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Our Ref: DAP/HA

28 January 2020

Dear Sirs

Strategic Rail Freight Interchange

Application by Four Ashes Limited (“the Applicant”) for an Order granting Development Consent to construct a new Strategic Rail Freight Interchange near to Junction 12 of the M6 motorway in South Staffordshire (“the Proposed Development”).

Thank you for your letter of 24 January 2020. We are grateful to you for the opportunity to respond to the applicant’s purported additional representations made on 13 December 2019.

We note that:

- The issues covered in the letter of 13.12.19 were covered *at length* during the examination process, indeed it was one of the main topics of discussion at the public hearings in June and July 2019.
- The letter of 13.12.19 was not, somewhat disappointingly, copied to this authority, or it appears, to any other interested party.
- There are, in our considered view, no circumstances justifying the re-opening of the examination process – the interpretation of the relevant provisions in the National Policy Statement on National Networks was covered at length both in writing and



during the hearing process. The fact that our interpretation has been preferred in another decision does not justify the re-opening of the process.

In the event that the representation is allowed as a late representation we re-iterate the points made in our representations of 14 June 2019, see link [here](#), 19 July 2019 see link [here](#) and importantly our deadline 7 representation see [here](#) which includes evidence from Carter Jonas, at appendix 1 on the issue of viability.

In reply to the specific points made in the letter of 13 December 2019 we point out that South Staffordshire District Council (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)

One of the key concerns that the Council has relates to the lack of certainty that a rail connection would be provided and the timing of such a connection as well as concerns that the proposed approach to the site will not be one that is compliant with paragraph 4.88 of the National Policy Statement for National Networks ("NPSNN").

4.88 Applications for a proposed SRFI should provide for a number of rail connected or rail accessible buildings for initial take up, plus rail infrastructure to allow more extensive rail connection within the site in the longer term. The initial stages of the development must provide an operational rail network connection and areas for intermodal handling and container storage. It is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be.

The Council's position is that the scheme as it currently stands does not meet the test at paragraph 4.88 of the NPSNN for the following reasons:



- A rail connection after potentially 25% of the total warehousing on site, as the current wording of the requirements allows, is not in the initial stages – initial means “of, relating to, or occurring at the beginning; first”¹ – we do not accept that this can be interpreted as meaning anything broader than this as the applicant appears to be arguing in quite a semantic way.
- The proposal is that the buildings will not be “rail connected” at the outset, whereas 4.88 specifically requires that whilst not all buildings on the site should be rail connected “from the outset “(our emphasis”) a “significant element should be”. However the Applicant is proposing that up to 25% of the warehousing would not be rail connected for a period of up to 6 years – those warehouses cannot in any way be said to be rail connected “from the outset”.
- We fail to understand why the warehousing to be built prior to the rail connection is not in the immediate vicinity of the rail connection so that as soon as the connection was installed those warehouses would then be served by the connection. That does not appear to be the Applicant’s intention, again we do not understand why not.
- In terms of the supposed distinction between “must” and “should” in para 4.88, we must strongly disagree. It is long established that if words do not have an established judicial or technical meaning, the starting point is that they should be given their ordinary and natural meaning: terms are to be understood in their plain, ordinary, and popular sense, unless they have generally acquired an additional sense distinct from their popular sense (by trade usage or similar); or unless the context evidently points out that they must, in the particular instance, and in order to give effect to the parties’ intentions, be understood to mean something else.

In general terms, the words "shall", “should” and “must”, when used in the mandatory sense, both impose a duty on the subject of the sentence. Where it is clear, as in this case, that the term is being used to impose a duty, we are not aware of any case where that duty has been held to be reduced by reason of the use of the word “shall”, “should” instead of “must”.

It is crucial to consider the sentence/clause as a whole when assessing what meaning the writer intended, we contend that it is clear that “should” was not intended as a weaker form of the term “must”. We cannot see why such a requirement would have a lesser importance than those with the word “must”.

- Viability was raised by the applicants at a late stage in the process. We set out in appendix 1 to the deadline 7 representations 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.*** In the event that this

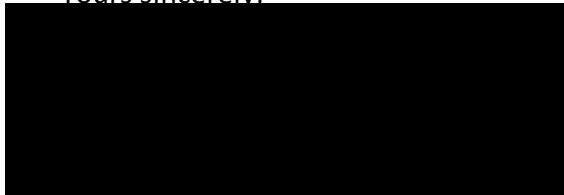
¹ Oxford English Dictionary definition



happened it would leave the area with large sheds in the Green Belt without the rail terminal that was purported to justify their existence. This shows how important the words “should” and “must” are in para 4.88 of the NPSNN.

In conclusion we respectfully agree with the interpretation taken in the decision on the Northampton proposal and urge the Secretary of State to adopt the same approach.

Yours sincerely,



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