

Deadline 6 Post Hearing 10/11th July Submissions by Ansons Solicitors Limited on behalf of Stop the West Midlands Interchange.

(A) Alternative Sites

When asked by the Examining Authority which of the potential alternative sites Stop the West Midlands Interchange favoured we responded a site based on ROF Featherstone. This site and some neighbouring land comprising approximately 36 hectares is currently allocated for employment land. There is adjacent suitable additional land (most of which is in one ownership namely Taylor Wimpey Developments Limited Title SF458749), part of which is in the green belt, which would enable a development of over 60 hectares to take place. Moreover the site is close to Hilton Park where there is already substantial warehousing. It may be said that the loss of the allocated employment land should be avoided but it is preferable to find other employment land, which does not require a rail connection, to losing the opportunity of utilising a site adjacent to the railway for this purpose - if a need for WMI is found to exist.

The advantages of a Rail Interchange in this location over the Application Site include the following:

No public footpaths, No bridleway, No canal, No reservoir, No sailing club, No fishing club, No birdwatching club, No canoe club, No loss of woodland and veteran trees.

Less impact on wildlife.

Potential for direct link on M54 which would minimise the impact on local highways.

Better topographical link to railway.

Demolition of existing properties in use avoided.

Significantly less greenbelt land utilised so sequentially preferable.

Closer to the Black Country and West Midlands Conurbation it will serve.

Closer to the workforce to be employed so shorter journey to work impacts.

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

Following the June Hearings Ansons prepared a draft Trust Deed to address the point that there was no provision for a bond or other means of covering the liability for the costs of the rail connection. This was done against the background that there was a risk that the rail connection may never occur and a standalone warehouse development might be created on green belt land for which no very special circumstances exist.

The Applicant's Solicitors were sent a copy of the draft Deed on 13th June 2019 and responded on the same day in the following terms:

"As you can imagine we are busily seeking to finalise documentation for submission tomorrow (Deadline 4) and then will need to turn our minds to the Inspector's Second Written Questions to be issued on Monday and to be responded to by Deadline 5 (5 July). We will however give your proposal consideration and respond as soon as we are able."

In the result they did not respond to the draft save for their published response at page 44 of their Deadline 4 Submissions in the following terms.

"If the Applicant is not prevented from delivering the rail terminal at the times stated due to matters outside of its control, then the provisions of requirement 5 can be enforced utilising the

enforcement powers of Part 8 of the Planning Act 2008. If the Applicant is prevented from providing the rail terminal due to matters outside of its control, then it is not clear how the provision of a bond will overcome the barriers to the provision of the rail terminal encountered by the Applicant. Accordingly, there is no logical basis upon which to further explore the provision of a bond. For these reasons, the Applicant does not believe it relevant to explore the detail of the mechanism proposed by Stop WMI, which is problematic in itself.”

At the Hearing on 10th July the Applicant’s Solicitors raised objections to the drafting. These included a reference to the end date when monies in trust would be returned, to the fact that the rail terminal works were expensive and by inference would not be covered by the mechanism in the draft deed.

To address the point about the end date a further draft is included in Schedule 1 below providing that the trust fund would be released to the Applicant when the rail terminal works were complete.

It is however obvious from the responses of the Applicants that they do not wish to engage on this point, That is, of course, entirely a matter for them. The fundamental point is however that in the absence of a provision of this nature the proposal does not comply with policy for the reasons set forth in our earlier submissions and the clear statements of South Staffordshire District Council on the same point.

For the record it is submitted that a mechanism of the type proposed would in our submission meet the tests in the CIL Regulations. The presence of a trust fund built up from income received may only go part of the way towards the cost of the rail terminal works but it would encourage the Applicant not to forfeit it and the default position of the application of the same for Community Fund purposes would provide limited compensation to the residents for a non-policy compliant development. The argument that the sanction provisions in Part 8 of the Planning Act 2008 are adequate to cover this scenario is flawed for two reasons: first these are in essence criminal sanctions which are of no use in a situation where the Applicant is insolvent and secondly the lack of clarity about what is within the control of the Applicant renders the use of such criminal sanctions problematic. It should be borne in mind in considering the financial risk involved that: (a) the development is speculative; (b) it apparently needs additional land to be viable and (c) there are many uncertainties which include the capacity for freight and the pollution plume.

(C) DCO Obligation Schedule 2 Part 2

It is now clear that the Barred Routes do not include A5 west of Gailey. 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. The response by the Applicant at page 47 of their Deadline 4 submissions is as follows:

“As set out at 2.5.1 of the Applicant’s Post Hearing Submissions (REP4-003), the A5 to the west of Gailey Roundabout forms part of SCC’s primary road network and its function is to carry traffic flow, including HGV’s, having previously formed part of the Strategic Road Network prior to being de-trunked. Given its status, it is considered that the A5 is an appropriate route upon which to direct

traffic with an origin/destination to the north west. However, the principal route for traffic travelling in this direct will be via the M54.”

It is submitted that as it is accepted that the principal route for traffic to and from the site from the west will be via the M54 the A5 to the west should be a barred route given its unsatisfactory status.

DCO Obligation relating to Schedule 2 Rail Infrastructure Works

We submitted at the Hearing that the test based on matters “outside the control of the Applicant” was too loose and that it should be based on a force majeure test under which lack of funds was not included. We have offered to comment on a revised draft but have not received one to date.

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 in relation to the rail terminal works as defined are completed pursuant to Schedule 2 of The West Midlands Rail Freight Interchange Order 2019 are completed.

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 in relation to the rail terminal works in 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 in relation to the rail terminal works in 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 relation to the rail terminal works 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

