

West Midlands Interchange

OBJECTION TO DEVELOPMENT PROPOSALS

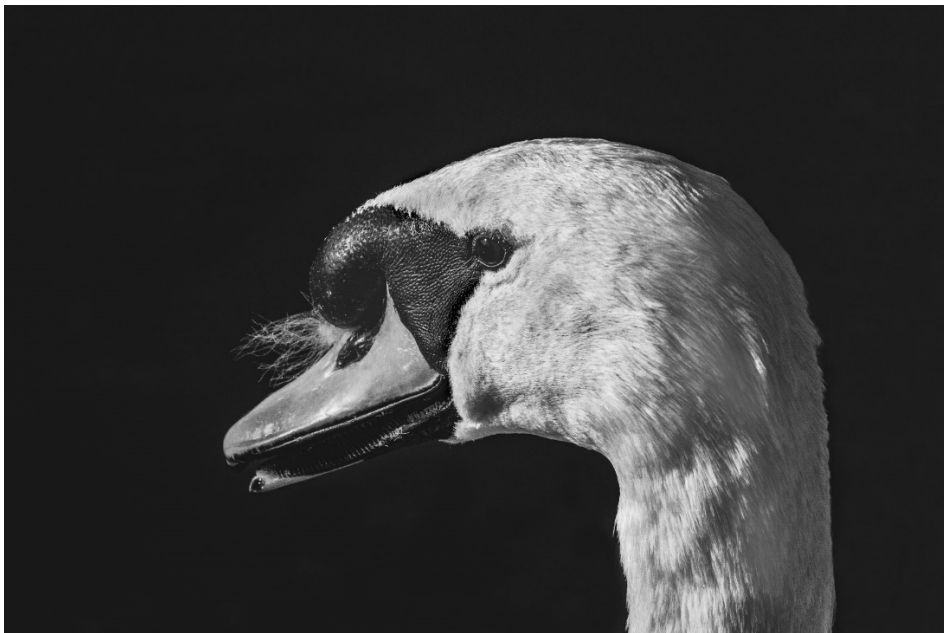
Project reference TR050005

Written Representation submitted by Christopher Walton

Registration ref I.D no. 20015378

Submission Deadline

7th February 2020



Dear Mr O'Hanlon,

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”).

I refer to your letter dated 24th January 2020 inviting comments on a late representation letter received from the Applicant dated 13th December 2019.

I do not agree that the late representation submitted by the applicant should be allowed to proceed, it is outside of the Examination timetable and compromises the integrity of the formal process.

I consider the circumstances presented by this late submission to be very different to late submissions that occurred at other stages of the Examination process, namely that the final deadline within the Examination timetable passed on the 27th August 2019 and the Examination formally closed at that point. Further, the Examining Authority released its recommendations to the Secretary of State on the 27th November 2019 and the decision is now under active government consideration.

The inclusion of this late submission is not a neutral act, the Applicant is self-evidently seeking to advance its position by this undertaking. Manifestly this manoeuvre disadvantages opponents to the scheme who are required to respond to the deadline constraint of 7th Feb 2020 imposed in your letter. This has the effect of restricting opportunity to review documentation and counter the position that has been presented by the Applicant. It is emphasized that the late submission does not introduce any new information that was not previously available at the time the formal Examination closed and it should therefore be disregarded.

Referring to the letter, I do not accept the reasoning referenced by the Applicant that pivots on the interpretation of the words “should” and “must” used in the context of The National Networks National Policy Statement (NN NPS).

I concur with the broad grammatical definitions of the words “should” and “must” offered by the Applicant

i.e. The elements where “should” is used clearly admit of some discretion and require an element of judgement to be made in the exercise of that

discretion. It is clear that such characteristics as the NPSNN introduces by use of the mechanism “should” (as in “should provide”, or “should be developed”) are objectives that the policy seeks to deliver. However, it is not an absolute requirement that all such objectives be provided.

.....Such objectives (“should”) can readily be distinguished from policy requirements, which are introduced in the NN NPS by use of the term “must”. The NN NPS, in that it uses the term “must” where appropriate, clearly recognises that distinction.

I note however there are no definitions of terms or glossary contained within the NN NPS. Within the context of the NN NPS I contend that the use of concise literal definitions relied on in the argument presented by the Applicant is flawed as construction of the NN NPS document does not support this approach. There are examples of inconsistencies within the NN NPS where the term “should” is used when it is clear an absolute requirement exists that demands use of the term “must.” For example:

4.37 This section sets out how the NPS puts Government policy on climate change adaptation into practice, and in particular how applicants and the Secretary of State **should take the effects of climate change into account when developing and consenting infrastructure. Climate change mitigation is essential to minimise the most dangerous impacts of climate change, as previous global greenhouse gas emissions have already committed us to some degree of continued climate change for at least the next 30 years. Climate change is likely to mean that the UK will experience hotter, drier summers and warmer, wetter winters. There is an increased risk of flooding, drought, heatwaves, intense rainfall events and other extreme events such as storms and wildfires, as well as rising sea levels.**

4.38 Adaptation is therefore necessary to deal with the potential impacts of these changes that are already happening. New development **should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable.**

4.42 The applicant **should take into account the potential impacts of climate change using the latest UK Climate Projections available at the time and ensure any environment adaptation measures, including through the**

provision of green infrastructure statement that is prepared identifies appropriate mitigation or adaptation measures. This **should** cover the estimated lifetime of the new infrastructure. Should a new set of UK Climate Projections become available after the preparation of any environment statement, the Examining Authority should consider whether they need to request additional information from the applicant.

4.72 The Secretary of State **should** not grant development consent unless satisfied that all reasonable steps have been taken, and will be taken to:

- . minimise the risk of deaths or injury arising from the scheme; and
- . contribute to an overall improvement in societal safety levels;
- . noting that railway developments can influence risk levels both on and off the railway networks.

4.73 The Secretary of State **should** not consent to development which would lead to a disproportionate increase in the risk of death or injury.

Time constraints have denied me the opportunity to comprehensively review The National Networks National Policy Statement and to further investigate some other of the comments contained within the late representation submitted by the Applicant.

In summary I believe the representation of the Applicant dated 13th December 2019 should be disregarded my principal objections are:

- i) it is late, out of procedure and causes opponents of the scheme to be disadvantaged and
- ii) it selectively interprets terminology contained within the NN NPS document inconsistently

Yours faithfully

Christopher Walton