

Application by Four Ashes Limited for an Order Granting Development Consent for the West Midlands Strategic Rail Freight Interchange (Case Ref. TR050005)

Agenda for Issue Specific Hearing 4: the draft Development Consent Order

Date:	Thursday 6 June 2019
Time:	2.00 pm
Registration:	from 1.30 pm
Venue:	Premier Suite, 1st Floor, High Green, Cannock

On 7 May 2019 interested parties and others were notified and Issue Specific Hearing concerning the draft Development Consent Order (DCO) would take place on Thursday 6 June 2019.

For the avoidance of doubt, the hearing will not consider the underlying issues arising from the application or the representations which have been made in relation to those issues. My decision as Examining Authority to hold the hearing should not be taken to imply that I have reached any view at this stage of the examination as to whether or not the Order should be granted. The hearing will, accordingly, be conducted on a without prejudice basis.

The applicant, all interested parties and affected persons are invited to attend but should note that the DCO hearing is likely to be of interest mainly to those organisations or bodies that have a direct involvement in drafting the Order and in its subsequent implementation should the Order be granted. For this reason, I would welcome the attendance of the following parties:

- The applicant
- Eversheds Sutherland (for the applicant)
- South Staffordshire District Council (SSDC)
- Staffordshire County Council (SCC)
- Highways England (HE)

Agenda

To ensure the best use of the time available at the hearing I have prepared an Agenda (Annex 1) and a number of observations and questions about the draft documents (Annexes 2-5). As this will be the fourth Issue Specific Hearing of

the examination it should be referenced in future submissions/ correspondence as **ISH4** with the specific the questions raised in Annexes 2-5 referenced as **ISH4:1.1** etc. The purpose of the hearing is to:

- clarify how the draft DCO is intended to work, the extent of the powers and what requirements, provisions and agreements are proposed;
- identify any issues not covered by the DCO as currently drafted;
- confirm the views of Interested Parties as to the appropriateness, proportionality and efficacy of the provisions and requirements; and
- consider how the draft Development Consents Obligation (DCOb) might operate alongside the proposed requirements in the revised draft DCO.

The discussion at the hearing will be focussed on the revised version of the draft DCO submitted at Deadline 3. This can be found under the Deadline 3 tab of the Examination Library as Document **REP3-003** (clean version) or **REP3-004** (tracked changes version). A DCO Changes Tracker which provides a summary of the changes made from the previous draft document and the reasons for these changes has also been submitted [Document **REP3-005**].

A revised draft Development Consents Obligations document was submitted after Deadline 3 but has been accepted into the examination as I judged that it would helpful to all parties for this to be considered at the hearing alongside the revised draft DCO. The document can be found under the Additional Submissions tab of the Examination Library as Document **AS-037**]

Paul Singleton

Paul Singleton

Examining Authority

Annex 1

Issue Specific Hearing on the Draft Development Consent Order (DCO)

5 June 2019

Agenda

1. Welcome, introductions and hearing arrangements.
2. Applicant's summary of the key amendments made in the revised draft DCO [Document **REP3-003**] (5-10 minutes).
3. Structure of the Order, Definitions and Articles 1- 49: ExA's observations and questions (see Annex 2) and comments and questions from interested parties.
4. Schedules 1 and 3-13: ExA's observations and questions (see Annex 3) and comments and questions from interested parties.
5. Schedule 2- Requirements: ExA's observations and questions (see Annex 4) and comments and questions from interested parties.
6. Draft Development Consent Obligations: Applicant's summary of the key amendments made in the revised draft (10 minutes).
7. Draft Development Consent Obligations: ExA's observations and questions (see Annex 5) and comments and questions from interested parties.
8. Actions arising and timetable for submission of revised draft documents including updated Explanatory Memorandum.
9. Any other business.

Annex 2

Draft DCO – Structure, Definitions and Articles 1-49

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref	Part of DCO	Directed to	Question/ comment
1.1	A2	Applicant SSDC	The definition of " <i>maintain</i> " was discussed at ISH1 and in its post hearing submission [REP1-006] SSDC indicated its intention to suggest an alternative wording. What is the current position on this?
1.2	A2	SSDC SCC HE	Are the parties content with the revised definition of " <i>occupation</i> "?
1.3	A2	SCC HE	Following the discussion at ISH1 the applicant has opted not to make any revision to the definition of " <i>verge</i> ". Do SCC and HE agree that no revision is required?
1.4	A4	Applicant	In its Deadline 1 submission (response to ISH1:1.10) the applicant indicated that they would give further thought to whether the wording in sub paragraphs (b) and (c) might usefully be amended to alleviate any concerns about the degree of flexibility provided by A4 but no changes appear to have been made. Is greater clarity needed in these clauses?
1.5	A4	Applicant SSDC	In its Deadline 1 submission (response to ISH1:1.11) the applicant refers to similar articles included in the A14 Order and the M20 J10a Order. However, the relevant articles in both of these DCOs, as made, reserve to the Secretary of State the decision as to whether any subsequent changes should be agreed and the ExA remains concerned about the degree of flexibility provided by the 'rider' to A4. (i) Is the applicant able to point to similar articles in other DCOs where this power is devolved to the local planning authority? (ii) In what way would the development be " <i>disadvantaged</i> " by being authorised by a DCO and does this provide adequate justification for the approach proposed?
1.6	A4	Applicant SSDC SCC HE	The rider to A4 also includes the words " <i>would not give rise to any significant environmental effects on the environment not identified at the time this Order was made, or in any updated environmental information supplied under the 2017 EIA regulations</i> ".

			<p>This same wording is adopted in A 6(3) and A 45 (1) & (2) and in the recital under the "Further Works" heading in Part 2 of Schedule 1.</p> <p>The ExA has concerns about the appropriateness of this 'tailpiece' with regard to the proper assessment of environmental effects and questions whether the comparison should not simply be to significant environmental effects.</p> <p>The additional words "<i>not identified at the time this Order was made, or in any updated environmental information supplied under the 2017 EIA regulations</i>" do not appear in paragraph 13 of Schedule 2 to the Infrastructure Planning (EIA) Regulations 2017 which says that any change or extension to an approved project that may have significant adverse effects on the environment constitutes EIA development.</p> <p>(i) Can the applicant provide any justification for the specific wording proposed?</p> <p>(ii) Do other parties have any concerns about this proposed wording?</p>
1.7	A12	Applicant SCC	<p>(i) Can SCC provide an update as to the current position with regard to application to add an additional Right of Way (BOAT?) to the Definitive Map in the proximity of Gravelly Way that is referred to at paragraph 9.6 of the Local Impact Report [REP2-062]</p> <p>(ii) Are any amendments to the DCO required to reflect that change in circumstances?</p>
1.8	A42	SSDC	Does the deletion of A42 satisfy SSDC with regard to its response to ISH1: 1.8.5 [REP2-049] of the ExA First Written Questions with regard to the likely dust effects of the proposed development?
1.9	A43	Applicant SCC SSDC	<p>In its Deadline 1 submission (response to ISH1: 1.20) the applicant indicated that they were considering the need for additional wording to A43 but no amendments have been proposed.</p> <p>Are the parties satisfied that this article is consistent with the advices in paragraphs 22.1 & 22.2 of PINS Advice Note 15 (AN15)? (See also Q1.13 below).</p>
1.10	A45	Applicant	As Schedule 2 is currently drafted A45(3) should now refer to <u>Part 3</u> rather than to Part 2 of Schedule 2 (<u>but seen queries regarding Schedule 2 in Annex 4 below</u>).

1.11	A9, 11, 13, 17, 21, 22,	Applicant HE	Are any changes needed to these clauses in response to HE's concerns re deemed consent as set out in its Deadline 1 response [REP1-008]
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Annex 3: Draft DCO – Schedules 1 and 3-13

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCO	Directed to	Question/ comment
1.12	S1 Part 1	Applicant	It is noted that no amendments have been made to Works No. 3 sub paragraph (e). The ExA would like to review the need for any changes having regard to the drawing submitted at Deadline 2 (Appendix 11).
1.13	S1 Part 1	SSDC SCC HE CRT NR Other IPs	A number of amendments/ additions have been made to the description of Works Nos. 1, 4, 6, 7 and 10a. (i) Do any of the IPs have any concerns with regard to these detailed amendments. (ii) Are any further revisions to the Works descriptions required?
1.14	S13 Part 3	Applicant SCC	Are the seemingly substantive changes to paragraphs 7 and 9 of Part 3 agreed between the applicant and SCC?
1.15	S14	Applicant SSDC SCC	In the DCO Changes Tracker the applicant states that the proposed new paragraphs 5 and 6 have been included to " <i>ensure the powers in the Order to remove trees and important hedgerows are not subject to any further consents</i> " as per the applicant's response to ISH1:1.20. However, the proposed provisions are widely drawn and seem to go much further than this. (i) Is the proposed wording appropriate and what is the justification for the broad scope of these proposed provisions? (ii) Is this suggested amendment appropriate without a cross reference to the relevant section of the ES to identify the important hedgerows as suggested in the applicant's Deadline 1 submission (response to ISH1: 1.20)?

Annex 4: Draft DCO Schedule 2 – Requirements

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCO	Directed to	Question/ comment
1.16	Part 1	Applicant SCC	What are the reasons for deleting the requirements in relation to the provision of HGV parking bays from the DCO and replacing these with provisions within the draft DCOb?
1.17	R2 & R3	Applicant	In both cases the tracked changes have accidentally deleted the first bracket before the word "excluding" in sub paragraph (1).
1.18	R2	Applicant SSDC SCC HE	Are the parties content that the additions made to R2 are adequate to provide sufficient clarity to this requirement?
1.19	R3	Applicant SSDC SCC HE	Are the parties content that the additions/amendments made to R3 are adequate to provide sufficient clarity to this requirement?
1.20	R5		See Q1.25 below.
1.21	R9	SSDC SCC	Are the parties content with the revised wording of this requirement?
1.22	R16	Applicant HE	Have HE's concerns re the potential for on-site landscaping works to interfere with the safe operation of the SRN (point 5 of REP1-008) been resolved?
1.23	R20	Applicant SSDC	(i) Is the revised wording of R20 agreed? (ii) Note error in R20(2): should " <i>jurisdiction</i> " should read " <i>justification</i> "?
1.24	R22	Applicant SSDC	Are the parties content with the wording of amended R22?
1.25	Part 2	Applicant SSDC SCC HE NR Other IPs	I have concerns about the proposed approach of setting out the detailed "requirements" in respect of the provision of the rail infrastructure in a separate section (Part 2) of Schedule 2 both in the interests of clarity and in terms of ensuring these are fully enforceable. As drafted new R5 is a requirement for the purposes of the DCO but the details set out in Part 2 are not. These are cross referenced in R5 as " <i>provisions</i> " and do not fall within the definition of " <i>requirements</i> " in A2(1) which refers only to the requirements " <i>set out in Part 1 of Schedule 2</i> ". (i) What are the views of LAs with regard to the appropriateness and efficacy of this approach?

			<p>(ii) Is the flexibility provided by paragraphs (4) & (6) appropriate and acceptable given HE's submissions that there has been no transport assessment of the traffic effects of the occupation of more than 147,000 sq. m of building floorspace on the Site?</p> <p>(iii) Is the word "<i>expeditiously</i>" in paragraphs 5 & 9 sufficiently clear as to allow for the enforcement of these provisions?</p> <p>(iv) If they are to be treated as requirements do all of the provisions set out in Part 2 meet the relevant tests?</p>
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Annex 5: Draft Development Consent Obligations (DCOb)

COMMENTS AND QUESTIONS BY EXAMINING AUTHORITY

Q Ref.	Part of DCOb	Directed to	Question/ comment
1.26	General	Applicant	<p>(i) Although most references in the draft document to "<i>owner</i>" have been amended to "<i>owners</i>" there are a number which are still written in the singular. There may be good reason for some of these but a final check for consistency may be advisable.</p> <p>(ii) The final pages of the draft document have not been updated to provide space for signature by the additional owners who are to be party to the deed.</p>
1.27	Background-C	Applicant	It is not fully clear to the ExA which owners are referred in section (c).
1.28	Definitions	Applicant	Would the " <i>Obligation Land</i> " be better defined as the " <i>land shaded pink on Plan A</i> "?
1.29	6.1.2 & 6.1.3	Applicant SSDC SCC	<p>(i) Do the provisions in these paragraphs adequately prevent the development of all remaining, privately owned land within the Order Limits without the necessary obligations having been secured?</p> <p>(ii) Are there any matters still to be resolved in this regard?</p> <p>(iii) Note typographical error in 6.1.3.</p>
1.30	17.1 & 17.2	Applicant SCC SSDC	Is there a reason why the rider added to these clauses applies to SCC but not to SSDC?
1.31	19.1	Applicant SCC SSDC	(i) Whilst the 'commitment to rail' provisions have been moved to Schedule 2 of the draft DCO will it not still be necessary for formal notification of

			occupation of the first 47,000 sq. m of warehousing to be given to the Councils? (ii) If this is not done how will clarity be achieved in relation to the start date of the 6-year period referred in draft Rail Requirement 3(1)(b) in Part 2 of Schedule 2 to the revised draft DCO [REP3-003].
1.32	S1:2.1 & 2.2	Applicant SSDC	Is SSDC content that obligations re the MoU and EMP are linked to above ground construction of any warehousing rather than earlier stages of the development?
1.33	S1:2.3 and 2.4	Applicant SSDC	Are these provisions and timescales/triggers agreed?
1.34	S1:3.3	SSDC	Is the Council content with the wording of this obligation and that entering this obligation would not conflict with any of its statutory obligations and responsibilities?
1.35	S2 Part 1	Applicant SCC SSDC	(i) Are there any elements of S2 that have not yet been agreed between the applicant and SCC? (ii) Are there any significant differences between the Travel Plan obligations as set out in S2 and those that have been agreed in relation to other major warehousing/industrial developments in Staffordshire? (iii) In paragraph 2.5 should " <i>nomination</i> " read " <i>appointment</i> "- i.e will the person(s) be appointed by the owners? (iv) Re paragraph 3.5 what enforcement measures might be open to SSDC in the event of non-compliance?
1.36	S2 Part 2 2.8-2.9	Applicant SCC	Who would fines be paid to in the first instance before transfer to SCC and how would this be recorded?
1.37	S2 Part 3	Applicant SCC	Is the total sum for the Bus Service Contribution and the phasing of payments agreed?
1.38	S2 Part 4	Applicant SCC	What is the basis of calculation of the total sum for the Shuttle Bus Fund and has this sum been agreed?
1.39	S3	Applicant SCC	(i) Are there any elements of S3 that have not yet been agreed between the applicant and SSC? (ii) Are there any significant differences between the ES&T obligations as set out in S3 and those that have been agreed in relation to other major warehousing/industrial developments in Staffordshire?

1.40	S3 2.6	Applicant SCC	Please clarify the purpose of this provision and the 5-year timescale proposed.
1.41	S3 2.7	Applicant SCC	The wording appears rather awkward in respect of the occupier's obligation to engage with the County Council; the use of " <i>must</i> " may not be adequate to convey a binding obligation. Is this sufficiently clear?
1.42	S6	SSDC	Are there any elements of Bespoke NIS and its proposed operation which have yet to be agreed by SSDC?