

Deadline 4 Post Hearing 5th/6th June Submissions by Ansons Solicitors Limited on behalf of Stop the West Midlands Interchange.

(A) Part 2 of Schedule 1 of Development Consent Order (DCO)

1. What is proposed is that the Applicant can erect and permit the occupation of 186,000 square metres of warehousing before there is any rail connection.

There is still significant uncertainty about the practicability of the rail connection at all and the number of stopping freight trains that might be accommodated according to the Statement of Common Ground between Network Rail and the Applicant. New information was provided orally on 5th June on this subject by Network Rail to the effect that there is capacity for 4 trains each way per day and that the rail line can take the length and weight of the freight trains. They said are 2 holding places available either side of the development down the tracks for the freight trains to wait for the faster passenger trains to pass by at Bushbury and Crewe. In response we make these points:

- (i) Bushbury-Stafford is one of the few pieces of 125mph railway and the result of the proposal by Network Rail, which they admitted could not be guaranteed as rail users had an input on amendments to time tables, would be to slow those trains down and reduce the capacity for them.
 - (ii) Crewe holding area would come under capacity pressure if HS2 proceeded.
 - (iii) In the meantime we also have the news that the Treasury is assessing for the first time whether HS2 could be delivered within its £56 billion budget and that the results will be presented to the new Prime Minister to make a decision about the future of the scheme. Clearly this would have an impact on the capacity of the Birmingham Branch line which is a point we have already made.
2. The NSPNN para 4.88 is quite clear about the test for consent – “a significant element of the buildings should be rail connected from the outset.” In this case there may be no connection for at least 6 years. In fact there may never be a rail connection – either because Network Rail do not permit it or because the Applicant cannot be relied upon to deliver or is not able financially to provide it.
3. It is relevant that there is no bond proposed to cover this liability and that the Applicant has agreed that this is a speculative development with no pre-lettings negotiated. We consider that the drafting of DCO is far too loose to enforce any failure of the Applicant to complete the rail connection. A minimum requirement should be the creation of a trust fund out of income derived from sales or lettings of warehouse prior to connection to be expended on funding the connection or if that is not possible then expended on community projects. A draft of a Trust Deed is attached as Schedule 1 below. This has been sent to the Applicant’s Solicitors and South Staffordshire Council with an indication that Ansons Solicitors Limited are prepared to engage in discussions with regard to detailed drafting points. The draft is considered to be compliant with the requirements of Regulation 122 of the Community Infrastructure Regulations 2010 because without such security there is an unacceptable risk that the rail connection would not be delivered.

4. In the context of the very special circumstances test in relation to the green belt land no case is advanced that green belt land should be released for stand- alone warehouses without a rail connection and no such case could reasonably be advanced. An illustration of the application of the test is provided by the Appeals made by Roxhill Developments Limited for land adjacent to the Southeastern Train Depot, Moat Lane, Slade Green, Erith -APPLICATION REF: 15/02673/OUTEA and DA/15/01743/OUT.

The Secretary of State issued his decision letter on 7 May 2019. He dismissed the appeals. He found that the scheme was not in accordance with the relevant development plans. "He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

25. In this case the Secretary of State considers that the harm to the Green Belt from inappropriate development carries substantial weight against the scheme and the effect on the character and appearance of the local area carries significant weight along with the adequacy of the proposed rail link and the effect on existing/future passenger rail services. Significant weight is also given to the effect on the convenience of highway users.
 26. The Secretary of State considers that the provision of social economic benefits of the scheme has overall limited weight and the resulting net biodiversity gain has moderate weight.
 27. The Secretary of State considers that the benefits of the scheme do not outweigh the harm to the Green Belt by reason of inappropriateness and any other harm, and so very special circumstances do not exist. He considers that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits. Overall, he considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
 28. The Secretary of State therefore concludes that the appeal is dismissed, and planning permission is refused."
5. The phasing proposal is contrary to policy and would represent an unjustified risk of the release of green belt land for an inappropriate purpose.
 6. It is in any event desirable to address the phasing proposal in the context of the order in which land is built upon. It would be illogical to permit the building of warehouse remote from the rail connection first. The order of any phasing should sequence building outwards from the rail connection.

(B) DCO Obligation Schedule 2 Part 2

The Approved and Barred Routes are not clear from the documents. Our submission is that the A5 west of Gailey should be a barred route to HGVs. This section has been de-trunked. It is narrow and already heavily used. This is highlighted in our submissions under 3. Road Infrastructure report and 9.Supporting Information.

(C) Noise Insulation Scheme Schedule 7

We welcome the changes that have been made but there are 3 points remaining:

- (i) It is now agreed that there should be an up to date baseline assessment. We are concerned that this is not simply noise readings but it should in our submission lead to the production of a noise contour map and the setting of appropriate limits which may require bunds and acoustic fencing. In this case unlike East Midlands Gateway and Northampton there are close receptors needing adequate protection.
- (ii) "Criteria" is limited to noise issues – we have already asked that other pollution issues namely air pollution and light pollution be addressed in our initial Post hearing submissions.
- (iii) We ask that 3.8c deadline changed to 36 days – we submit this is still too short and would ask for a minimum of 60 days.
- (iv) There was a reference to the provision of mechanical ventilation at the Environmental Issues Hearing. This is again welcome and should be expressly included in the S106 Obligation.

(D) Link Road A5 to A449

Highways England indicated that the proposed Link Road would not be part of the Strategic Road Network because a separate planning application would be required for this but it would be signposted as such. We are concerned that such a Link Road would be inadequate to serve its intended purpose.

SCHEDULE 1

Draft Deed of Trust

THIS DEED OF TRUST is made the _____ day of _____ 2019

BETWEEN

- (1) SOUTH STAFFORDSHIRE DISTRICT COUNCIL of Wolverhampton Road, Codsall, South Staffordshire WV8 1PX ("the District Council")
- (2) PIERS ALASTAIR CARLOS MONCTON of Stretton Hall, Stretton, Stafford ("The First Owner")
- (3) ALAN STOBART MONCTON of Stretton Hall, Stretton, Stafford ("the Second Owner")
- (4) JOANNA MARY MONCTON of Horsebrook Hall, Horsebrook Hall Lane, Brewood, Stafford ST19 9LP ("the Third Owner")
- (5) FOUR ASHES LIMITED (Company Registration Number 09747871) whose registered office is at 4th Floor 7/10 Chandos Street, Cavendish Square, London W1G 9DQ ("the Developer")

RECITALS

(A) In order to satisfy the District Council that adequate provision by way of financial security has been made by the First Owner, the Second Owner, the Third Owner and the Developer in relation to their obligations in Schedule 2 of The West Midlands Rail Freight Interchange Order 2019 the First Owner, the Second Owner, the Third Owner and the Developer have agreed to enter into this Deed.

(B) The provision made by this Deed is without limitation to the District Council's other rights and powers.

NOW IT IS AGREED as follows

DEFINITIONS AND INTERPRETATION

1. In this Deed unless the context otherwise requires or definitions are elsewhere set out in this Deed:

1.1 "the Account" means the Financial Provisions account at National Westminster Bank Plc CPB Services London Corporate Services Centre 2nd Floor 280 Bishopsgate London EC2M 4RB sort code 60-70-80 Account No..... which was created for all monies deposited for the purposes of this Deed or such other account created for similar purposes as the District Council may from time to time notify to the First Owner, the Second Owner, the Third Owner and the Developer.

1.2 "the Bank" means National Westminster Bank plc whose registered office is at 280 Bishopsgate London EC2M 4RB or such other bank as the District Council may from time to time notify to the First Owner, the Second Owner, the Third Owner and the Developer.

1.3 "Business Day" means any day from Monday to Friday inclusive other than Christmas Day Good Friday or a statutory bank holiday in England.

1.4 "the Commencement Date" means the date of the first payment into the Account pursuant to Clause 2.1.

1.5 "Expenses" includes all costs and other expenses of whatsoever nature (on a full indemnity basis) incurred by the District Council in connection with the exercise of the District Council's powers for the enforcement of this Deed in whole or in part or the exercise of any power under this Deed and all legal costs and disbursements together with Agreed Interest from the date on which the Expenses are incurred.

1.6 "The Land" means the land bound by a Section 106 Agreement between the Parties to this Deed and Staffordshire County Council relating to The West Midlands Rail Freight Interchange.

1.7 “the Termination Date” means the date on which the obligations of First Owner, the Second Owner, the Third Owner and the Developer are completed pursuant to Schedule 2 of The West Midlands Rail Freight Interchange Order 2019.

1.8 The singular includes the plural and vice versa.

1.9 Obligations entered into in this Deed by the First Owner, the Second Owner, the Third Owner and the Developer are entered into jointly and severally.

1.11 Any reference to an Act of Parliament shall include any modification extension or re-enactment of it for the time being in force and shall also include all instruments orders plans regulations permissions licenses and directions for the time being made issued or given under such Act or deriving validity from it or so made issued or given and treated as though so made issued or given under a re-enactment with or without any modification or extension.

1.12 Headings are inserted for reference purposes only and do not form part of this Deed.

1.13 This Deed shall be subject to and construed in accordance with English Law.

THE TRUST

2.1 Subject to the following provisions the First Owner, the Second Owner, the Third Owner and the Developer shall until the Termination Date pay into the Account 20% of all gross receipts from the sale or rental of warehouses erected on the Land after the date hereof within 7 days of receipt of the same for the purpose of securing the performance and observance of the provisions of Schedule 2 of The West Midlands Rail Freight Interchange Order 2019 and further as security for the District Council for the purpose of satisfying Expenses incurred by the District Council in respect of any work undertaken by the District Council (whether by itself or any other authorised person) pursuant to Schedule 2 of The West Midlands Rail Freight Interchange Order 2019 provided that the District Council has served a notice on the First Owner, the Second Owner, the Third Owner and the Developer Permit requesting reimbursement of the Expenses within 5 Business Days of the date of service of the notice and the First Owner, the Second Owner, the Third Owner and the Developer have failed to pay and the District Council may in accordance with the provisions of this Deed withdraw monies from the Account as appropriate pursuant to this Deed to satisfy Expenses incurred in respect of this Clause.

2.2 The amount standing to the credit of the Account pursuant to this Deed shall be held upon trust for the District Council for the purposes set out in Clause 2.1 for itself until all the obligations of First Owner, the Second Owner, the Third Owner and the Developer under Schedule 2 of The West Midlands Rail Freight Interchange Order 2019 have been wholly discharged in accordance with Clause 3.

2.3 Bank charges and other costs and expenses arising in respect of the operation of the Account pursuant to this Deed shall be charged to the Account.

2.4 The First Owner, the Second Owner, the Third Owner and the Developer shall pay any tax due on the interest accruing to the Account pursuant to this Deed which is not deducted at source and will

indemnify the District Council and keep the District Council indemnified against any claim for payment of such tax.

2.5 The First Owner, the Second Owner, the Third Owner and the Developer hereby irrevocably appoint the District Council as its attorney in relation to any necessary consents permissions or the like in relation to the application of the amount standing to the credit of the Account pursuant to this Deed in accordance with the terms of this Deed.

2.6 The District Council shall be entitled within 20 Business Days of the service of a written request for the same to details of all transactions relating to the sale or rental of warehouses erected on the Land after the date hereof and at the expense of the First Owner, the Second Owner, the Third Owner and the Developer.

2.7 The District Council shall be entitled to an account of the various transactions on the Account relating to the amount standing to the credit of the Account as appropriate pursuant to this Deed within 20 Business Days of the service of a written request for the same upon the District Council and at the expense of the First Owner, the Second Owner, the Third Owner and the Developer.

2.11 The First Owner, the Second Owner, the Third Owner and the Developer shall not charge and/or create any other security over and or beneficial interest in the amount standing to the credit the Account pursuant to this Deed.

RELEASE FROM THIS DEED

3. Upon the obligations of the First Owner, the Second Owner, the Third Owner and the Developer under Schedule 2 of The West Midlands Rail Freight Interchange Order 2019 being wholly discharged the First Owner, the Second Owner, the Third Owner and the Developer shall be released from performance of this Deed and within 5 Business Days thereof any amount then standing to the credit of the Account pursuant to this Deed shall be paid to the First Owner, the Second Owner, the Third Owner and the Developer.

STEP IN RIGHTS AND APPLICATION OF TRUST FUND IN EVENT OF DEFAULT

4.1 If the First Owner, the Second Owner, the Third Owner and the Developer fail to complete the Works described in Part 1 of Schedule 1 of The West Midlands Rail Freight Interchange Order 2019 in accordance with the obligations in Schedule 2 thereof the First Owner, the Second Owner, the Third Owner and the Developer grant to the District Council step in rights as defined in Schedule 1 of this Deed.

4.2 The District Council shall have the right to complete the Works described in Part 1 of Schedule 1 of The West Midlands Rail Freight Interchange Order 2019 utilising the monies held in the Account in trust hereunder for that purpose.

4.3 If the District Council is not able to complete the Works described in Part 1 of Schedule 1 of The West Midlands Rail Freight Interchange Order 2019 for any reason including the fact that all or any

part thereof cannot be completed for any reason including a shortfall of monies in the account to do so or the fact that requisite consents to do so cannot be obtained the District Council shall apply any remaining sums held in trust under this Deed for Community Fund purposes as defined in a Section 106 Agreement between the Parties to this Deed and Staffordshire County Council relating to The West Midlands Rail Freight Interchange.

SERVICE OF NOTICES

5. Save as otherwise specifically provided any notice or documents to be given or served for the purpose of this Deed shall be in writing and shall be delivered personally or sent by first class post or sent by facsimile (confirmed in such case by post) to the person to be given notice or served at the address specified herein or at such other address as the parties hereto may from time to time so serve upon each other and such notice shall be deemed to have been given and such document served;

5.1 if delivered personally or sent by facsimile as aforesaid on the date of delivery or transmission unless such date is not a Business Day or is after 4.30 pm on a Business Day in which event on the next Business Day; or

5.2 if sent by first class post on the next Business Day after the date of posting.

FORBEARANCE BY THE DISTRICT COUNCIL

6. No forbearance forgiveness or compromise in or in respect of any matter or thing concerning the on the part of the District Council shall discharge the First Owner, the Second Owner, the Third Owner and the Developer from their liability hereunder.

COSTS

7. The First Owner, the Second Owner, the Third Owner and the Developer shall pay the District Council reasonable legal and administrative costs and expenses incurred in the preparation and execution of this Deed in the sum of £.....

ARBITRATION OF DISPUTES

8.1 If any dispute arises between the parties as to the interpretation implementation or operation of this Deed and the parties are unable to resolve the dispute amicably it shall be referred to arbitration by either party.

8.2 A reference to arbitration shall not prevent the District Council withdrawing monies from the Account as appropriate in accordance with Clause 2.1.

8.3 In the event of a reference to arbitration the parties shall agree an arbitrator or if not agreed an arbitrator will be nominated at the request of either party by the President (or failing that the Vice-President) for the time being of the Chartered Institute of Arbitrators and such reference shall be deemed to be a reference to arbitration pursuant to the Arbitration Act 1996.

8.4 The parties agree that the decision of the arbitrator shall be final except in the case of manifest error.

8.5 If the decision of the arbitrator is that the District Council has wrongly withdrawn monies from the Account in whole or in part pursuant to this Deed then the District Council shall repay into the Account within 20 Business Days of the arbitrator's decision that amount wrongly withdrawn together with Interest at the rate earned on monies held in the Account from the date of wrongful withdrawal to the date of repayment into the Account.

8.6 The parties agree that the costs of the arbitrator shall be paid as directed by the arbitrator or in the absence of such direction each party shall bear its own costs.

SCHEDULE 1

STEP IN RIGHTS

The right in the event of default by the First Owner, the Second Owner, the Third Owner and the Developer in performing the obligations in Schedule 2 of The West Midlands Rail Freight Interchange Order 2019 to enter upon the Land to carry out such works and/or take such action as may be necessary and to act as attorney and agent of the First Owner, the Second Owner, the Third Owner and the Developer for the purpose of executing any relevant document to remedy any breach.

IN WITNESS of which the parties have executed this Deed the day and year first written above