

Kevin O'Hanlon
Department for Transport
c/o
Steve Parker
Case Manager
West Midlands Interchange
National Infrastructure Planning
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PB

Date: 07 February 2020
Your ref: TR050005
Our ref: THOMSOMO\303716.000001
Direct: [REDACTED]
Email: moragthomson@eversheds-sutherland.com

Sent by Email only: WMInterchange@planninginspectorate.gov.uk

Dear Mr O'Hanlon

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

Application by Four Ashes Limited for an Order granting Development Consent to construct a new Strategic Rail Freight Interchange and associated development (West Midlands Interchange)

This is the Applicant's response to the request for comments contained in your letter of 24 January 2020.

A449 Drainage Culvert

It is disappointing that Highways England have not responded substantively to the legal position set out by the Applicant in Appendix 1 of the Applicant's Post Hearing Submissions ISH6 (REP6-013) which explains why the Applicant is legally entitled to use the culvert in connection with the proposed development. In the circumstances, however, the Applicant acknowledges that the additions to Works Nos 6(u) and 7(r) are appropriate.

For the reasons set out in **Appendix 1** to this letter the Applicant can confirm that the additional culvert referred to in the revised Works description would not give rise to any different conclusions in the Environmental Statement concerning the likely significant effects of the construction or operation of the development.

Stage 1 Road Safety Audit

The Applicant can confirm that the proposed addition to requirement 3(2) is appropriate and accords with the suggestion made by the Applicant in its letter dated 27 August 2019.

The Applicants updated, position in respect of the matters raised in the Stage 1 RSA referred to in the Secretary of State's letter is set out in **Appendix 2** to this letter.

Greensforge Sailing Club

In the Applicant's view, it would be appropriate, and preferable, for matters relating to the relationship between WMI and the Greensforge Sailing Club (GSC) to be settled as part of the decision on the Development Consent Order (DCO) application, rather than deferred for further consideration at the detailed stage. There are three principal reasons for this:

- extensive evidence was made available to the Examination about the likely effects of the Proposed Development on the GSC, and substantial opportunity provided for that evidence to be tested;
- the evidence identifies an acceptable relationship between the Proposed Development and the GSC; and
- the balance of evidence, and public interest, lies firmly in favour of approving the application as submitted and matters relating to the weight to be attached to nationally significant infrastructure should be settled through the DCO.

It is also not apparent that the suggested requirement would be effective other than to sterilise land unnecessarily. For example, it assumes a potentially unacceptable impact on the GSC but does not identify a benchmark against which the acceptability of the impacts of the development may be judged nor how that should be weighed in the balance against the importance of the development. This is an issue of principle which can, and should, be resolved through the DCO process.

If the Secretary of State does not agree, the Applicant will, of course, seek to work with the local authority to discharge the proposed requirement. The Applicant's preference, however, would be for the DCO application to be consented, as submitted, without this additional requirement.

The Applicant's position is explained in more detail in **Appendix 3** to this letter.

Side Agreement with Network Rail

The side agreement with Network Rail was completed on 28 January 2020 and you will by now have received a letter from the solicitors acting for Network Rail withdrawing the Network Rail representation. The side agreement comprehensively deals with the issues in relation to access to the WCML for Network Rail and, accordingly, the suggested requirements are not needed. Network Rail has also confirmed to you that the requirements are no longer needed.

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

Yours sincerely

Morag Thomson

Partner

Planning and Infrastructure Consenting

Eversheds Sutherland (International) LLP