

6 February 2020

Your Ref: TR050005

Interested Party – Reference 20015052

Comments on late representation from the Applicant dated 13 December 2019

Thank you for offering the opportunity to comment on the late representation from the Applicant dated 13 December 2019. Unlike the Applicant I will not attempt to introduce additional arguments after the conclusion of the consultation, and have restricted my comments below to respond directly to the points raised by the Applicant.

My comments relate to two specific matters within the submission:

- This appears to represent a further attempt by the Applicant to minimise its commitment to rail at a proposed Rail Freight Interchange, a point that was raised numerous times during consultation.
- The Applicant's argument appears confusing and contradictory in places by picking and choosing specific elements within the report by the Northampton Gateway Examining Authority (NGExA) that support its own argument, and ignoring those that don't.

Commitment to Rail

One of my major concerns from the consultation is that the Applicant is not committed to rail.

As I stated in my concluding comments to you on 21 August 2019, the Applicant appeared to go to great lengths to incorporate wording into the DCO and Rail Requirements to provide a number of scenarios whereby it would be relieved of the requirement to build the rail terminal, leaving us with a warehousing development in the greenbelt connected solely by road.

This late submission appears to continue this argument and reinforces my belief that, if granted, the Applicant will find one of any number of reasons it has included within the DCO and Rail Requirements to never build the rail element.

In particular, the Applicant's latest submission attempts to rely heavily on the distinction and their lawyer's interpretation of the words "should" and "must" within the National Policy Statement for National Networks (NPSNN).

This very carefully worded, if slightly inscrutable, legal distinction between the words "should" and "must" is I am sure linguistically accurate. It does not seem however to be faithful to the spirit of the NPSNN which one could argue is making the point that a development such as this "should" have a rail connection simply because

otherwise a Rail Freight Interchange would have neither the rail nor the interchange element.

It seems incongruous that a rail freight interchange can ever exist without the rail element. And yet the Applicant appears to be arguing that a development can be classified as a Rail Freight Interchange without any rail element at all, as long as it has the “ability” to contain a rail element.

Whilst one can evidently, as the Applicant has, construct a legal argument that this is the case, there can certainly be no sensible moral argument in this.

I urge you therefore to disregard the Applicant’s argument in this matter.

The Applicant highlights that paragraph 4.89 of the NPSNN states that an SRFI “*should be capable of handling four trains per day and, where possible, should be capable of increasing the number of trains handled*”.

And yet it still remains unclear that the Applicant will make any significant increase beyond this four train minimum. As stated in my comments during consultation, the Applicant has set itself very low ambitions for rail connectivity, with six trains per day being referenced repeatedly during consultation.

Other Rail Freight Interchanges in the region, such as the site at Landor Street in Birmingham proposed by Midlands Connect, are targeting 36 trains per day which seems to be far more in keeping with the spirit of the NPSNN than the Applicant’s ‘do minimum’ proposal. So, I contend that the Applicant’s commentary in this latest submission again shows that they intend to provide the bare minimum of rail connections to justify this development as an SRFI.

I believe the Applicant’s submission again highlights their very low ambition for rail connectivity at WMI, with the very barest minimum rail connection, and that better options exist for a Rail Freight Interchange elsewhere in the region.

This is a development that will destroy a significant amount of greenbelt land and increase congestion and pollution for local residents. It needs to have a strong benefits case to justify this destruction. As discovered throughout consultation, the benefits case for this development is extremely weak. It is disappointing therefore that the Applicant, through this late submission, is continuing to use technicalities to justify it, rather than justifying it through its benefits.

If we are to destroy the greenbelt, we should set a high barrier to ensure it is justified. In arguing that WMI should be approved by using language such as “*there is no suggestion that West Midlands Interchange **could not** accommodate rail activities*”, and merely that it “*will be **able to***”, the Applicant has lost this argument.

I urge you therefore to bring to the attention of the Secretary of State, when reaching his decision, that the Applicant has a very weak commitment to rail, which should actually be an essential requirement for a Rail Freight Interchange built on greenbelt land.

Contradictory Arguments

I also found the Applicant's argument to be very confusing, as it seems to pick and choose when the NGEExA decision creates a precedent and when it does not.

The overall purpose of the late submission appears to be to suggest that interpretation within the NGEExA report creates a precedent that should influence the decision in relation to WMI.

However, in picking and choosing when they agree with the NGEExA report, and also when this concurs with the East Midlands Gateway decision, I would argue that they have negated their own argument. In doing so I think they have simultaneously highlighted the fact that each of these developments is unique, and interpretation of the NPSNN should be made on a case by case basis.

Indeed, the Applicant goes to great lengths on a number of occasions within its argument to highlight that the guidance within the NPSNN is vague, and open to interpretation. The Applicant appears to be seeking to put forward its interpretation of a number of the terms as fact.

I urge you and the Secretary of State therefore to disregard the arguments made within the Applicant's late submission. It is unreasonable to pick and choose when elements of the reports and decisions for earlier developments and the NPSNN should be interpreted in relation to WMI on its own merits.

Conclusion

I conclude therefore by highlighting once again the continued efforts by the Applicant to seek to minimise the number of rail connections to this development. The whole point of this development is to be a road to rail interchange to remove freight from the road, and I find it quite concerning that such a large and destructive development should have so few, and potentially no, rail connection.

With such a weak commitment to rail, and such great lengths taken throughout consultation to avoid rail connections, the Applicant has once again revealed this to be a Rail Freight Interchange in name only. This development clearly remains a warehousing development with just enough "**ability**" for rail connections to justify it as a Nationally Significant Infrastructure Project.

As such, I urge you to recommend the rejection of this development.

Richard Hancher