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Date: 6 September 2019

Dear Mr James

Planning Act 2008 (as amended)

Application by Gazeley GLP Northampton s.a.r.l. and Ashfield Land Management Ltd for an Order Granting Development Consent for the Rail Central Strategic Rail Freight Interchange

Your letter of 16 August 2019

Thank you for your response to the milestone date of 16 August 2019 and for the further detail on progress which was requested in the Examining Authority's (ExA's) letter of 5 August 2019. Paragraph 110 of the Guidance explains that it is for the applicant to determine how best to proceed, whether that is to withdraw the application and restart the pre-application process or continue with the application in its original form, or to submit an alternative proposal for change to the DCO. However, we note you have asked for our consideration and agreement to your revised programme, together with the proposed milestones and communications strategy.

In respect of the highways mitigation, the ExA was concerned to see the extent of the new work which has had to be undertaken, including a detailed review of the core assessment parameters and up-to-date comparator evidence for the modelling. The further work set out in the letter indicates that the outcome of the further modelling could result in significant changes to the Development Consent Order (DCO) application originally submitted. This relates particularly to the works to Junction 15a, which is a Nationally Significant Infrastructure Project (NSIP) in its own right, and works to additional junctions.

Paragraph 2.1 of the Inspectorate's Advice Note 16¹ sets out what should be considered as a material change or whether any changes proposed constitutes a

¹ Advice Note 16: how to request a change which may be material
<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/07/Advice-note-16.pdf>

different project for which a new application would be required. Such decisions include assessment of whether the change would produce different environmental effects and whether there would be any extension to the Order land, especially where that involved Compulsory Acquisition powers.

When the initial delay to the start of the examination was agreed, in its letter of 23 April 2019 to the applicant, the ExA explained that the Government Guidance² states that delays may be appropriate but that such delays should be kept to a minimum and should not normally be for longer than three months. Although paragraph 45 of the Guidance does not set out any "exceptional circumstances" to allow extensions, at that time the ExA agreed to allow time to do all the necessary work and allow time to comply with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The ExA was assured that this could be completed in time for a PM in December 2019 but the milestones set have not been met and the applicant has said that the programme would need to be further delayed so that there would not now be a PM until December 2020.

The original extension would have taken the project over a year past the date that the Secretary of State accepted the application (15 November 2018) and the proposed new extension would put it just over two years. Having regard to the Guidance and Advice Note 16, the ExA considered that, having regard to this particular case, the first extension was justified and designed to prevent requests for further deferrals. The ExA acknowledges the scale and the scope of the further work which needs to be undertaken in the light of the issues found as part of the review. However, to go beyond this deadline, which is already far in excess of the 3 months expected by the Secretary of State in the Guidance, would bring further uncertainty for local people about the nature and scale of the project. Whilst the timetable would allow for further consultation of a full eight weeks and the programme allows for a review of environmental information in respect of the proposed mitigation, the ExA is concerned that further delay raises the risk of the assessments in the Environmental Statement as a whole becoming increasingly outdated.

The scale and length of the consultation required to manage the changes arising, especially when it is not yet known whether they would be accepted for the original DCO examination, is likely to add further to the concerns of Interested Parties, in addition to the concerns which have already been registered against the current delayed PM. In your latest submission you have already identified issues with the original application which would make it unsuitable to proceed to the examination stage. The scale and nature of the changes which you have outlined mean that the ExA would have to consider not just if these represent a material change but that they may represent a significantly different project to the one that was accepted for examination.

If the ExA's view was that it was a significantly different project, then either the original project would have to proceed to examination or you would have to withdraw the existing DCO application and re-start the process with a new DCO application under the Planning Act 2008. The former would be at risk of challenge on many grounds including the question of costs, the latter would eliminate some of the risks to the applicant in terms of whether a change to the original application would be

² Planning Act 2008: Guidance for the examination of applications for development consent
<https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent>

accepted. It would also allow for an open and transparent process which would provide greater certainty for Interested Parties.

In the light of this response to your submission and request for a view on the revised programme and actions, the ExA requests a response from you by 20 September 2019.

Yours sincerely

Elizabeth Hill

Lead Member of the Examining Authority

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