

28 January 2020

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**By email only**

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Our ref:  
RG1/RG1/300932.7063  
Your ref:  
TR050005

Dear Sirs

**Application for the West Midlands Interchange DCO (Application)**

We write on behalf of Network Rail Infrastructure Limited (**Network Rail**).

Subject to the last paragraph of this letter, Network Rail and the Applicant, Four Ashes Limited, have reached agreement on the remaining outstanding issues in respect of the Application. On that basis, Network Rail now withdraws its representations in respect of the above application.

Network Rail also withdraws its request for the inclusion of the Requirement as set out on page 2 of the enclosed letter dated 21 August 2019 and as referred to on page 3 of the letter from the Secretary of State for Transport dated 24 January 2020 (copy enclosed for ease).

The qualification to Network Rail's withdrawal is that the Protective Provisions included as Appendix 1 to the letter dated 21 August 2019 are the protective provisions to be included in the Order (if made). The Applicant has made clear, through Eversheds Sutherland, that it has no objection to the inclusion of the Protective Provisions requested by Network Rail (subject to minor referencing updates), as set out in the letter dated 22 August 2019 (copy enclosed for ease).

Please could you forward this letter to the Secretary of State.

Yours faithfully



**Womble Bond Dickinson (UK) LLP**

**Enclosures**

1. Letter to the Planning Inspectorate dated 21 August 2019
2. Letter from the Secretary of State for Transport dated 24 January 2020
3. Letter from Eversheds Sutherland dated 22 August 2019

**Copy to**

1. Morag Thomson, Eversheds Sutherland
2. Laura-Beth Hutton, Eversheds Sutherland

21 August 2019

Mr Paul Singleton  
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Your ref:

Dear Mr Singleton

### **Application for the West Midlands Interchange DCO (Proposed Order)**

We write on behalf of Network Rail Infrastructure Limited (**Network Rail**).

We write to provide you with an update in respect of the ongoing negotiations between Four Ashes Limited (**Applicant**) and Network Rail.

Network Rail and the Applicant have engaged in negotiations in respect of an agreement to regulate certain aspects of the relationship between the parties in relation to the Proposed Order, and to ensure that Network Rail's interests as statutory undertaker are properly protected (**Side Agreement**).

The Side Agreement is not yet in place, nor is the deed of easement that is also being negotiated by the parties.

Network Rail requires access to the West Coast Main Line (**WCML**) at all times. As it currently stands, if the Order is made and Network Rail does not have the access rights that it requires, Network Rail may be prevented from attending to any incidents or emergencies on the WCML through lack of access rights. This would have negative impacts on Network Rail's ability to run the national rail infrastructure network and lead to unnecessary costs being incurred.

Network Rail is concerned that the land assembly and works authorised by the Proposed Order could begin prior to the appropriate access rights being provided by the Applicant to Network Rail. Network Rail has been negotiating the Side Agreement and the deed of easement in good faith and in good time for conclusion prior to the end of the examination, which is why our client did not appear at the CA and S127 hearing. However, as it currently stands, the provision of such rights has not yet been agreed.

Network Rail has been willing to enter into negotiations with the Applicant in respect of the Proposed Order, Side Agreement and deed of easement. Whilst it is acknowledged that the Applicant has given good indications of its intent to deal with Network Rail's issues, our client is concerned about the lack of formal commitment in respect of its request for access to the WCML which is a key requirement for Network Rail and for the operation of the wider network.

We would therefore confirm that Network Rail's initial s127 representation remains in respect of the Proposed Order and should not be treated as withdrawn.

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In addition, on the basis that no agreement has yet been reached, we would request that a Requirement is included in the Proposed Order as follows:

*"(1) No authorised development may commence until a scheme for the continued provision of access to the West Coast Main Line has been agreed by the relevant planning authority, in consultation with Network Rail. Such scheme is to include the specification of and timings for Network Rail's temporary and permanent access to the West Coast Main Line and show how access to the West Coast Main line will be maintained at all times.*

*(2) The authorised development is to be carried out in accordance with the details approved to the satisfaction of the relevant planning authority in consultation with Network Rail."*

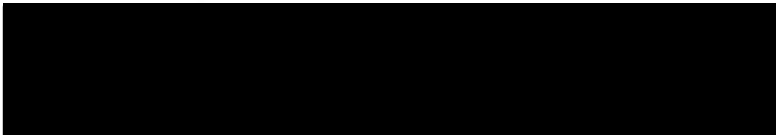
In addition to the above, Network Rail would request that the enclosed protective provisions for Network Rail (see Appendix 1 of this letter) are included in the Order as made. A small change to the PPs is required – see the comparison at Appendix 2.

Network Rail has not agreed the form of the current protective provisions in the Order and has been expecting the applicant to present a revised form of the Protective Provisions to the Examination. Network Rail's position on the Protective Provisions has been made clear to the Applicant since before the application for the Order was made. As the request reflects Network Rail's constant position presented to the Applicant, and no other party would be prejudiced by the change, Network Rail would kindly ask if this change be made, in the best interests of the national railway network.

We have included at Appendix 2 to this letter a comparison showing the changes between the protective provisions for Network Rail in the current draft Order and those that Network Rail are requesting, as included at Appendix 1.

Network Rail remains hopeful that it can, with the Applicant, reach formal agreement in respect of the outstanding agreements. However, until that has taken place, Network Rail's s127 representation should remain and be taken into account in the consideration of the application for the Proposed Order.

Yours faithfully



**Womble Bond Dickinson (UK) LLP**

**Enclosures**

1. Appendix 1 - Network Rail proposed protective provisions
2. Appendix 2 - Comparison between protective provisions



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# Department for Transport

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To: interested parties

Date: 24 January 2020

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Dear Sir/Madam

## **Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010**

**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").**

### **REQUEST FOR COMMENTS**

The Examining Authority submitted on 27 November 2019 a Report and Recommendations in respect of its findings on the above application to the Secretary of State for Transport ("the Secretary of State"). In accordance with section 107 of the Planning Act 2008, the Secretary of State has until 27 February 2020 to make a decision on the application.

The Secretary of State would be grateful if the Applicant and other affected parties where highlighted in bold could provide comments on the matters set out below.

### **A449 Drainage Culvert**

The Secretary of State notes that discussions were held between the Applicant and Highways England regarding the use of an existing culvert under the A449. The Secretary of State considers that the issue is one for the parties to resolve between themselves and is not for determination as part of the DCO. However, development consent cannot be given if there is a likely impediment to the scheme being implemented. The Secretary of State considers the unresolved issue between the



Applicant and Highways England as to the use of the culvert under the A449 poses a risk to the implementation of the Proposed Development should consent be granted. The Secretary of State is of the view that that risk could be removed by making a minor amendment to the description of the work in the draft DCO to include an authorisation to construct a new culvert under the road should one be required, as suggested by the Applicant in the final draft DCO they submitted to the examination ([\[REP8-005\]](#)).

In the circumstances, comments are being sought from **Highways England** on an amendment to Works Nos 6(u) and 7(r) in Schedule 1 to any Development Consent Order that might be granted by the Secretary of State, specifically the addition of the words in italics as set out below:

*“the construction of culverts under the A449 adjacent to Zone A1 and, if necessary, adjacent to Zone A2 as an alternative to use of the existing culvert situated adjacent to Zone A2, under Vicarage Road between Zone A5b and A7c and under Straight Mile south of Zone A7c to connect services either side of the public highway”*

Please could the **Applicant** confirm that if the additional culvert potentially envisaged by the revised requirement were to be constructed and used it would not give rise to any different conclusions in the Environmental Statement? Or provide details of such different conclusions if this is not the case?

### **Stage 1 Road Safety Audit**

Please could **Highways England** clarify their remaining concern with the Applicant’s Stage 1 Road Safety Audit in respect of the pedestrian crossing facilities at the A449, including the issue raised in the D2 submission [\[REP2-034\]](#) in relation to safety concerns of the circulatory at Junction 12 of the M6?

In relation to the concerns of the pedestrian crossing facilities at the A449 the Secretary of State notes that this matter could be resolved by a minor relocation of the crossing, which could be agreed at the detailed planning stage. The need for a detailed amendment could be secured through a small amendment to the draft DCO.

In the circumstances, comments are being sought from the **Applicant** and **Highways England** on the following new, draft requirement to be included in the list of details to be submitted and approved by the local planning authority prior to commencement of the relevant phase of the Proposed Development, as set out in (currently numbered) requirement 3(2) (detailed design approval) of Schedule 2 to any Development Consent Order that might be granted by the Secretary of State:

*“the location of the pedestrian crossing on the A5/A449 link road notwithstanding the detail shown in that respect on the Highway plans (in consultation with the local highway authority and Highways England)”*

### **Greensforge Sailing Club**

The Secretary of State notes the concerns about the potential effect on sailing conditions at Calf Heath Reservoir in the submission on behalf of Greensforge Sailing Club to the Examining Authority [\[REP1-016\]](#).

In the circumstances, comments are being sought from the **Applicant** and **Greensforge Sailing Club** on the following new, draft requirement to be added to (currently numbered) requirement 3 (detailed design approval) of Schedule 2 to any Development Consent Order that might be granted by the Secretary of State:

*"The details of any phase including the formation of screen bunds and/or buildings within Development Zones A4a and A5a as shown on the Parameters Plan must include a wind tunnel or other technical assessment of the likely effects of those detailed proposals on wind characteristics at Calf Heath Reservoir and any consequential effects on the suitability of the reservoir for sailing so that these effects can be taken into account by the local authority in deciding whether those details should be approved".*

## **Side Agreement**

Please could the **Applicant** and **Network Rail** confirm whether the 'side agreement' has been finalised and signed?

In the circumstances the agreement is not complete, comments are being sought from the **Applicant** and **Network Rail** on the following new, draft requirement for inclusion in any Development Consent Order that might be granted by the Secretary of State:

*"(1) No Authorised Development may commence until a scheme for the continued provision of access to the West Coast Main Line has been agreed by the local planning authority, in consultation with Network Rail. Such a scheme is to include the specification of and timings for Network Rail's temporary and permanent access to the West Coast Main Line and show how access to the West Coast Main line will be maintained at all times.*

*(2) The Authorised Development is to be carried out in accordance with the details approved to the satisfaction of the local planning authority in consultation with Network Rail."*

## **Late Representation**

The Secretary of State invites all **Interested Parties** to submit any comments they have on a late representation from the **Applicant** dated 13 December 2019. The representation is published alongside this letter.

**The deadline for any response is 7 February 2020.**

Responses to the matters outlined in this letter should be submitted by email to [WMInterchange@planninginspectorate.gov.uk](mailto:WMInterchange@planninginspectorate.gov.uk). Please send any hard copy response to Northampton Gateway Case Team, The Planning Inspectorate, Eagle Wing 3/18, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team.

Your response will be published on the project page for the West Midlands Interchange on the Planning Inspectorate website as soon as possible after the above deadline for response at:

<https://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/west-midlands-interchange/>

This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the West Midlands Interchange scheme, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

Kevin O'Hanlon



Robert Ranger  
Case Manager  
National Infrastructure Planning  
The Planning Inspectorate  
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**Date:** 22 August 2019  
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Dear Mr Ranger

**Planning Act 2008 (as amended)  
Four Ashes Limited**

**Application for an Order granting Development Consent for the construction of a Rail Freight Interchange and associated development (West Midlands Interchange)  
Examination – Applicant’s Further Update on Network Rail Representations**

With its Deadline 8 submission the Applicant submitted an Update on Network Rail Representations (Document 18.6). In paragraph 4 of that document reference was made to the Applicant having had sight of a letter to be submitted to the Examining Authority at Deadline 8.

The letter referred to in that paragraph differs from the letter that was in fact submitted (in respect of which no criticism is intended). The letter seen by the Applicant did not refer to the protective provisions but the submitted letter does.

The Applicant believes it would be helpful for the Examining Authority to have the Applicants view on the protective provisions that Network Rail have requested be inserted in the dDCO.

It is understood that Network Rail wish the protective provisions to be amended so that they accord with what they consider to be their standard provisions. The Applicant does not object to the inclusion of those protective provisions, subject to the following comments:

1. The references to “of this Part” of this Schedule need to remain so that the provisions are consistent with the remainder of the dDCO. The protective provisions comprise Part 1 of the Schedule, not the entire Schedule.
2. The reference in paragraph 11(11) to Article 49 should remain as Article 48 to accord with the dDCO (Document 3.1E).
3. In paragraphs 20 and 21 the words in brackets should not be capitalised to accord with the remainder of the dDCO and the SI template.

Please do not hesitate to contact me using the contact details above or my colleague, Laura-Beth Hutton ([laura-bethhutton@eversheds-sutherland.com](mailto:laura-bethhutton@eversheds-sutherland.com) or [REDACTED] should there be any queries.

Yours sincerely

[REDACTED]

**Morag Thomson**

*Partner*

*Planning and Infrastructure Consenting*

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