



Deadline 4 submission by South Staffordshire District Council [SSDC] – (to be submitted by email to WMInterchange@pins.gsi.gov.uk)

14 June 2019

PINs Case Ref: TR050005

IP Ref: 20015762

Application by Four Ashes Ltd [FAL] for an Order Granting Development Consent for the West Midlands Strategic Rail Freight Interchange

Rail Connection points

1. The points made at the hearings on 5 and 6 June 2019 are in addition to those already made on behalf of the Council. The Council remains deeply concerned with the proposal put forwards by the Applicant for the reasons set out in its written representation.
2. One of the key concerns that the Council has relates to the lack of certainty that a rail connection would be provided and the timing of such a connection as well as concerns that the proposed approach to the site will not be one that is compliant with paragraph 4.88 of the National Policy Statement for National Networks.

*4.88 Applications for a proposed SRFI should provide for a number of rail connected or rail accessible buildings for initial take up, plus rail infrastructure to allow more extensive rail connection within the site in the longer term. **The initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage. It is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.***

2. The Council's position is that the scheme as it currently stands does not meet the test at paragraph 4.88 of the NPSNN for the following reasons:
 - A rail connection after potentially 25% of the total warehousing on site, as the current wording of the requirements allows, is not in the initial stages – initial means “of, relating to, or occurring at the beginning; first”¹
 - The proposal is that the buildings will not be “rail connected” at the outset, whereas 4.88 specifically requires that whilst not all buildings on the site

¹ Oxford English Dictionary definition

should be rail connected “**from the outset**” (our emphasis) a “significant element should be”. However the Applicant is proposing that up to 25% of the warehousing would not be rail connected for a period of up to 6 years – those warehouses cannot in any way be said to be rail connected “from the outset”

- The Northampton Gateway development is proposing a rail connection from the start, we simply do not understand why that is not the case here.
 - We fail to understand why the warehousing to be built prior to the rail connection is not in the immediate vicinity of the rail connection so that as soon as the connection was installed those warehouses would then be served by the connection. That does not appear to be the Applicant’s intention, again we do not understand why not.
3. Interestingly at the hearing the Applicant appeared to indicate that the reason for needing warehousing to be provided prior to the rail connection was on the grounds of viability. This appears to be a significant change in the Applicant’s case. The Council has previously raised the question of whether the delay in the installation of the rail connection was down to viability (for example the need to provide enabling development to fund the costs of the rail connection) but was repeatedly informed by the applicants’ representatives that this was not the case². If the Applicant’s case is now that the scheme is not financially viable unless the warehousing goes in first then the Council needs to urgently see the evidence to support that change in position.
 4. If the Applicant is now arguing viability, namely that the warehousing is needed before the connection to effectively pay for it then we would see a need for a mechanism to be put in place to ensure that some of the income from those warehouses was used to fund the cost of the rail connection in much the same way as is done with enabling development schemes in relation to heritage assets.
 5. The Council remains concerned that unless a rail connection is provided from the outset that we may well be left with warehouses without an effective rail connection for some time and potentially even permanently, although the Council accepts that it could take enforcement action if the triggers proposed in the rail connection provisions of the requirements were breached. However in the event that the developer was no longer solvent this would be of little effect in practical terms.

² In September 2018 Eversheds, the Applicant’s solicitors, stated in response to questions raised by the Council’s solicitors (their comments in blue) the points made in red below “3, *As to date my clients have not received viability evidence that supports the size of the proposed development, is this something you can assist with please, I am sure you must appreciate that this is a central consideration supporting the DCO and the Councils review of the project. This is not really related to the s106 which you and I are dealing with, however, our proposal is not justified on the basis of viability – it is based on the NPS and unmet need.*”

Environmental Health Aspects

6. Below is the Council's details of its position regarding issues raised relating to Noise and Air Quality during the examination at the Specific Issue Hearings on 6th June for the West Midlands Interchange. In particular the Examining Authority asked the Council to release the expert reports it received in relation to the Noise and Air Quality matters, which it does through this report. It seeks to explain the background to the Council having sought these reports below. Again the Council repeats that it can only comment on matters in so far as they relate to the area for which the Council is responsible for and do not cover matters outside of South Staffordshire.

7. Noise

The Environmental Health and Licensing Team within the Council has suitably qualified officers holding the Diploma in Acoustics that were able to assess the noise impact from the development. The applicant's Environmental Statement (ES) also contained significant detail on the modelling of noise sources in order to predict their impact. SSDC wanted reassurance that the predictions were realistic and therefore employed Hepworth Acoustics Ltd to conduct an assessment of the ES.

This work resulted in two reports being received from Hepworth Acoustics. The first, Appendix A, is their report on Chapter 13 of the ES and Chapter 13A Noise addendum. This confirmed that the applicant's noise assessment was appropriate and it also made a number of observations for further consideration.

The second report, Appendix B, was a letter to SSDC setting out their thoughts on what our approach to further scrutiny of the application should be. Essentially this was that any objection in principle on noise grounds was unlikely to be successful and that if there were to be such an objection by the Council then its focus would need to be the impact on the amenity use of people's gardens and outside areas. SSDC commissioned this further piece of work the results of which are contained in Appendix C.

SSDC conclusions after all its investigations are that:

1. Noise emitted from the site will be within 10dB of the background noise level when assessed against BS4142, the appropriate standard for the development.
2. The noise limits set using BS4142 are significantly (dramatically would not be too strong a word) lower than those for a pure rail or road scheme.
3. External noise levels will be within the 55dB criterion.

Therefore SSDC concluded that it had scrutinised the application in detail and determined that it did not have a sustainable objection in principle on noise grounds provided that suitable mitigation was put in place. Having reached this conclusion

SSDC put its efforts into securing further improvements to ensure that the mitigation would be effective and negotiated what it considers to be significant improvements and concessions to the scheme:

1. Road and Rail noise insulation schemes apply only to a distance of 300m from the site boundary. This was originally proposed by the applicant in their Bespoke Noise Insulation Scheme. SSDC has negotiated that there will be no arbitrary distance but that any property exceeding the trigger level (see next paragraph) will be eligible for noise insulation.
2. The applicant proposed that the trigger level for noise insulation would be 10dB above the background level. This has now been agreed at 8dB above background level.
3. The applicant (as set out in the draft requirements) originally proposed a set noise level for site operations and that the Statutory Noise Nuisance provisions of the Environmental Protection Act 1990 would be dis-applied for the development. SSDC has negotiated that there will be no set noise level as this is not conducive to dealing with any complaints that may arise after the development is in place and that the Statutory Noise Nuisance provisions will remain in place so that SSDC, should it need to, can take appropriate action for noise nuisance.
4. A procedure to ensure that complaints are investigated properly and fairly has also been agreed.

8. Construction Noise

The above points apply equally to construction noise as they do to operational noise. However, it must be recognised that construction noise will be noisier than operational noise and that the building of the bunds will bring large earth moving vehicles close to property. However, this will only be for short periods of time. SSDC has agreed shorter hours of operation during the construction phase. Originally the applicant proposed 07:00 to 19:00 Monday to Friday, 07:00 to 13:00 Saturdays, no working on Sundays or Bank Holidays. These have been reduced to 07:00 to 18:30 Monday to Friday, 08:00 to 13:00 on Saturdays, no working on Sundays and Bank Holidays.

9. Noise Conclusion

SSDC has scrutinised the application and actively pursued avenues of enquiry that would give it sufficient grounds for an objection in principle on noise grounds. It has not found any. Significant improvements to the scheme have been negotiated to protect the residents' amenity now and SSDC has reserved the right to take appropriate legal action, through statutory nuisance, in the future if it needs to.

10. Air Quality

Overview of Air Quality in South Staffordshire District

The Local Air Quality Management process (legislation and guidance) places a duty on SSDC to regularly review and assess air quality in its area against the Air Quality Objectives laid down in legislation. This is a process that has been in place since 1999 and DEFRA oversees the process with a dedicated team looking only at air quality.

A considerable body of knowledge, experience and expertise has grown up over the intervening years. The reality is that there are now only 2 pollutants of concern to most local authorities: Nitrogen Dioxide and Particulate Matter (PM10).

The Air Quality Objectives are health-based standards and apply at 'relevant locations' i.e. where people will be exposed.

Each year SSDC submits an Annual Status Report to DEFRA advising them on what monitoring is being carried out in the area, what the levels are and what action is being taken. The reports are scrutinised and approved by Defra. In addition details of the existing Air Quality Management Areas (AQMA) can be seen in the recent report taken to the Council's Licensing and Regulatory Committee in March 2019 which has resulted in the Council now having only 1 remaining AQMA (along the A5) – see the report [here](#).

Since Client Earth won its legal challenge against the government and the government has been directed to take more action to reduce air pollution levels more quickly, along with the increasing attention on climate change, air quality has become the focus of more attention and public concern.

As a result of this SSDC commissioned a review of air quality across its district with the primary purpose of providing its Councillors and residents with assurance that the air quality in the District meets the air quality objectives.

Nitrogen Dioxide levels, which are the only pollutant of concern identified within SSDC, have continued to fall and this has resulted in the reduction from 5 Air Quality Management Areas to 1 Air Quality Management area. Nitrogen Dioxide levels are used by Defra as a proxy indicator for particulate matter levels. If Nitrogen Dioxide levels are below the standard and are falling then the same can be assumed for particulate matter. However, there is an increasing focus on particulate matter and the review of air quality across the district suggests that we consider carrying out modelling and monitoring for particulate matter.

Appendix D contains the review document which considers potential sources of pollution, how they are screened for potential impact and makes recommendations for further work. It also contains information on monitoring locations and our revoked and existing AQMAs.

Appendix E contains the draft 2019 Annual Status Report which is due to be sent to Defra at the end of June. Its status is draft as it has not yet been through our internal approval procedure.

Assessment of WMI Chapter 12 Air Quality

Whilst the Environmental Health and Licensing Service has officers qualified to undertake air quality work it did not have the relevant knowledge to understand or to challenge the assumptions of the air quality modelling work which formed the basis of the applicant's submission on the impact of air quality.

SSDC employed Air Quality Consultants Ltd (AQL) to undertake a review of Chapter 12. Appendix F contains the initial report of AQL raising concerns over various issues. Following a response from WMI to this report, which was considered unsatisfactory, the report at Appendix G was produced by AQL.

At this point the position of SSDC was that it had no confidence in the modelling and the results being produced by the model for its District. In particular the model was predicting levels of Nitrogen Dioxide far in excess of those being monitored by SSDC. Furthermore these elevated levels related to the Wedges Mill AQMA which SSDC was in the process of revoking.

After further exchanges between the applicants and SSDC the report at Appendix H was produced by AQL. This followed further correspondence between the two sides and remodelling of the pollutant levels of the receptors in the SSDC area. Also included as Appendix I is the final report on air quality by West Midlands Interchange. This is included because it brings together the final report of AQL and other email correspondence between SSDC and WMI, along with the re-modelled data.

11. Air Quality Conclusion

Through AQL SSDC satisfied itself that it had subjected Chapter 12 to sufficient scrutiny to ensure that it had confidence that there would not be a significant adverse impact on air quality from the development. This was also the conclusion of AQL on behalf of the Council.

12. Comments on the proposed DCO

The Council considers that progress is being made on the DCO but it remains concerned by the provisions in the proposed rail requirements regarding their compliance with the policy (see above) and their lack of certainty:

Q 1.1 – We no longer object to this wording

Q1.2 – We are content.

Q 1.5 – We prefer the approach of the decision resting with the Secretary of State

Q 1.6 – No comment.

1.8 – We are content with the deletion.

1.9 – A43 – we remain of the view, as stated in our deadline 1 representations, that the work in relation to the trees should be carried out in line with the relevant British Standard and that reference to danger should be “imminent danger”.

1.13 – No comment.

1.15 – We have no objections to the approach.

1.18 - We have no objections to the approach.

1.19 – We are content

1.21 – We are content.

1.24 – The wording is agreed.

1.25 – Whilst we are pleased that the wording relating to the rail connection has moved into the DCO we remain concerned that there is too much scope for the connection not to be delivered. We do not have any objection to the location of the rail requirements in their own section provided that they are enforceable.

For example paragraph 4 causes us concerns. If the situation arises and there is a need to reset the completion date, this date should be agreed with the local planning authority. The paragraph should also set out examples of matters which are outside the control of the undertaker, for example delays in the delivery timetable caused solely by Network Rail or other outside contractors. This would provide greater clarity for all parties concerned with this project.

13. Comments on the proposed Section 106 Agreement

The Council’s position is that the wording on the Section 106 agreement is close to being acceptable to the Council. The Council comments on the questions raised as follows:

- 1.29 - The Council’s position is that whilst ordinarily it would wish that every person with a legal interest in the land to be covered by the section 106 agreement, was a party to the agreement, it recognises the difficulty where there is a compulsory purchase situation.

The Council’s preference is that the parties who have agreed to an option (and therefore will not be going through the CPO process) should be a party to the section 106 agreement, however in the event that it is not possible for them to be a party to the section 106 agreement the Council is satisfied that clause 6 does provide sufficient protection.

- 1.31 – The Council would wish for notification to be provided but is happy for that to be in either the DCO or the section 106 agreement.
- Q 1.32 - S1:2.1 & 2.2 – The Council is content with the obligations referred to.
- Q 1.33 – The relevant provisions are agreed.
- Q 1.34 – the Council is content.
- Q 1.35 – the Council has no comment on this provision
- Q 1.42 – yes - there are – these have been sent to the applicant’s solicitors and include suggested amendments on requiring that operational development cannot be brought into use in any phase until all eligible properties identified in respect of that phase have **completed** the procedures set out in the scheme (and been installed). These comments were sent to the Applicants’ advisors on 21.5.2019.