

Date: 10 July 2019
Our ref: STRE/SLVY/2024388.000017
Your ref: TR050005 (20015793)
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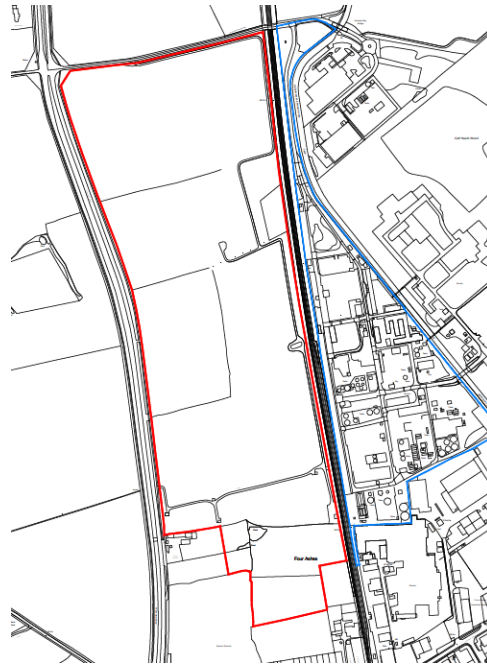
Dear Sir/Madam

WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER

SUBMISSION – PRE ISSUE SPECIFIC HEARING 6: THE DRAFT DCO

PINS REFERENCE: TR050005 (20015793)

- 1 Please accept this letter as a submission on behalf of SI Group – UK, Ltd (SI Group), for whom we act, in advance of Issue Specific Hearing 6 of the examination in respect of the proposed West Midlands Rail Freight Interchange Order (**the proposed Order**).
- 2 SI Group restates the comments made in its Relevant Representation dated 29 October 2018 and Written Representation dated 5 April 2019, particularly its continued support for the making of the proposed Order on the terms of the Remediation Safeguarding Agreement made between it and the Applicant, Four Ashes Limited (**FAL**) on 3 August 2018 and the Protective Provisions in its favour currently on the face of the proposed Order, but wishes to make the following further comments:
 - 2.1 In the draft DCO dated 24 April 2019, the definition of “the undertaker” is phrased in a manner we assume intended to enable future owners and occupiers of the rail freight interchange, warehousing, etc. to have the benefit of development consent under the proposed Order. The definition includes, not only the applicant (FAL), but also any other person who has the benefit of the proposed Order in accordance with section 156 of the Planning Act 2008 (by virtue of being a person for the time being interested in the land). Technically, that includes SI Group as “the undertaker” as it owns Area A, edged red in the drawing below, and is likely to continue to have an interest in it for some time as it continues to carry out the remediation scheme there:



- 2.2 We note, however, that the draft DCO has evolved to now include a range of provisions, including requirements and protective provisions in favour of authorities and third parties, that require proactive steps to be carried out by "the undertaker" which are worded in a manner which, when read together with the definition of "the undertaker", technically requires SI Group to carry them out.
- 2.3 SI Group is not the promoter of the project and is not anticipated to deliver the Rail Freight Interchange.
- 2.4 On this basis, particularly bearing in mind the potential criminal liabilities associated with non-compliance with the terms of a DCO (under section 161 of the Planning Act 2008), SI Group does not consider it appropriate for the draft DCO to impose obligations in this manner on a third party landowner.
- 2.5 SI Group assumes that the effect of the current drafting is unintentional, as it is presumably aimed at future owner/occupiers of the warehousing etc.
- 2.6 Therefore, in the strongest possible terms, SI Group requests that the Examining Authority allow the definition of "the undertaker" in the draft DCO to be amended as per the new underlined addition below such that it reads:

"the undertaker" means—

(a) Four Ashes Limited (company number 09747871) registered office 4th Floor, 7/10 Chandos Street, Cavendish Square, London W1G 9DQ; and

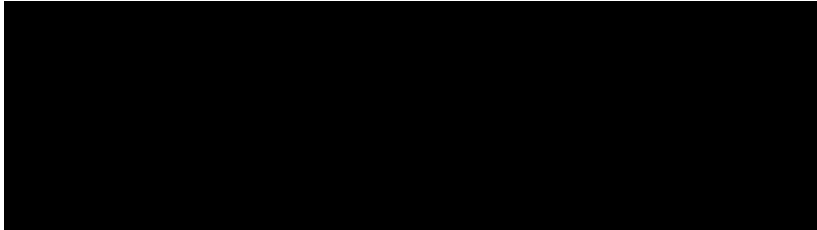
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(b) in respect of the main site only any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person, but does not include SI Group unless SI Group is carrying out part of the authorised development under this Order other than the remediation strategy;"

- 2.7 We confirm that the Applicant, FAL, has stated it has no objection to the amendment.
- 2.8 SI Group does not wish to take up the time of the Examining Authority at Issue Specific Hearing 6 by attending and making oral representations in respect of this matter, which it assumes is uncontroversial, notwithstanding its critical importance to SI Group. But, if the proposed amendment is not acceptable for any reason, then in the interests of fairness we would request an opportunity to set out the necessity of the change in a further hearing.
- 3 On the terms of this letter and its Relevant Representation dated 29 October 2018 and Written Representation dated 5 April 2019, SI Group hereby reconfirms that it supports the making of the proposed Order.

Yours faithfully

For and on behalf of SI Group – UK, Ltd



Bryan Cave Leighton Paisner LLP

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