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? (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? (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 be approved either by the LPA or by any	(i) In short South Staffordshire District Council (SSDC) does not agree. SSDC's position has been clear throughout: • There is no way that there could be any potential very special circumstances ***without the rail connection*** for essentially what are large sheds in the Green Belt, that do not accord with SSDC's local policies (notwithstanding that SSDC does not agree that consent should be granted). As such any uncertainty about provision of this infrastructure is a serious concern for SSDC. It is therefore important to SSDC that the rail infrastructure is in place at the initial stages – not after 25% of the total warehousing is already in place. As we have said throughout certainty and clarity is critical. As things currently stand a very large area of large sheds would be able to be stationed in the Green Belt well before an operational rail connection. • National Policy Statement on National Networks para 4.88 in SSDC's view does not support this approach – the rail infrastructure should go in first (as set out at length in previous submissions). • Viability has been raised at a late stage – originally we were told that this was not one of the planks of the Applicant's

	other statutory body/authority? (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? (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? (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;" • Require that copies of the report referred to in (2)(a) be sent to the LPA,	case (see SSDC's comments at deadline 4) – however it now appears that this is an argument, if viability is one of the reasons proposed for granting consent then we note that: a) only very limited information was provided and b) that there is no mechanism in place to ensure that the rail connection is provided using the resources gained from that warehousing. We set out in appendix 1 to this note the comments from Caroline Penn Smith partner of Cater Jonas who has expressed her concerns on viability and ultimately the real risk that the rail terminal will not be built. ii) No. SSDC's position remains that in policy terms the provision of such a substantial amount of warehousing prior to the rail connection is not policy compliant. The real risk remains that the warehouses could be built without the Rail Connection being provided and then complex enforcement proceedings would be needed which would follow from that. It is hard to see a situation in which those proceedings would realistically lead to the Rail Connection being provided, particularly if there were an insolvency situation. We note the comments from Highways England at deadline 6 regarding the concerns re non-delivery of the Rail Connection.

	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?	iii) Yes. We agree that in the event that the scheme is consented, allowing warehousing to be built ahead of the rail connection that there may be circumstances where a change in the timetable needs to be allowed for. iv) No for the reasons set out in (i). v) We share the concerns expressed. The simple way to solve this dilemma is for the rail connection to be provided first. It is not acceptable for the variation mechanism to be used to seek to alter the scheme to something that would no longer constitute a NSIP. vi) The approach would address the concerns but might be a little less flexible, if for example a minor change to the timing were being proposed for good reason then there is no objection to the Local Planning Authority determining it.
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 believes" so to introduces an objective test?	(i) This does improve the drafting. We also recognise the improvement by requirement of evidence for the cause of the delay. We remain concerned that the scope on "outside the control" is quite wide - this could in theory cover a situation where a number of factors led to a potential delay both

		those within and outside of the gift of the applicant/undertaker - the key for SSC remains clarity and control and that the scope for alterations is as limited as possible.
	(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) We agree that it is possible that there may not be a need to change the figures at 4(1)(a) and rather simply a need to amend the timetable (provided the tests are met) – the insertion of an "and/or (as appropriate)" may address this.
	(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) Agreed.
	(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	(v) This would need to be in addition to any potential change to the floor space threshold, for example the LPA may decide (under the power at Regulation

	change in the programme if delivery of the RT is delayed due to matters outside of its control? (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?	4(b)(ii)) that it agrees to a longer timescale but a reduced floor space. (vi) Agreed. (vii) Agreed.

Appendix 1

6.8.19

I confirm that I have listened to the recordings of the Issue Specific Hearing 6, further considered the Applicant's Deadline 5 case re viability, reviewed the revised DCO (Sch.2 Part 2 Rail Requirements), the Applicant's Post Hearing Submission ISH6, SSDC's Deadline 6 Submission and considered the Inspector's request for further information dated 30th July.

In general terms I do not consider that SSDCs initial concerns, in relation to assurance that the rail terminal will be delivered have been addressed.

On the question of viability the Applicant has provided very little detail and it is impossible for me to undertake a meaningful detailed examination of the applicant's submitted appraisal on the basis of the information contained in the 'dashboard'. I would agree that development land values in the West Midlands are lower than those in the M1 corridor and likewise that infrastructure costs are broadly equivalent (although there will be a very small regional reduction). In addition it is inevitable that primary infrastructure costs will be incurred at the commencement of any development and in the case of an SRFI these will be exceptionally high (£117m is the Applicant's estimate, £40.6m of which is attributed to rail connection and terminal). The timing of this expenditure is critical to the profitability of the scheme and small adjustments will impact significantly on the IRR. However I do not have the detail of timing of expenditure/ income etc.

In relation to the Applicant's viability appraisal dashboard which provides very general indicators I would agree that the overall approach is appropriate. The use of a custom cash flow with the suitable measure of profitability being IRR is understandable, but I note it is possible to generate this within Argus which could be easily shared. However the refusal to provide the detail of the cash flow means that while it would presently be difficult to dispute any of the variables adopted or outputs shown including the level of profitability, this does not mean the dashboard should be accepted without question. As previously acknowledged, the importance of the timings of expenditure and receipts and indexation/inflation in a cash flow model means that the dashboard approach is not particularly useful evidence.

The dashboard shows that the required IRR of 15% is predicated on completion of the rail terminal within 6 years with all other values and costs remaining proportionate over 17+ years. However there is no obligation on the Applicant to complete the RT until the letting of 186,000 sq m. The dashboard shows a take-up rate of 187,569 sq m over that 6 years. As previously noted the applicants could conceivably develop 185,999 sq m and walk away within a given time frame.

In addition it is widely accepted and evidenced that rail connected warehouses do not attract a rental premium.

I am concerned that the applicant has sought to demonstrate that exclusion of the Inglewood land, which represents 15.28% of the scheme's lettable space 'would significantly affect the viability of the project'. This indicates to me that a marginally smaller scheme and thus the viability of the entire project is in the balance; compounded by the applicant's assertion that the development is 'not in a position to suffer any significant increase in cost or loss in value'.

In view of the above points and the sensitivity of the viability of the scheme to any fluctuations in the adopted variables (the fluctuations of which would be out of the applicant's control) I would be inclined (without seeing further evidence) to suggest that there is a very real risk that the rail terminal will not be delivered.

The applicant has emphasised the case that there is a market driven need for an SRFI in this location and refers to the benefits of SRFI's cited in the NPS. If market demand is as they suggest, and is sufficiently high it is arguable that securing pre-lets would generate higher land values than the suggested £525,000 per net acre and enable accelerated delivery of the RT and/or would provide enough confidence to developers to enter into a bond?

Whilst the ExA's proposal 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 SSDC is helpful, it still remains the position that there is no means of enforcing delivery of the RT in the absence of a bond arrangement or other guarantee. The risk of a large-scale road served warehouse scheme of 186,000 sq m, with insufficient highways capacity being developed in the greenbelt is therefore still very high.

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