

Dear Secretary of State,

On 24th January 2020 you issued a letter¹ requesting clarification on a range of matters regarding the proposed Development Consent Order (DCO) for the West Midlands Rail Freight Interchange (WMI) on land to the west of junction 12 of the M6.

Given that you appear to be taking a pragmatic and considered approach to determining the WMI DCO, I would like to bring an important additional matter to your attention.

The Issue

The matter of concern centres on the applicant's submission of inaccurate and misleading information regarding the adverse acoustic effects resulting from the proposed intensification of vehicular use along the A449 between the proposed WMI site and Junction 2 (J2) of the M54.

Over 100 residential dwellings reside in close proximity to the A449 in the settlements of Standeford, Cross Green and Coven Heath between the proposed WMI site and J2. These dwellings will experience increases in nuisance sound which will exceed 3 decibels (dB). The applicant has fully acknowledged that increases of 3 dB or more are severely detrimental to residential receptors and are significant in environmental impact assessment terms.

Paragraph 13.344 of the applicant's submitted Environmental Statement Chapter 13 states:

'Increases in road traffic noise of just 3 to 5dB would be classed as moderate adverse impacts, which when combined with the high sensitivity of the residential receptors along these roads, would be regarded as moderate adverse effects, which are significant in EIA terms.'

The 'Calculation of Road Traffic Noise' (1988) (CRTN)² manual asserts in Paragraph 13 that sound modelling for new roads and the intensification of use of existing roads should where appropriate combine (aggregate) data from multi-carriageway roads.

13. Traffic flow
13.1 On normal roads the flow of traffic in both directions shall be aggregated to obtain the total flow. But in cases where the two carriageways are separated by more than 5 metres or where the heights of the outer edges of the two carriageways differ by more than 1 metre, the noise level produced by each of the two carriageways shall be evaluated separately and then combined using Chart 11. In the case of the far carriageway the source line will be assumed to be 3.5 metres in from the far kerb and the effective edge of the carriageway used in the distance correction is 3.5 metres nearer than this, i.e. 7 metres in from the edge of the farside carriageway (see Annex 2).

Paragraph 13 of the *Calculation of Road Traffic Noise* (1988) manual.

The Applicant's Appendix 13.5 (an annotated copy of this document is provided in Appendix 6 of my Deadline 8 submission³ and a sample extract is provided below) demonstrates that the applicant did not aggregate sound data from the north and south bound carriageways of the A449 (in a two mile

¹<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050005/TR050005-001345-WMI%20E2%80%93%20Letter%20from%20Secretary%20of%20State%20-%2024%20January%202020.pdf>

² <http://bailey.persona-pi.com/Public-Inquiries/M4-Newport/C%20-%20Core%20Documents/14.%20Noise%20and%20Vibration/14.2.1%20-%20Department%20of%20Transport%20and%20Welsh%20Office%20Calculation%20of%20Road%20Traffic%20Noise.%201988.pdf>

³ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050005/TR050005-001250-Daniel%20Williams%20-%20Resposne%20to%20Deadline%208.pdf>

section of the road that the applicant refers to as 'Link 18') in accordance with the CRTN Paragraph 13 requirement.

The fundamental point here is that the A449 is a sound producing entity that will be experienced as a single sound producing entity by people living and working around it.

Submitted DCO Technical Appendix 13.5 - Operational Noise Assessment information:

Table 13.5.7: Calculated changes in night-time road traffic noise, 2021, free-field LA10, 8hrs dB

Location	2016 baseline	2021 No development ⁽¹⁾	2021 With development ⁽²⁾
A449 between Station Drive and Brewood Road (northbound)	67.8	67.5 (-0.3)	70.4 (+2.9)
A449 between Station Drive and Brewood Road (southbound)	70.4	70.7 (+0.3)	73.1 (+2.4)

Notes:
⁽¹⁾ the bracketed value is the change in noise level between the 2016 baseline and 2021 No Development scenario
⁽²⁾ the bracketed value is the change in noise level between the 2021 No Development scenario and the 2021 With Development scenario

Aggregation of the sound data in accordance with the CRTN Paragraph 13 methodology would have given 3 dB plus increases in sound emanating from the A449 in 'Link 18'. The applicant's artificial division of the data has been done solely to avoid having to take responsibility for the matter.

The applicant's Appendix 13.5 projected dB increases (annotated in Appendix 6 of my Deadline 8 submission) would also compound the existing 70 dB+ baseline levels in the Standeford, Cross Green and Coven Heath settlements to the south of the proposed WMI.

Furthermore, alongside the A449 to the south of Station Road (the southern extent of the proposed WMI) most residential dwellings and urban structures are congregated around the intersecting junctions. The aerial photographs provided on page 8 of ExQ2 Rep2-178⁴ clearly show this. CRTN Paragraph 26 asserts the following instructions where urban built form exists which can modify and amplify adverse sound for residential receptors:

26. Reflection effects
 Reflection of noise from hard rigid surfaces adjacent to the source or in the neighbourhood of the reception point increases the noise level compared with that calculated under the above procedures, which give the free-field noise level. The 'free-field' noise level is appropriate where the site is open and clear and the reception point is away from other facades.

26.1 Facade effect
 To calculate noise 1 metre in front of a facade, a correction of +2.5 dB(A) is to be made. (Other noise calculations along side roads lined with houses but away from the facade still require the same addition of the 2.5 dB(A) because of the proximity of facades, see para 27).

26.2 Reflection from opposite facades
 Where there are houses, other substantial buildings or a noise fence or wall beyond the traffic stream along the opposite side of the road, a correction for reflection from the opposite facade facing the reception point is required. The correction only applies where the height of the reflecting surface is at least 1.5 metres above the road surface.

The correction for reflection from opposite facades is $+1.5(\theta'/\theta)$ dB(A) where θ' is the sum of the angles subtended by all the reflecting facades on the opposite side of the road facing the reception point, and θ is the total angle subtended by the source line at the reception point (see Fig 5). The above correction is required in addition to the +2.5 dB(A) facade correction described in para 26.1. For calculating the reflection correction for a reasonably uniform row of houses on the opposite side of the road see para 34.2.

Paragraph 26 of the *Calculation of Road Traffic Noise* (1988) manual.

⁴ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050005/TR050005-000782-Daniel%20Williams%20-Written%20Representation.pdf>

Not only do buildings and dwellings face one another around the intersecting A449 junctions south of Station Road, they are also opposite and adjacent to intersecting side roads. CRTN Paragraphs 27 and 33 assert that the following factors be accounted for during a sound modelling appraisal:

27. Side roads
For side roads the above correction applies only when there are houses or other substantial reflecting walls along the main road opposite the aperture of the side road and within the angle of view of the reception point. In this case however, θ is the angle of view of the main road at the reception point defined by the aperture of the side road, and θ' is the sum of the angles subtended by all the reflecting facades on the opposite side of the main road facing the reception point contained within the total angle θ (see Annex 13).*

Paragraph 27 of the *Calculation of Road Traffic Noise* (1988) manual.

33. Multiple roads including road junctions
Calculation of noise from multiple roads is achieved as an extension of the procedures outlined in Section I. The contribution from each individual length of road is calculated separately, using the appropriate mean speed (see para 14) and ignoring any speed change at the junction, and the overall predicted noise level obtained using Chart 11. Some difficulties may be encountered, however, since the segment boundaries may not be precisely defined in all cases. In general, the location of segments will depend upon the presence of buildings and the position where the source lines of each road segment intersect. Annex 16 illustrates how segmentation of two particular junction designs could be achieved. For the roundabout site the source lines could have been drawn to intersect at different positions which would have resulted in different segment angles. In such situations the noise contribution from each road segment should be calculated for each possible segment angle and the maximum resultant predicted noise level taken.

Paragraph 33 of the *Calculation of Road Traffic Noise* (1988) manual.

If the applicant's submitted Appendix 13.5 data had aggregated the A449's north and south bound carriageways; included the sound contribution from intersecting side roads and the amplifying effects of urban built form in accordance with the CRTN methodology; the predicted increases in nuisance sound (in the applicant's Appendix 13.5) would have been shown to exceed 5 dB, and in some instances may well have exceeded 10 dB in parts of Links 18 and 20 (the A449 Station Road to J2 of the M54).

Paragraph 5.195 of the 2014 'National Policy Statement for National Networks'⁵ is very clear:

...*"The Secretary of State **should not grant development consent** unless satisfied that the proposals will meet, the following aims, within the context of Government policy on sustainable development:*

- 1) avoid significant adverse impacts on health and quality of life from noise as a result of the new development;*
- 2) mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and*
- 3) contribute to improvements to health and quality of life through the effective management and control of noise, where possible".*

The Appendix 13.5 data and the findings the applicant has drawn from it are completely unsatisfactory. The WMI DCO proposal fails to meet NPSNN Paragraph 5.195 requirements 1 and 3 – until that is satisfactorily rectified consent should not be granted.

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387223/npsnn-web.pdf

The 'Open' Examination

Throughout the six months of open hearings I made frequent and repeated written attempts to bring these matters to the attention of the Examining Authority (ExA). However, the combination of my late understanding of the CRTN (1988) manual requirements, Highways England's (HE) institutional ineptitude, the local authority's (South Staffordshire District Council (SSDC)) lack of 'in-house' transport expertise and the applicant's patent lying combined to obscure the full extent of the problems I am now bringing to your attention.

Throughout most of the open examination (until Deadline 8) I repeatedly expressed my concerns about the acoustic impact that the proposal will have on the settlements residing alongside A449 to the south of the site. However, I never managed to fully grasp and expose the dubious acoustic appraisal. For example in my ExQ2 Rep2-178 submission I made the following anecdotal observation which did not 'join the dots':

"Signal controlled junctions amplify the frequency and intensity of the most disruptive sounds, such as harsh braking, engine revving, rapid acceleration, blaring radios and refrigeration cooling units being activated on HGVs when cab/engines are stationary at a red traffic lights. Around junctions these types of noise sources are sporadic and intermittent bursts of sound, particularly at night, which could be problematic for the occupants of vulnerable older houses. For example, the constant drone of several passing cars may produce the same average amount of sound as a fully laden HGV slamming its brakes on at a traffic light change. However, the passing cars would not wake a sleeping child, whereas a harshly braking HGV could."

The applicant's Deadline 7 (17.1.032) response to my concerns was the following:

"As stated in response to Brewood and Coven Parish Council (06 BCPC 005) in the Applicant's Responses to Other Parties Deadline 4 Submissions (Doc 15.2 REP5- 006), calculations of road traffic noise follow the method set out in the Department of Transport's 1988 document Calculation of Road Traffic Noise (CRTN). Speed changes at junctions are ignored when using the CRTN methodology."

The applicant's selective citing of the CRTN at Deadline 7 ultimately drew my attention to its significance - a significance I implore you to now have full regard to.

It is very frustrating that I, along with hundreds of local residents and the ExA were cynically and systematically deceived by the applicant for several months. I also find it very frustrating that the organisations tasked with identifying and bringing these matters to the attention of the ExA and yourself, both during and after the open examination, failed to perform their statutory duty. The fact that it has fallen to a lay person such as myself to expose the truth is frankly scandalous.

Post 27th August 2019

Since the closure of the open examination on 27th August 2019 I have corresponded extensively with senior HE officers to seek clarification as to why the failure to identify the sound modelling deficiencies was able to occur in the first instance, and I have asked HE to contribute to remedying the now exposed CRTN problems.

Regrettably HE have refused to bring this matter to the ExA's or your attention (**Please see Appendices 1 and 2 for further details**). Instead HE have sought to blame the local authority's licensing manager for the failure to identify the deficient sound assessment (**please see Appendix 1 and the latter paragraphs on page 3 of Appendix 2**).

HE's West Midland's spatial planning manager, [REDACTED], sent me an email on 16th October 2019 with HE's planning-modelling sub-consultant Sytra Ltd. copied into the correspondence (**see Appendix 3**). When I asked [REDACTED] what Sytra thought about the CRTN problems I had identified (**please see Appendix 4 and my Deadline 8 submission**), [REDACTED] refused to comment. When I asked [REDACTED] a second time to clarify Systra's opinion, he ignored my email (**see pages 1 and 2 of Appendix 2 for further details**).

On 11th December 2019 I made a Freedom of Information (FOI) request in an attempt to force HE to reveal the email discussions which had occurred between HE planning managers and Systra's planning modellers following my CRTN allegations. HE have firmly resisted their publication for very dubious reasons – **please see page 1 of Appendix 2 and Appendix 5 for further details**. I am still waiting (as of 4th February 2020) for HE to explain their position by responding to questions 2 and 3 dated 17th January 2020 (**as given in Appendix 2**).

HE's initial failure to identify the nuisance noise problem and their subsequent obstruction of my attempts to find potential solutions to remedy these problems has been further compounded by a letter I received from HE's Operations Executive Director [REDACTED] on 10th January 2020 (**see Appendix 1**). [REDACTED] asserted that retrospective mitigation for the nuisance noise issues I have identified can be extracted from the applicant using the provisions gifted by Section 151 of 'The Planning Act' (2008)⁶. As I have explained to [REDACTED], this is utter nonsense as that part of the Act concerns itself with the nuclear and water industries (**see Appendix 4**).

I suspect [REDACTED] may have made a mistake in his 10th January 2020 letter, and was possibly intending to refer to the provisions of Section 152 of the Act. If that was the case I strongly urge [REDACTED], his organisation and all interested parties to fully acquaint themselves with the numbers of people affected, and the geographical size of the aggregation and CRTN problems in the A449 corridor. These matters should be appraised and bound seamlessly into the DCO appraisal/decision. Paragraph 5.199 of the NPSNN⁷ instructs clearly on the matter:

*"For most national network projects, the relevant Noise Insulation Regulations will apply. These place a duty on and provide powers to the relevant authority to offer noise mitigation through improved sound insulation to dwellings, with associated ventilation to deal with both construction and operational noise. An indication of the likely eligibility for such compensation **should be included in the assessment.**"*

A contrived retrospective workaround is in nobody's long term interests, other than possibly those of the applicant.

Secretary of State Clarification

Given what has happened and the seriousness of the problems I describe, I respectfully ask that you do the following:

⁶ <http://www.legislation.gov.uk/ukpga/2008/29/section/151>

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387223/npsnn-web.pdf

1. Ask the ExA, the applicant, HE and SSDC to formally comment in a 14 day period on all of the matters that I have raised in this document. The applicant could start by answering the questions I posed in Section 2 of my Deadline 8 submission. Answers to the Section 1 – Deadline 8 questions I posed may also be insightful in light of the publication of the applicant’s “*Must to Should*” letter⁸ dated 13th December 2019.
2. Allow/host a second 14 day period for myself, the parties listed in ‘request 1’ and other interested parties to appraise the submissions generated by the ‘request number 1 consultation’.
3. Instruct HE in accordance with my 11th December 2019 FOI request to publish all email exchanges between HE’s West Midlands spatial planning managers and Systra Ltd. where the WMI, the A449 or myself were discussed after the closure of the ‘open’ WMI examination on 27th August 2019.
4. Instruct HE’s Operations Executive Director [REDACTED] to respond to all of my questions dated 17th January 2020 (those given in Appendix 2).
5. Delay determination of the pending WMI DCO proposal or refuse it entirely until you are satisfied all of the A449 acoustic evidence before you is accurate, scientifically sound and is accompanied by appropriate mitigation measures that are defined, acceptable in planning terms, financially accounted for and enforceable in the years and decades to come.
6. If you are unable or unwilling to undertake my requests labelled 1- 5 please provide and publish a written explanation of your reasons before your determination of the pending DCO.

Yours sincerely,

Daniel Williams

⁸ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050005/TR050005-001344-WMI%20%E2%80%93%20Letter%20from%20the%20Applicant%20%E2%80%93%2013%20December%202019.pdf>

**Appendix 1 – 4th February
2020**

Nick Harris' emailed letter to
Daniel Williams dated 10th
January 2020



Our Ref: 21512231

Mr Daniel Williams
[REDACTED]

Nick Harris
Operations Executive Director
Bridge House
Walnut Tree Close
Guildford
Surrey
GU1 4LZ

nick.harris@highwaysengland.co.uk

10 January 2020

Dear Mr Williams

The proposed West Midlands rail freight interchange (WMI) at Four Ashes, South Staffordshire

Thank you for your email of 11 December 2019 addressed to Jim O'Sullivan, regarding your complaint about unanswered correspondence dated 24 October 2019, your request for information under the Freedom of Information Act and your Subject Access Request. I am replying to you as this issue falls within my area of responsibility.

I would like to begin by apologising for the delays in responding to your emails. Feedback has been passed to the team to prevent this from happening again. I understand that the Operations Midlands High Level Correspondence team emailed you on 16 December 2019 to explain how we will be responding to your correspondence.

Your request for information dated 11 December 2019 regarding emails and documents about the WMI, the A449, Systra Ltd and [REDACTED] was logged as a Freedom of Information (FOI) request reference FOI 100626.

On 18 December we asked you to clarify your request and you provided clarification on the same day. On 7 January 2020 we asked you to reduce the scope of your request. This was because we estimated that the cost of complying with your request exceeded the set limit of £450. Section 12 of the FOI Act does not oblige us to comply with requests if they exceed the £450 limit.

I would be grateful if you would respond to our reduction in scope request as soon as possible. Please note that if we cannot agree a revised request by 31 January 2020 we will have to refuse your request in reliance on the section 12 exemption.

On 11 December 2019, we identified question 8 in your letter dated 24 October 2019 regarding funding allocated for mitigation work, as a request for information under FOI. This was logged as FOI 100641. We responded to you on 18 December 2019 confirming that we did not hold the information requested.

Your subject access request, dated 11 December 2019, was logged as reference 1117 and we responded to you on 7 January 2020. The concerns you raised in relation to this response, in your email dated 7 January, have been raised separately and we will respond under reference number 21533977.

In response to the concerns raised in your letter of 24 October 2019:

Question 1 - Who is [REDACTED] from Highways England (HE) and why has he been copied into our correspondence?

[REDACTED] is an employee of Highways England. [REDACTED] was copied in to the correspondence because he is a member of the West Midlands Spatial Planning Team, which covers the Stoke and Staffordshire area the Development Consent Order (DCO) application falls within.

Question 2 - Who is [REDACTED] from 'Systra' and why has he been copied into our correspondence?

[REDACTED] is an employee of Systra Ltd. [REDACTED] was copied in to the correspondence because Systra Ltd are sub-consultants on Highways England's Spatial Planning Framework for the West Midlands region. Systra Ltd have provided advice to us on matters relating to the West Midlands Interchange.

Question 3 - Could you please explain the full extent of the conversations which have occurred between Systra and HE since the closure of the West Midlands Interchange (WMI) Development Consent Order (DCO) public examination?

This is being responded to under FOI reference 100626.

Question 4 – Why not put HE's hired expertise to good use and address the issue of carriageway data aggregation along the A449?

As noted in our previous correspondence of 16 October 2019, the responsibility for the assessment and consideration of the noise implications of the development is South Staffordshire District Council. [REDACTED] was the

Principal Officer acting for South Staffordshire District Council. Therefore, you may wish to contact [REDACTED]

Question 5 - Can HE or the Examining Authority (ExA) assist with identifying the relevant person in South Staffordshire Council?

At the time of the examination, [REDACTED] was the Principal Officer acting for South Staffordshire District Council with regards to these matters.

Question 6 - What type of 'formal notification' does HE require?

Highways England is not the authority that would determine the content or form of any formal notice. This is the responsibility of South Staffordshire District Council, given their powers in this matter.

Question 7 - What level of harm needs to be demonstrated in a 'formal notification' to induce acoustic mitigation?

We remain of the view that the only body which can make such a decision is the relevant authority, in this case South Staffordshire District Council. They would need to confirm the breach of standards in any such decision and to confirm in its decision the legal basis for such a determination.

For your information Government advice relating to noise from roads, trains and planes is available at www.gov.uk/noise-pollution-road-train-plane. South Staffordshire Council also provides advice on noise matters which is available at www.sstaffs.gov.uk/environment/noise.cfm.

Question 8 - Per year how much funding does HE have allocated in the West Midlands region for this type of mitigation work?

This was responded to on 18 December 2019 under FOI reference 100641.

Question 9 - Can you identify the specific localities of the 'numerous locations' you allude to?

We carry out a range of tasks and improvements to meet our statutory responsibilities including those related to noise as previously advised. The mitigation of noise matters will form one element of schemes designed to address issues on the strategic road network. Therefore, the identification of schemes specifically targeting noise issues is not recorded.

Question 10 - Why is the evidence I am putting to you not sufficient to induce nuisance noise mitigation in any outcome?

Our role as a statutory consultee in the DCO process is to respond to the applicant's proposal and the Examining Authority's questions. As we have previously stated, if we are made aware through the necessary formal process of such an issue, we will meet our statutory responsibilities.

Question 11 - What is the legislative basis of your view that the onus to mitigate nuisance noise 300m plus from the Order limits is solely the responsibility of the applicant?

We previously stated our view on the legal basis to this issue in our response of 24 September 2019. Section 151 of the Planning Act 2008 places this liability exclusively upon the applicant for a DCO. It is not our responsibility to determine the fact of the evidence presented by the applicant. The sole assessor of fact is the Examining Authority who will in turn advise the Secretary of State.

Question 12 - Is withholding the technical highways modelling expertise that HE have, which the ExA and South Staffordshire Council appear to not have, conducive with the aspirations stated in paragraphs 1.9 and 1.10 of HE's framework document? Yes or No?

We reviewed the highway traffic modelling evidence produced by the applicant in accordance with the requirements of the policy set out in DfT Circular 02/2013. The production of evidence to which we respond is in the exclusive domain of the applicant.

You will note that in our Relevant Representation, dated 15 October 2018, at each subsequent deadline and in response to the Examining Authority's questions, we provided full responses to set out our views on the veracity and acceptability of traffic modelling evidence.

Please refer to the WMI section of the National Infrastructure Planning website at the following link:

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

Patrick Thomas, Spatial Planner, and Kamaljit Khokhar, Spatial Planning Manager, would be happy to meet you to explain our role in the planning process and answer any questions you may have.

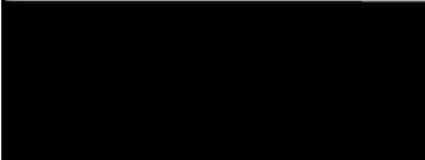
If you would like to meet them, or if you would like any further information, please contact Kamaljit, who will be pleased to respond. He can be contacted by email at [REDACTED]

Alternatively, our correspondence address is The Cube, 199 Wharfedale Street, Birmingham B1 1RN.

As you have been dissatisfied on this occasion, we have handled your correspondence in accordance with the first stage of Highways England's complaints procedures. Further details are on our website:

<https://www.gov.uk/government/organisations/highways-england/about/complaints-procedure>

Yours sincerely



Nick Harris
Operations Executive Director

www.highwaysengland.co.uk

Appendix 2 - 4th February 2020

Daniel Williams' unanswered
(as of 04/02/20) response to
Nick Harris' emailed letter
dated 17th January 2020

17th January 2020

Dear Mr Harris,

Thank you for your email dated 11th January 2019. I have some further questions to ask based on what you have said. In the document below the relevant content from your 11th January emailed letter is given in red; my analysis and questions are presented in black. For the complete avoidance of doubt I have labelled the new 17th January 2020 questions with numbers and highlighted them with yellow. If you could answer all of the additional 11 no. new questions I would be most grateful.

"I would like to begin by apologising for the delays in responding to your emails. Feedback has been passed to the team to prevent this from happening again. I understand that the Operations Midlands High Level Correspondence team emailed you on 16 December 2019 to explain how we will be responding to your correspondence."

You appear to acknowledge that my 24th October 2019 questions were ignored by [REDACTED] and his team; however, you do not specify the exact reason or reasons why this happened.

Question 1 (17th Jan.): Why did [REDACTED] choose to deliberately ignore me and my line of questioning?

"Your request for information dated 11 December 2019 regarding emails and documents about the WMI, the A449, Systra Ltd and [REDACTED] was logged as a Freedom of Information (FOI) request reference FOI 100626. On 18 December we asked you to clarify your request and you provided clarification on the same day. On 7 January 2020 we asked you to reduce the scope of your request. This was because we estimated that the cost of complying with your request exceeded the set limit of £450. Section 12 of the FOI Act does not oblige us to comply with requests if they exceed the £450 limit."

Question 2 (17th Jan.): Could you please specify what the actual cost will be to provide all of the information I have requested?

In an email on 7th of January 2020, Highways England (HE) claimed that providing email exchanges between three spatial planning managers which discussed the West Midlands Interchange (WMI), Systra Ltd. and the A449 would cost more than £450 to disclose. The period of time I am interested in is 16 weeks in duration and occurred after the WMI public examination had closed.

The basis of HE's £450 plus cost claim is that "the A449 is a long road" and so will have generated many emails for the spatial planners.

Firstly, the section of A449 managed by HE is less than 6 kilometres (3.7 miles) in length - I think it would be a gross exaggeration to say that amounts to it being a 'long road'. In the course of the 16 week time period I am interested in, very little operational development occurred on this stretch of road. Aside from routine maintenance and repairs to street lighting and grass cutting etc. there will be very few email exchanges to wade through as has been claimed.

Question 3 (17th Jan.): Is a 3.7 mile road really a 'long road'? Yes or No?

Secondly, HE stated that emails involving Systra Ltd.'s senior transport planning manager, [REDACTED] could not be disclosed as he is 'a member of the public' - [REDACTED] was deliberately copied into correspondence produced and sent to me by HE spatial planning managers in the first instance. To

now claim that his privacy is under threat is hypocrisy in its purest form! The public has a right to know and see how HE interacts with its sub-consultants.

Within my 11th December 2019 Freedom of Information (FOI) request, I asked HE to disclose emails where I was personally discussed by the spatial planning managers. On 17th December 2019 HE wrote to me to say that this element of my FOI request would be dealt with under the provisions afforded by the 2018 GDPR legislation. On 7th January 2020 I received another email stating that HE were unable to do this as the request falls outside of the 2018 GDPR legislation. It would therefore appear that I have been the subject of conversation amongst HE managers but they do not want to release this information.

"I would be grateful if you would respond to our reduction in scope request as soon as possible. Please note that if we cannot agree a revised request by 31 January 2020 we will have to refuse your request in reliance on the section 12 exemption. On 11 December 2019, we identified question 8 in your letter dated 24 October 2019 regarding funding allocated for mitigation work, as a request for information under FOI. This was logged as FOI 100641. We responded to you on 18 December 2019 confirming that we did not hold the information requested."

I fully accept that providing the answers and information I have requested may cost HE money in the short term. However, doing nothing and allowing the errors to fester will ultimately cost the tax payer more in the long term when decisions are made which go on to require mitigation and amendment years and decades into the future.

On 7th January I wrote to our MP, Mr Gavin Williamson, (HE were copied into this correspondence) outlining the chronology of events that have occurred with regard to the WMI's impact on the A449 and HE's conduct around this issue. I asked Mr Williamson if he could write to the Secretary of State for Transport and the chief executive of HE, Jim O'Sullivan, to ask them to compel members of HE's West Midlands' management team to provide all of the requested emails. Having this correspondence put before us will mean that fair and fully informed decisions can be made going forward.

██████████ case workers confirmed that they would be making such an approach on my behalf. If by 31st January 2020 ██████████ and his team have not persuaded the Secretary of State for Transport or the chief executive of HE ██████████ to provide what I have asked for I will be in contact again.

Please also note that various other members of the community living in the vicinity of the A449 to the south of the proposed WMI inform me that they will be making similar FOI requests of their own in the coming weeks.

"Question 4 – Why not put HE's hired expertise to good use and address the issue of carriageway data aggregation along the A449? As noted in our previous correspondence of 16 October 2019, the responsibility for the assessment and consideration of the noise implications of the development is South Staffordshire District Council. ██████████ was the Principal Officer acting for South Staffordshire District Council. Therefore, you may wish to contact ██████████

██████████

Question 4 (17th Jan.): Could you please confirm which statement applies - statement A or statement B?

- A- During the WMI's open examination period HE's spatial planners identified that there was an issue with the applicant's failure to aggregate traffic flow data along the A449 but choose not to bring this to the attention of the Examining Authority (ExA) or South Staffordshire District Council (SSDC) as it was a matter that fell outside of HE's statutory remit;
- B- During the WMI's open examination period HE's spatial planners did not in any way identify the issue of un-aggregated traffic flow data because it is an issue that HE does not look at or look for when it appraises development proposals which affect the strategic road network.

It was patently HE's responsibility in the first instance to examine and evaluate the applicant's compliance with the carriageway flow parameters set out in the 1988 'Calculation of Road Traffic Noise' (CRTN) manual; specifically the data aggregation requirement set out in paragraph 13 of that document.

The 'Purpose and Status of Highways England' from the 'Highways England: Framework Document'¹ paragraphs 1.9 and 1.10 is crystal clear:

"1.9 Through the Infrastructure Act 2015 and the creation of Highways England the Government changed the way the strategic road network is managed and run, with the aim of creating a world-class strategic road network in England, to give road users the best possible quality of service and supporting broader economic, environmental and safety goals.

1.10 These changes will give the necessary flexibilities for Highways England to deliver efficiency savings, a step change in the scale and speed of investment, greater transparency, a better service to customers and value for money to taxpayers."

Notwithstanding, I fully accept SSDC's environmental protection department should have contributed to advising the ExA on the noise impacts and acoustic mitigation required right along the A449 corridor between the proposed WMI and J2 of the M54. However, SSDC is a small distinct council that does not manage a single mile of road, let alone sections of dual carriageway at the centre of the UK's strategic road network. SSDC does not employ any highways engineers or highway planners who could have appraised the applicant's compliance with requirements of the 1988 CRTN modelling techniques during the WMI's six month open examination by the ExA.

██████████ to whom you refer has a 'Linked In' profile which identifies that his role in the local authority ██████████

██████████ Whilst ██████████ is clearly an experienced and versatile local authority employee, that does not qualify him to understand and comment upon the nuanced functions of the strategic

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414863/highways-england-framework-document.pdf

²<https://services.sstaffs.gov.uk/CMIS/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=1vyg1Z8AMv%2Ba0QaFVIn%2Bo5L8OhjbevMffkaith6pPhyrDd7d9sMIQw%3D%3D&rUzwRPf%2BZ3zd4E7Ikn8Lyw%3D%3D=pwRE6AGJFLDNih225F5QMaQWcTPHwdhUfCZ%2FLUQzgA2uL5jNRG4jdQ%3D%3D&mCTIbCubSffXsDGW9IXnlG%3D%3D=hFflUdN3100%3D&kCx1AnS9%2FpWZQ40DXFvdEw%3D%3D=hFflUdN3100%3D&uJovDxwdjMPoYv%2BAJvYtyA%3D%3D=ctNJf55vVA%3D&FgPIIEJYlotS%2BYGoBi5oIA%3D%3D=NhdURQburHA%3D&d9QjjOag1Pd993jsyOJqFvmyB7X0CSQK=ctNJf55vVA%3D&WGewmoAfeNR9xqBuxOr1Q8Za60lavYmz=ctNJf55vVA%3D&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJf55vVA%3D>

road network. Therefore it can only be assumed that this work would need to be outsourced to “experts.”

Question 5 (17th Jan.): Was HE providing value for money for the tax payer when it expected SSDC to outsource an appraisal of the traffic modelling and the inferred impacts this would have on the acoustic regime of the A449 between the proposed WMI and J2 of the M54? **Yes or No?**

Question 6 (17th Jan.): Could you please provide the names of suitable companies where SSDC ‘should’ have turned for technical advice on the applicant’s traffic-acoustic modelling of the strategic road network?

Question 7 (17th Jan.): Would Systra Ltd. - HE’s very own traffic modellers - have been a suitable choice? After all HE have worked with Systra Ltd. for over 3 years on the WMI project.

“Question 6 - What type of ‘formal notification’ does HE require? Highways England is not the authority that would determine the content or form of any formal notice. This is the responsibility of South Staffordshire District Council, given their powers in this matter.”

Question 8 (17th Jan.): Could you please specify the specific ‘powers’ you believe SSDC have in this matter?

“Question 11 - What is the legislative basis of your view that the onus to mitigate nuisance noise 300m plus from the Order limits is solely the responsibility of the applicant? We previously stated our view on the legal basis to this issue in our response of 24 September 2019. Section 151 of the Planning Act 2008 places this liability exclusively upon the applicant for a DCO. It is not our responsibility to determine the fact of the evidence presented by the applicant. The sole assessor of fact is the Examining Authority who will in turn advise the Secretary of State.”

Question 9 (17th Jan.): In what way is Section 151 of the 2008 Planning Act (please see below) relevant to the question I posed and the WMI proposal more broadly?

151	<p>Liability under existing regimes</p> <p>An order granting development consent may not include provision the effect of which is to exclude or modify the application of—</p> <ul style="list-style-type: none"> (a) any provision of the Nuclear Installations Act 1965 (c. 57); (b) section 28 of, and Schedule 2 to, the Reservoirs Act 1975 (c. 23) (liability for damage and injury due to escape of water from a reservoir constructed after 1930); (c) section 209 of the Water Industry Act 1991 (c. 56) (civil liability of water undertakers for escapes of water from pipes); (d) section 48A of the Water Resources Act 1991 (c. 57) (civil remedies for loss or damage due to water abstraction).
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During the ExA’s 6 month open examination period it was the responsibility of HE to discuss the provisional acceptability or otherwise of mitigation to the strategic road network beyond the 300m Order limit buffer.

If consent is granted for the WMI DCO how will these issues be resolved retrospectively? Furthermore, how would the applicant be compelled to provide financial assistance for extensive

acoustic mitigation along the entire length of the A449 corridor between the WMI site and J2 of the M54?

“Question 12 - Is withholding the technical highways modelling expertise that HE have, which the ExA and South Staffordshire Council appear to not have, conducive with the aspirations stated in paragraphs 1.9 and 1.10 of HE's framework document? Yes or No? We reviewed the highway traffic modelling evidence produced by the applicant in accordance with the requirements of the policy set out in DfT Circular 02/2013. The production of evidence to which we respond is in the exclusive domain of the applicant.”

It is very surprising to learn that HE assessed the traffic modelling submitted by the WMI applicant against just the content of 'DfT Circular 02/2013'.

Question 10 (17th Jan.): Can you confirm that HE had no regard to the modelling requirements of any other statutory requirement or technical guidance?

Question 11 (17th Jan.): If HE were applying to the Secretary of State for a DCO of its own, and that proposal were to require existing/proposed sound modelling – would HE as an applicant aggregate its highway sound data in accordance with the requirements of paragraph 13 of the 1988 CRTN to ensure that traffic in carriageways flowing in different directions on the same road were appraised as a single sound producing entity? **Yes or no - would HE have full regard for paragraph 13 of the 1988 CRTN?**

Please do not try to avoid answering this question by saying HE would submit sound modelling in accordance with all relevant legislation, statutory and non-statutory best practice guidance.

**Appendix 3 - 4th February
2020**

Patrick Thomas' emailed letter
to Daniel Williams dated 16th
October 2019

[Redacted]

[Redacted]

Forwarded message

[Redacted]

Sent: Wednesday, 16 October 2019, 16:12:13 BST

Subject: The proposed West Midlands Interchange & the A449

Dear Mr Williams,

Further to your recent correspondence regarding the above, please see the attached letter.

Kind Regards

Patrick

Patrick Thomas, Asset Manager

Highways England | The Cube | 199 Wharfside Street | Birmingham | B1 1RN

Tel: +44 (0) 300 4703407 | **Mobile:** [Redacted]

Web: <https://highwaysengland.co.uk>

GTN: 0300 470 3407



Our Reference: **SHARE/ 77536357**
Your Reference: West Midlands Interchange

Patrick Thomas
Asset Manager

Mr Daniel Williams

The Cube
199 Wharfside Street
Birmingham B1 1RN

Direct Line: 0300 4703407

Via Email:



16th October 2019

Dear Mr Williams,

WEST MIDLANDS INTERCHANGE DCO

Thank you for your further email correspondence dated 29th September 2019 in respect of the proposed West Midlands Interchange SFRI.

In the context of the DCO examination, I consider it important to re-iterate that the noise related implications of the proposed development are a matter for the applicant to determine and, if necessary, mitigate. The DCO examination has been conducted on this basis and our submissions in response to the Examining Authority's question reflect this. As such, we are not a party to any claims made by the applicant in terms of how or if it will discharge their duties in respect of noise matters should the proposed development receive approval. The Examining Authority will no doubt consider exploring this in his consideration of the proposed development.

In terms of your specific query about the baseline (existing) conditions on the A449, again I must note that the authority with responsibility for this issue is South Staffordshire Council. I cannot accept your assertion that a failure to respond to a matter outside our remit implies that we are in any way avoiding a matter that you have raised and which you canvassed fully in your representations. In contrast, the examination of baseline conditions informed the applicant's approach to noise management for impacts created by the development which is the issue before the examination alongside the range of other matters explored by the Examining Authority. At no time have we sought to mislead the Examining Authority in the manner you suggest; we have responded to his questions and advised across a full range of matters affecting the strategic road network.

I can confirm that should Highways England be formally notified of any breach of the required standards by the relevant authority it will respond appropriately and indeed has done so at numerous locations on the strategic road network. I reiterate that any noise impacts created by the proposed development are exclusively for the applicant / developer to address, firstly to the Examining Authority's satisfaction and secondly the District Council's satisfaction if the development gains approval.

I trust this clarifies the position.



Yours sincerely,



Patrick Thomas

Asset Manager

Email: patrick.thomas@highwaysengland.co.uk

**Appendix 4 - 4th February
2020**

Daniel Williams' 24th October
2019 response to Patrick
Thomas' emailed letter dated
16th October 2019

24th October 2019

Dear Mr Thomas,

Thank you for your letter dated 16th October 2019.

Notified Persons:

Before I appraise the information you have and have not provided in your 16th October 2019 letter could you please clarify the following:

Question 1 (24/10/2019): Who is [REDACTED] from Highways England (HE) and why has he been copied into our correspondence?

Question 2 (24/10/2019): Who is [REDACTED] from 'Systra' and why has he been copied into our correspondence?

I have no issue with input from additional persons especially if they are experts – I think the more light that gets shone on these matters the better but for future reference it would be helpful for me to know their interests.

Question 3 (24/10/2019): Could you please explain the full extent of the conversations which have occurred between Systra and HE since the closure of the West Midlands Interchange (WMI) Development Consent Order (DCO) public examination? If you could please send me unredacted copies of the email exchanges I would be very grateful - I would prefer not to have to make Freedom of Information requests to obtain this information.

Unanswered 30th September Questions:

Your 16th October 2019 letter has ignored the format of the questions which were posed in my 30th September 2019 letter to Kathryn Simmonite. I am therefore compelled to re-ask these questions:

30th September Questions 1 and 2 are simple yes or no questions and as you appear to have the suitable expertise¹ at your disposal I see no reason why you cannot assist with this matter.

Question 4 (24/10/2019): Why not put HE's hired expertise to good use and address the issue of carriageway data aggregation along the A449?

30th September Question 4 has not been addressed. Given the limited time before a recommendation is made to the Secretary of State, finding the correct person in South Staffordshire Council to raise this issue with would be very helpful.

Question 5 (24/10/2019): Can HE or the Examining Authority (ExA) assist with identifying the relevant person in South Staffordshire Council?

With regard to 30th September Questions 7 and 8 you said the following:

¹ <https://uk.linkedin.com/in/derek-jones-bb96b67b>

"...I can confirm that should Highways England be formally notified of any breach of the required standards by the relevant authority it will respond appropriately and indeed has done so at numerous locations on the strategic road network."

Question 6 (24/10/2019): What type of 'formal notification' does HE require?

Question 7 (24/10/2019): What level of harm needs to be demonstrated in a 'formal notification' to induce acoustic mitigation?

Question 8 (24/10/2019): Per year how much funding does HE have allocated in the West Midlands region for this type of mitigation work?

Question 9 (24/10/2019): Can you identify the specific localities of the 'numerous locations' you allude to?

September 30th question 9 has been ignored.

Question 10 (24/10/2019): Please can you answer September 30th question 9?

Highway England's 16th October Letter:

I have put the content of your 16th October letter in red below. In black is my analysis and further questions.

"In the context of the DCO examination, I consider it important to re-iterate that the noise related implications of the proposed development are a matter for the applicant to determine and, if necessary, mitigate. The DCO examination has been conducted on this basis and our submissions in response to the Examining Authority's question reflect this."

The noise related implications of the proposed development are not for the applicant to 'determine'. The applicant's role is to provide modelling of the existing and proposed arrangements. It is for the ExA and its consultees to determine if the modelling methodology and the associated analysis is scientifically sound and offers legally compliant conclusions.

"...As such, we are not a party to any claims made by the applicant in terms of how or if it will discharge their duties in respect of noise matters should the proposed development receive approval. The Examining Authority will no doubt consider exploring this in his consideration of the proposed development."

This is not true – throughout the DCO assessment the applicant has robustly and consistently asserted that the *Noise Insulation Regulations (1975)* render them not responsible for any acoustic highway mitigation 300m beyond the Order limits.

"...I reiterate that any noise impacts created by the proposed development are exclusively for the applicant / developer to address, firstly to the Examining Authority's satisfaction and secondly the District Council's satisfaction if the development gains approval."

Question 11 (24/10/2019): What is the legislative basis of your view that the onus to mitigate nuisance noise 300m plus from the Order limits is solely the responsibility of the applicant?

**Appendix 5 – 4th February
2020**

Highways England's refusal to
answer Daniel Williams' FOI
questions submitted on 11th
December 2019

From: OD MIDLANDS HLC <ODMIDLANDSHLC@highwaysengland.co.uk>

Date: 7 January 2020 at 16:32:46 GMT

To: "daniel williams

Subject: Highways England - FOI 100626 - Reduction of scope request

Dear Mr Williams

We have estimated that the cost of compiling your request will exceed £450. This is because:

- The A449 is a long road. A search for any recorded information referencing the A449, and then reviewing that information for relevance would exceed the threshold.
- Systra are a sub-consultant on Highways England's Midlands Spatial Planning Framework and are utilised on numerous planning and study tasks across the West Midlands region. They are also involved in a considerable number of Highways England projects. A search for any recorded information referencing Systra, and then reviewing that information for relevance would exceed the threshold.

Section 12 of the Act does not oblige us to comply with requests if they exceed the £450 limit.

We have identified that [REDACTED] is a member of the public. Under Section 40 of the Act this information would not be provided.

We are able to provide you with one month of information which references the proposed West Midlands Strategic Rail Freight Interchange between 27 August 2019 and 10 December 2019.

Please confirm which one of the following months of information you would like to receive:

- 27 August to 30 September 2019
- 1 October to 31 October 2019
- 1 November to 10 December 2019

Please note that if we cannot agree a revised request by 31 January 2020 we will have to refuse your request in reliance on the section 12 exemption.

If you wish to discuss any of the above please contact us. Please remember to quote reference number FOI 100626.

Kind regards

Rachel Keogh, Customer Correspondence Executive

High Level Correspondence Team - Operations Midlands
Highways England | The Cube | 199 Wharfside Street | Birmingham | B1 1RN

Web: www.highwaysengland.co.uk