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Cc: [Suzanne Tucker](#)
Subject: TR050005 : WM Freight Interchange - hearing 27 February
Date: 20 February 2019 10:33:45
Attachments: [image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[FBCMB to FAL 20015438 Eversheds_1.pdf](#)

(The Inglewood Investment Company Limited : 20015438)

Dear Sirs

I am writing to enclose a letter which is primarily addressed to Eversheds but which I would like to ensure is also noted by the Inspectorate in advance of the preliminary hearing next week.

The letter seeks clarification of the developer's intentions in relation to the treatment of minerals within the DCO. The clarification sought was raised within our client's original representations. This is not a matter which the Examination Inspector had raised in the list of matters for consideration at the Issue Specific Hearing on 28 February; we are not seeking that the Inspector should change that position, because it is a point which can hopefully be dealt with through correspondence and then reported back in due course. However we felt that the Inspector should be aware of our concerns.

Primarily for the information of the Inspectorate case office, as to the hearing next week, we intend to be present at the Preliminary Hearing on 27 February. The writer, together with our Associate Suzanne Tucker, and a company Director Tom Follows would be present. We do not anticipate speaking on any of the items on the agenda (save as to timetabling matters if needed). We have no special access requirements.

The DCO includes CPO proposals in respect of our client's land holdings; as a result our client would be entitled to be 'heard'; *however*, having reviewed matters, we are content that our client's position can be appropriately explained in **written representations**, and would not therefore seek an allocation of a hearing. Similarly, in relation to minerals matters, our client is content to rely on written representations. We note the present deadline for representations of 5 April, subject to any directions given next week.

Yours faithfully

Niall Blackie Partner			
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Our ref SRT/NB/933834/6
Your ref HUTTON\303716-000001
Date 20 February 2019

Dear Sirs

**PLANNING ACT 2008 INFRASTRUCTURE EXAMINATION
FOUR ASHES LIMITED (FAL) WEST MIDLANDS INTERCHANGE
APPLICATION FOR A DEVELOPMENT CONSENT ORDER (DCO) TR050005
REPRESENTATION BY (OUR CLIENT) THE INGLEWOOD INVESTMENT COMPANY LIMITED
REFERENCE – 20015438**

We write in relation to the above application; the Examination is due to hold a Preliminary Meeting next week. There is an issue in relation to the question of whether the DCO is intended to include the acquisition of minerals lying within our client's land, which we would hope that FAL would be prepared to answer prior to further representations being prepared. This would help to narrow the issues which would need to be covered in those representations and consequently would assist the Examination.

Our client's Representation as lodged includes the following passage as its penultimate paragraph: '*The Objector's understanding is that it is not the intention of the Undertaker to acquire the Objector's mineral interests; however the DCO is ambiguous as to whether the minerals are 'expressly named and conveyed', and this ambiguity should be resolved. The Statement of Reasons 3.12 recognises that an active working of this kind of mineral is inconsistent with the DCO; the Objector's minerals are not under active working but (as to parcels 101, 102, 103) are allocated in the current development plan. Were it not for the DCO (if granted) the working of this mineral would be permitted. [The parcels are not in fact subject to the tenancy to SSG claimed at 3.19.17 of the SofR].*'

Despite this Representation, no comment has been forthcoming from FAL as to the ambiguity, so we would like to try to resolve it before framing our representations in relation to the DCO. It is important to be clear as to the question, because the answer will dictate the scope of the expropriation of land authorised by the powers included within the DCO (if those powers are confirmed), and will affect the ability of the mineral owner to extract the mineral. The DCO includes a provision at Article 29 for the incorporation of the Minerals Code. This means that minerals are deemed to be excepted from the conveyance (or vesting declaration) unless 'expressly named and conveyed'.

In relation to our client's parcels (and in that regard we include parcel 103 which is the subject of an identified issue as to ownership), we consider that there is ambiguity as to the DCO.

- On the one hand, the pink hatching applied elsewhere is not applied to our client's parcels; the Book of Reference does not include the phrasing used elsewhere as to acquisition of minerals in relation

to our client's parcels; and the Planning Statement at 7.2 suggests there is no intention to work the minerals but instead to leave them in situ;

- On the other hand, the same document, at 7.2.18 contains an indication that the minerals might be used in the construction of the scheme; the Book of Reference indicates that 'rights' would be taken (a term *capable* of including mineral rights); and critically the Statement of Reasons at 3.19.17 expressly states that the minerals under parcels 101, 102 and 103 are to be acquired : '*Acquisition is required for the cessation of the extraction and processing of minerals and any access rights in respect thereof all of which would be inconsistent with the development*'. (That passage appears to be written under a mistaken impression that Staffordshire Sand and Gravel have a 'tenancy and/or right' in respect of those parcels, but if that is the understanding, FAL's understanding is incorrect, since the minerals are our client's property.)

Our understanding, as we have said, is that FAL's intention, in relation to our client's parcels, is to exclude the minerals from the acquisition. The Statement of Reasons appears to indicate an intention to 'name' minerals in any conveyance or vesting document. The ambiguity is one that needs to be resolved.

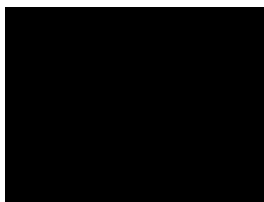
Some of the minerals in question are included within the current Minerals Development Plan as an allocation for aggregates (and the stratum stretches onto other land parcels being acquired from our clients) : Our clients would indeed intend to extract the minerals unless prevented.

The purpose of this letter is to ask for clarification :

- As to whether the DCO is intended to include or exclude the minerals lying within any of our client's parcels of land, *including parcel 103*.
- If it is not intended to acquire these minerals, then this should be made clear through the amendment of the Statement of Reasons, with an unequivocal statement.
- It is also requested that FAL make clear whether the minerals are to be left in situ, or whether there is in fact any intention to use the minerals lying in our client's land within the construction process, as hinted at in the Planning Statement.

Once answers are provided to these questions we will be in a better position to frame our further representations in relation to the final point of our client's Representation as to the justification or otherwise of the proposed incorporation of the Minerals Code in relation to our client's parcels.

Yours faithfully



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