danger from underground services".

Expenses

7.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to National Grid on demand all charges, costs and expenses reasonably incurred by it in, or in connection with, the inspection, removal, relaying or replacing, 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 this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use powers to compulsorily acquire any necessary rights under 4(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.
- (2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, 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 promoter or in default of agreement settled by arbitration in accordance with article 31 (*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 undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the promoter.
- (4) For the purposes of sub-paragraph (3)—
 - (a) an extension of apparatus to a length greater than the length of existing apparatus shall not 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 shall 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 an undertaker in respect of works by virtue of sub-paragraph (1) shall, 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 undertaker 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.

Indemnity

- 8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these 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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—
- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
 - (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the undertaker, by reason or in

consequence of any such damage or interruption or the undertaker becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this sub-paragraph (1)).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the promoter and considering their representations.

Ground subsidence monitoring scheme in respect of National Grid's apparatus

9.—(1) No works within 15 metres of any apparatus or alternative apparatus shall commence until a scheme for monitoring ground subsidence ("referred to in this paragraph as the monitoring scheme") which is capable of interfering with or risking damage to National Grid's apparatus has been submitted to and approved by it, such approval not to be unreasonably withheld or delayed.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) shall set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraph (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of the undertaker will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to National Grid for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph (10).

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Schedule B (*requirements*) the undertaker may submit a revised monitoring scheme or mitigation scheme to the undertaker for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with National Grid.

Enactments and agreements

10. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

11. Where in consequence of the proposed construction of any of the authorised development, the undertaker and National Grid require the removal of apparatus under paragraph 4(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 6, the undertaker shall use its reasonable 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 National Grid's undertaking and National Grid shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

Access

12. If in consequence of the agreement reached in accordance with paragraph 3(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Save for differences or disputes arising under paragraph 4(2), 4(4), 5(1) and 6 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between them, be determined by arbitration in accordance with article 31 (arbitration).

SCHEDULE G

PERMITTED WORKS

~~(1) The works described in paragraphs (2), (3) and (4) below are permitted subject to the exclusions and limitations set out in this Schedule.~~

~~(2) The carrying out for the maintenance, improvement or other alteration of any building works which—~~

- ~~(i) affect only the interior of the building; or~~
- ~~(ii) do not materially affect the external appearance of the building.~~

~~(3) The erection, extension or alteration of a warehouse.~~

~~(4) Works consisting of~~

- ~~(a) the provision of a hard surface within the curtilage of a warehouse to be used for the purpose of the undertaking concerned; or~~
- ~~(b) the replacement in whole or in part of such a surface.~~

~~(5) Works are not permitted by paragraph 3 if~~

- ~~(a) the height of any part of the new building erected would exceed~~
 - ~~(i) if within ten metres of a boundary of the curtilage of the premises, five metres;~~
 - ~~(ii) in all other cases, the height of the highest building within the curtilage of the premises or 15 metres, whichever is lower;~~
- ~~(b) the height of the building as extended or altered would exceed~~
 - ~~(i) if within ten metres of a boundary of the curtilage of the premises, five metres;~~
 - ~~(ii) in all other cases, the height of the building being extended or altered;~~
- ~~(c) any part of the works would be within five metres of any boundary of the curtilage of the premises;~~
- ~~(d) the gross floor space of any new building erected would exceed 200 square metres;~~

- (e) ~~the gross floor space of the original building would be exceeded by more than~~
- (i) ~~50%; or~~
- (ii) ~~1,000 square metres, whichever is the lesser; or~~
- (f) ~~the works would lead to a reduction in the space available for the parking or turning of vehicles.~~

(6) ~~Works are permitted by paragraph 3 subject to the following conditions~~

- (a) ~~the works must be within the curtilage of an existing warehouse;~~
- (b) ~~any building as erected, extended or altered may only be used for storage or distribution or any purpose ancillary thereto for the purposes of the undertaking or the provision of employee facilities ancillary to the undertaking; and~~
- (c) ~~no building as erected, extended or altered may be used to provide employee facilities~~
- (i) ~~between 7.00pm and 6.30am, for employees other than those present at the premises of the undertaking for the purpose of their employment; or~~
- (ii) ~~at all, if a notifiable quantity of a hazardous substance is present at the premises of the undertaking.~~

(7) ~~Works are permitted by paragraph 4 subject to the following conditions~~

- (a) ~~where there is a risk of groundwater contamination the hard surface shall not be made of porous materials;~~
- (b) ~~in all other cases, either~~
 - (i) ~~the hard surface must be made of porous materials; or~~
 - (ii) ~~provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the warehouse.~~

(8) ~~For the purposes of this Schedule~~

~~“building”~~

- (a) ~~includes any structure or erection and, includes any part of a building; and~~
- (b) ~~does not include plant or machinery and, does not include any gate, fence, wall or other means of enclosure;~~

~~“developer” means a person with the benefit of the Order for the time being in accordance with section 156 of the 2008 Act;~~

~~“employee facilities” means social, care or recreational facilities provided for employees of the undertaking, including crèche facilities provided for the children of such employees;~~

~~“erection” in relation to buildings as defined in this article, includes extension, alteration, or re-erection;~~

~~“floor space” means the total floor space in a building or buildings;~~

~~“original building” does not include any building erected at any time under paragraph 5;~~

~~“warehouse” means a building used for storage and distribution and any purpose ancillary thereto.~~

(9) ~~Unless the context otherwise requires, any reference in this Schedule to the height of a building will be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph “ground level” means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.~~

(10) ~~Where two or more original buildings are within the same curtilage and are used for the same undertaking, they are to be treated as a single original building in making any measurement.~~

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Rugby Radio Station Limited Partnership and Prologis UK Limited and their associated companies to construct, operate and maintain, an alteration to the existing Daventry International Rail Freight Terminal Interchange together with associated development. For the purposes of the development that it authorises Rugby Radio Station Limited Partnership and Prologis UK Limited and their associated companies are authorised by the Order to construct and use the authorised development and to compulsorily acquire rights over land. The Order also authorises the making of alterations to the highway network, stopping up and diversion of public rights of way and to discharge water.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 29 (certification of plans etc) of this Order may be inspected free of charge at the offices of Daventry District Council at Lodge Road Daventry NN11 4FP and Rugby Borough Council Town Hall Evreux Way CV21 2RR.