ExA Ref	Question	Response
3.1.1	The ExA does not wish IPs and other parties to repeat evidence already given on the detailed wording of the proposed Rail Requirements although they are invited to comment on the further changes made in REP6-003. The ExA does, however, wish to know the final views of parties with an interest in these matters on the wider issues set out in the following questions.	
	(i) The applicant's evidence is that there is a need for an element of warehousing to be constructed and occupied in advance of the completion of the RT, both to help fund the rail infrastructure and to ensure occupier demand for the rail services once they are available. Having regard to that evidence, do the parties consider that there are reasonable grounds for allowing up to 186,000 sq. m. of the proposed warehousing to be built and occupied prior to the opening of the RT?	(i) The position in relation to the timing of the delivery of the terminal has been presented by the Local Planning Authority in relation to compliance with the NPS and Very Special Circumstances for development in the Green Belt. We would defer to the LPA on this point.
	(ii) Without the flexibility sought by the applicant, a simplified form of Rail Requirement 4 would possibly read as follows: "The undertaker must complete the rail terminal works prior to the earliest of— (a) the occupation of more than 186,000 sq.m of warehousing; or (b) the sixth anniversary of the first occupation of more than 47,000 sq. m. of warehousing". If there are reasonable grounds for allowing some warehousing to be occupied prior to the completion of the RT, would this simplified Requirement 4 provide the necessary certainty as to the delivery of the rail infrastructure?	(ii) On the face of it this proposed wording would provide more certainty on delivery as it compels the developer to deliver the terminal by a set point in time and not to allow any further occupation/s until such time as the terminal is complete.
	(iii) Do the parties agree, as a matter of principle, that the Rail Requirements should provide for a subsequent change to the timescale for completion of the RT to	(iii) Assuming the SoS approves the scheme allowing warehousing to be built ahead of the terminal then it follows that any subsequent change in the timetable for completion of the RT

	be approved either by the LPA or by any other statutory body/authority?	be approved by the LPA or another Statutory body.
	(iv) As currently drafted in REP6-003, do the Rail Requirements provide for an appropriate level of certainty as to the delivery of the RT given the Green Belt location of the proposed development?	(iv) Matters in relation to Green Belt we will defer to the LPA.
	(v) The current wording of Rail Requirements 4 and 6 make the LPA the decision making authority for approving any subsequent changes to the approved RT delivery requirement. The Applicant expresses confidence that the RT will be delivered in the timescales specified. However, in a 'worst case scenario' the draft Requirements could potentially lead to the LPA being asked to give approval to WMI being completed and/or operated as a large warehousing development with no rail connection, as feared by many IPs in their evidence to the examination. Such an outcome would, arguably, mean that the completed development does not constitute a SRFI NSIP as defined in s26 of the Planning Act 2008. Does the delegation of this decision making authority to the LPA give rise to any legitimate concern that what would be approved under the DCO as drafted may not be developed in a form which would constitute an NSIP?	(v) Whilst it is assumed that the LPA would not approve a scheme without a RT under normal circumstances, under the 'worst case' scenario they could find themselves placed in a position to make a decision on that basis. This scenario, should it ever play out, would most likely occur many years into the future where the policy position could be completely different to as it is now. So, there may be a legitimate concern but as decision making authority we would revert to the position put forward by the LPA on this point.
	(vi) If there are legitimate concerns of the type set out in Question 5, it seems to the ExA that one way of addressing such concerns would be to reserve to the Secretary of State the power to determine any subsequent application to change the timescale requirement for delivery of the RT rather than delegating this to the LPA. Under such a scenario the current drafting of Rail Requirement 4 might possibly be amended as follows: • Replace the references to "the local planning authority" LPA in paragraph (2) with the words "the Secretary of State;"	(vi) If it is concluded that the concerns put forward in Q(v) are legitimate then the proposals put forward here to provide for the Secretary of State to be the decision making Authority would seem to allay those concerns and ensure decisions are made in the National interest and in accordance with the NPS. However, this needs to be balanced against the level of extension being requested and/or the state of progress of the works – for example if the RT works have been commenced on the ground and there is a clear programme for completion then the concerns in Q(v) would not persist and

	• Require that copies of the report referred to in (2)(a) be sent to the LPA, the local highway authority and HE and to require that those bodies be consulted by the SoS before a decision is made; • Remove the suggested need for HE to issue its written consent to any approval of a change as this would not be necessary if the decision is to be taken by the SoS for Transport; • Remove the right to appeal as this would be a SoS decision in the first instance. Rail Requirement 6 might also be reworded to replace the reference to "local planning authority" to "Secretary of State". Under this approach they might also need to be an amendment to Part 3 of Schedule 2 to make it clear that the rights of appeal do not apply to decisions taken under the relevant Rail Requirements. At Appendix A to these questions the ExA has produced a tracked changes version of how amended Rail Requirements 4-6 might read if this approach was to be taken. If parties consider that there are grounds for the potential concerns identified in Question (v) would they please set out their views as to whether those concerns would be allayed if Rail Requirements 4 and 6 were to amended along these lines and, if so, whether any other changes to the Rail Requirements would be needed?	there would seem little sense in requiring the SoS to make a decision.
3.1.2	**Clarity of the Rail Requirements in Part 2 of Schedule 2 as drafted** The questions in this section have a different purpose to Q3.1.1 and are concerned only with the clarity of the wording of the Rail Requirements as currently drafted. (i) Rail Requirement 4(2) includes the wording "the undertaker believes". As there could potentially be difficulty as defining what any person or body may "believe" would additional clarity be added by amending this to read "reasonably	(i) It is agreed that this addition would provide an objective test. However, the key to this part of the Requirement is part 2(a) and the provision of the report demonstrating the reasons for the delay etc.

	believes" so to introduces an objective test?	
	(ii) As drafted, Rail Requirement 4(2)(a)(ii) requires a revised timetable with "substitute figures" to those in 4(1)(a) and (b).This presupposes that any revised "timetable" would involve a change to the level of floorspace to be built and occupied prior to the completion of the RT rather than, for example a revised programme and agreed dates for achieving key milestones. Is it appropriate and reasonable that the Requirement be based on such an assumption?	(ii) It is assumed that in order to make a compelling case for an extension in time for completion of the RT the developer will have to clearly set out, in addition to explaining first why a delay has occurred, where they are in the process; the work outstanding; an expectation of when this will be complete by; and ultimately a calendar based timetable. It is reasonable to assume that this could be converted into a level of warehousing floorspace that could be reasonably constructed within the same time period. Ultimately it would be for the decision making authority to determine what level of extension if any to approve.
	(iii) If the purpose of any change is to approve a revised timetable, is there a need to agree a change to the 186,000sq.m or 47,000 sq. m or could that purpose be achieved, for example, by changing the wording in 4(1)(a) from "the occupation" to "the first anniversary of the occupation" of 186,000 sq. m? or the wording in 4(1)(b) to "the seventh anniversary" rather than changing the area or floorspace to be occupied?	(iii) See answer to Q(ii) above.
	(iv) There appears to be an inconsistency in that 4(2)(a) and 4(5) refer to "substituted figures" whereas the term "substituted dates" is used in 4(4)(a). Is a further amendment needed to remove that apparent inconsistency?	(iv) Agreed.
	(v) Would the use of "substitute dates" throughout Rail Requirement 4 add clarity whilst still providing a reasonable level of flexibility for the undertaker to seek some change in the programme if delivery of the RT is delayed due to matters outside of its control?	(v) Possibly, but the application of a floorspace threshold gives certainty of the level of warehousing that can be delivered ahead of the RT a calendar date would not provide for this.

	(vi) New Rail Requirement 11 seeks to define “matters outside the control of the undertaker.” However, that term is not used consistently in all such references in Rail Requirement 4; for example, in 4(b). Should this not be consistent throughout the Requirements? (vii) In the revised wording in Schedule 2 Part 2 the term “shall” is used in various places whereas this has largely been replaced by “*must*” in most of the articles and requirements in line with the Office of Parliamentary Drafting Guidelines. Should these references be amended accordingly?	(vi) This proposed change should provide for greater consistency. (vii) Agreed.