

Our Reference: SHARE/ 71695897
Your Reference: West Midlands Interchange

Kathryn Simmonite

The Planning Inspectorate
Temple Quay House
Temple Quay
Bristol
BS1 6PN

The Cube
199 Wharfside Street
Birmingham B1 1RN

Direct Line: 0300 470 3357

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Via Email: WMInterchange@planninginspectorate.gov.uk

Dear Sirs

WEST MIDLANDS INTERCHANGE DCO - DEADLINE NO. 7 SUBMISSION

This is Highways England's Deadline 7 submission. It contains our comments on the Applicant's final draft DCO and our responses to further information requested by the ExA pursuant to the Rule 17 letter dated 30 July 2019.

The Applicant's final dDCO

Rail Requirement 4 (RR4)

It is important to note from the outset that Highways England's sole concern in this regard relates to the potential impacts of the development on the SRN should more than 186,000 sq. m of warehousing be in use without an operational rail terminal. Highways England's interest in this application is not whether or not the rail terminal is provided but rather whether the development's impacts on the SRN are adequately mitigated. At this time the potential impacts on the SRN of not providing the rail terminal on time are unknown. The assessment provided by the Applicant (technical Note 41) at Deadline 5 was woefully inadequate and did not give Highways England any confidence that there would not be additional impacts on the SRN. If a larger quantum of warehouse floorspace is occupied that is wholly road-dependant, then this could result in significant environmental effects not assessed as part of this application. Of particular concern to Highways England are the traffic impacts on the SRN together with any noise and air quality impacts associated with the same.

The updated draft RR4 (both the applicant's version and that of the ExA in the recent Written Questions) focuses heavily on the reasons for delay. This is of no real concern to Highways England. Of utmost importance to Highways England, and what we would expect to see as part of any application under RR4, is the submission of updated assessments to demonstrate that any changes in this regard will not lead to additional significant effects. Whilst it is noted that Article 44 has a general provision to this effect, given the materiality of such a change it is suggested that an explicit provision should be included within RR4(2)(a) that requires the Applicant to submit an assessment to demonstrate that, should such a change be approved, there would be no additional environmental impacts. It is also suggested that RR4(2)(b) should include reference to

the decision maker being satisfied, or not as the case may be, that the substitute figures /timetable would not give rise to any significant environmental effects.

Highways England has further concerns with the drafting of this Requirement however given there is some crossover in this regard with the ExA's Written Questions our additional comments in this regard can be found below.

Culvert

We strongly disagree with the assertions made by the Applicant with regards the use of the culvert beneath the A449 in their Deadline 6 submissions. This is a Highways England asset and any attempt to use this culvert without Highways England's consent will be strongly resisted and, if necessary, appropriate legal action will be taken to prevent any unlawful use. The Applicant has not put forward any alternative proposal for draining the site and we reiterate our view that if the DCO does not authorise the provision of a new private culvert by way of an amendment to Works No. 7(s) then this issue remains an impediment to the scheme being delivered.

Bond & Cash Sum

Highway's England's in-house cost estimators have reviewed the Applicant's estimate of costs for the SRN works. This exercise has identified some errors in the Applicant's estimating as well as some exclusions resulting in a discrepancy of over £3,000,000. With this in mind, accepting the Applicant's preferred bond sum of 120% presents a significant risk to Highways England which is unacceptable. We therefore reiterate our request for the bond sum to be recorded at 150%.

In addition, a cash sum of £50,000 is *not* considered sufficient to fund the costs of any necessary emergency works that might be required pending call in of the full bond. This would therefore place an additional burden on Highways England as Highways England holds no budget for such costs. We therefore reiterate our request that the Applicant should pay a £150,000 cash sum in additional to providing a 150% bond.

Amendments to existing TROs to prohibit verge parking

Whilst we welcome the changes made to the dDCO to include the amendment to existing TROs to prohibit verge parking we do not believe that the changes go far enough. We reiterate our previous submissions on the safety need for these prohibitions given the development will increase the number of vehicles, particularly HGVs, in the area and the known pressures on roadside facilities.

Highways England has identified possible locations for verge parking on the A5 between Gailey Roundabout and the junction with Vicarage Road and on the A449 between Gailey Roundabout and the M54. We have therefore asked the Applicant to update their proposals in this regard. Without such an amendment there is an increased likelihood that the development will result in increased safety risks on these parts of the SRN due to indiscriminate parking. The HGV Management Plan would also be undermined from

the outset. This is not considered to be a significant change but not doing so could have significant implications. To facilitate this request there would need to be slight change to the Traffic Regulation Plans with 'BB' being relocated east of the M6 roundabout to the junction with Vicarage Road and 'DD' relocated south down the A449 all the way to the junction with the M54.

Deemed Consent

The dDCO still seeks to make Highways England the subject of deemed consent. We reiterate the significant safety concerns that this raises which is completely unacceptable to Highways England. Highways England has a statutory duty to protect and improve the safety of the SRN¹ and therefore no work should be carried out on the SRN without Highways England's approval. The development necessitates physical works to two trunk roads and by seeking to bypass the usual approvals processes there is an unacceptable risk that Highways England will be in breach of its statutory duty and become responsible for substandard works and the liability that comes with that.

Highways England appreciates that the Applicant's rationale for seeking deemed consent provisions is to ensure appropriate engagement from Highways England. It ought to be recognised however that Highways England has statutory responsibilities to support economic growth² (i.e. to support developments such as this one) and as a public body must act reasonably. It should not therefore be necessary for Highways England to be made subject to deemed consent provisions to ensure its engagement and a public body should not be forced into a position against its will where public safety is potentially compromised. Highways England has recently reached agreement with the applicant for the Reinforcement to North Shropshire Electricity Distribution Network DCO for the removal of such provisions from their draft DCO. As a compromise, and despite it being considered unnecessary due its the statutory obligations, Highways England would not object to a provision that it must not unreasonably withhold or delay consent (in line with the Secretary of State's decision for the North London Heat and Power Generating Station DCO).

Further Written Questions

Question 3.1.1

Highways England reiterates its overarching concern with regards to RR4 which is the potential impacts of the development on the SRN should more than 186,000 sq. m of warehousing be in use without an operational rail terminal. The provision of the terminal itself and /or the reason for delay are not, in themselves, particular concerns for Highways England so long as any impacts are adequately mitigated.

¹ Paragraph 4.2e Highways England: Licence April 2015

² Paragraphs 4.2h, 4.3 and 5.25b Highways England: Licence April 2015



- (i) Highways England is satisfied that 186,000 sq. m of warehousing can be occupied prior to the opening of an operational rail terminal without any adverse impacts on the SRN.
- (ii) Highways England agrees that the simplified form of Rail Requirement 4 would give greater certainty as to the delivery of the rail terminal and would therefore address Highways England's concerns over the unknown impacts of any deviation from the agreed cap.
- (iii) The Applicant's environmental assessments are based on the 186,000 sq. m cap. Any flexibility could therefore result in the development operating without regard to the EIA. Highways England does not object in principle to RR4 including an element of flexibility however safeguards need to be in place to ensure that this cannot result in additional environmental impacts not currently assessed as part of this application.
- (iv) Highways England does not believe that, as drafted, the Rail Requirements provide certainty as to the delivery of the rail terminal.
- (v) Highways England reiterates its concerns, as outlined in its Deadline 6 response, should the LPA be the sole decision maker under the Rail Requirements. That said, the concern set out in this question would remain whomever the decision maker was.
- (vi) Highways England would have no concerns should RR 4 be updated to reflect the Secretary of State for Transport as the decision maker. We would still expect to have the role of a consultee as the appropriate body to consider the impacts that any change would have on the SRN.

We had a specific concern over RR4(6) allowing the LPA to agree for the use of the rail terminal to be discontinued without any requirement to even consult with Highways England. The proposed change so that this becomes a decision for the Secretary of State is therefore welcomed however we would expect such decision to be made with regard to the views of Highways England having had the opportunity to consider any impacts on the SRN.

Question 3.1.2

- (i) Highways England agrees that the addition of the word "*reasonably*" would be an improvement.
- (ii) Highways England has no particular view on this but reiterates its overarching concern that whatever flexibility is ultimately permitted must require the Applicant to show that there are no additional environmental impacts as a result of any changes proposed.

- (iii) Highways England has no particular view on this but reiterates its overarching concern that whatever flexibility is ultimately permitted must require the Applicant to show that there are no additional environmental impacts as a result of any changes proposed. This may be more difficult if the revised proposal is based on X number of years in the future rather than X sq. m of occupied floorspace.
- (iv) It is agreed that there could be some improvements made to the drafting in this regard. In particular it would seem that “*revised timetable*” might be more appropriate in RR4(2)(b) as that is what is referred to in (2)(a)(ii). The use of this term would then encompass both “*substituted figures*” and “*substituted dates*”.
- (v) See answer to (iv) above.
- (vi) Highways England agrees that if the term “*matters outside the control of the undertaker*” is defined then all references should consistently use this term (unless the definition is updated accordingly).
- (vii) Whilst of no great concern to Highways England it is agreed that the word “*must*” should be used instead of “*shall*”.

Question 3.3.2

Highways England has reviewed the submissions of Mr Williams as requested and has nothing further to add to submissions already made on these points.

Yours sincerely,



Kathryn Simmonite
OD Midlands
Email: kathryn.simmonite@highwaysengland.gov.uk