



Department for Transport

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4 May 2020

Dear Sirs,

PLANNING ACT 2008 APPLICATION FOR THE PROPOSED WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:
 - the report dated 27 November 2019 of the Examining Authority, led by one Examining Inspector, Paul Singleton, who conducted an examination into the application made by Four Ashes Limited (“the Applicant”) for the West Midlands Rail Freight Interchange Order (“the DCO”) under section 37 of the Planning Act 2008 (“the 2008 Act”);
 - the late representations received by the Secretary of State following the close of the examination; and
 - the responses to the further consultation undertaken by the Secretary of State in respect of the application.
2. The application was accepted for examination on 24 August 2018 and the examination was completed on 27 August 2019. The examination was conducted on the basis of written and oral submissions submitted to the Examining Authority and by a series of meetings held in Wolverhampton. The Examining Authority also undertook an accompanied site inspection carried out over two days, including six unaccompanied site inspections.
3. The DCO as applied for would grant development consent for the construction, operation and maintenance of a new Strategic Rail Freight Interchange (“SRFI”) and associated infrastructure close to Junction 12 of the M6 Motorway in South Staffordshire District (“the Proposed Development”). The Proposed Development would include an intermodal freight terminal, including container storage and Heavy Goods Vehicle (“HGV”) parking, rail served warehouses and ancillary buildings. The DCO would also grant development consent for new road infrastructure and works to the existing road network, including the reconfiguring and burying of existing overhead powerlines and pylons. In addition, the DCO

would contain compulsory acquisition powers in relation to land and rights that would be required for the purposes of the Proposed Development. The total area covered by the Proposed Development site is 297 hectares.

4. Published alongside this letter on the Planning Inspectorate's website is a copy of the Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the Examining Authority's Report"). The main features of the proposal and the site are set out in Chapter 2 of the Examining Authority's Report, the Examining Authority's findings and conclusions are set out in Chapters 5 to 10, and the Examining Authority's overall conclusions and recommendation are in Chapter 12.

Summary of the Examining Authority's Report

5. The principal issues considered during the examination on which the Examining Authority has reached conclusions on the case for development consent are set out in the Examining Authority's Report under the following broad headings:
 - Legal and policy context (Chapter 3);
 - Findings and Conclusions in relation to planning issues (which include the Green Belt, need for the proposed development, scale of the development proposed, capacity of the rail network, meeting the National Policy Statement for National Networks ("NPSNN") criteria, alternative options and sites, mineral resources, and public rights of way) (Chapter 5);
 - Environmental and Other Effects (which include scope of environmental assessment, transport and access, air quality and health effects, noise and vibration, ecology and nature conservation, habitats regulations assessment, agriculture and soils, landscape and visual effects, archaeology and cultural heritage, socio-economic effects and human health, ground conditions, drainage and flood risk, waste management, climate change, carbon, public utilities and benefits of the proposed development) (Chapter 6);
 - Findings and Conclusions in relation to planning and other issues (Chapter 7);
 - Finding and conclusions in relation to Habitats Regulations Assessment (Chapter 8);
 - Conclusion on the case for Development Consent (Chapter 9);
 - Compulsory Acquisition and Related Matters (Chapter 10); and
 - Draft Development Consent Order and Related Matters (Chapter 11).
6. For the reasons set out in the Summary of Findings and Conclusions (Chapter 12) of the Examining Authority's Report, the Examining Authority recommends that the DCO be made, as set out in Appendix D to the Examining Authority's Report.
7. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an order granting development consent for the proposals in the application.** This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Secretary of State's Consideration of the Application

8. The Secretary of State's consideration of the Examining Authority's Report and all other material considerations, including the further representations received after the close of the Examining Authority's examination in response to the Secretary of State's consultation letter of 24 January 2020, are summarised in the following paragraphs. Where not stated in this letter the Secretary of State can be taken to agree with the Examining Authority's findings, conclusions and recommendation as set out in the Examining Authority's Report, and the reasons for the Secretary of State's decision are those given by the Examining Authority in support of those conclusions and recommendations. All "ER" references are to the specified paragraph or section in the Examining Authority's Report and references to "requirements" are to those in Schedule 2 to the DCO as recommended by the Examining Authority at Appendix D to the Examining Authority's Report.

Legal and Policy Context

9. The Secretary of State notes that under section 104 of the 2008 Act he must decide the application in accordance with the NPSNN designated in January 2015, subject to certain exceptions which are not relevant in this case. The Secretary of State notes that he must also have regard to any local impact reports, any matters prescribed in relation to development of the description to which the application relates and any other matters which the Secretary of State thinks are both important and relevant to the decision (ER 9.1.3). The Secretary of State notes the Examining Authority's assessment of other legislation and policy and agrees these are relevant and important matters to be considered in deciding this application, including the two Local Impact Reports from South Staffordshire District Council ("SSDC") and Staffordshire County Council ("SCC") referred to at ER 1.4.26 and all relevant development plan policies noted at ER 3.8.
10. The Secretary of State agrees with the Examining Authority's assessment noted at ER 1.1.12 that the requirements set out in regulation 14 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations") have been fully met by the environmental statement ("ES"). He confirms that, in coming to his decision to make the DCO, he has taken into consideration all the environmental information in accordance with regulation 4(2) of the 2017 Regulations.

Green Belt

11. The Secretary of State notes the Proposed Development will amount to a loss of 297 hectares of designated Green Belt. The Secretary of State has considered paragraph 5.170 of the NPSNN and notes there is a general presumption against inappropriate development in the Green Belt and that proposals should only be approved in very special circumstances. The Secretary of State has had regard to the paragraph 5.178 in the NPSNN that inappropriate development is by definition harmful, and decision makers are required to give substantial weight to

any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations (ER 5.2.2).

12. The Secretary of State agrees with the Applicant that, having regard to the policies in the NPSNN, the Proposed Development would constitute inappropriate development and notes that the application has been made on the grounds that very special circumstances would be required to justify making of the DCO (ER 5.2.3).
13. The Secretary of State notes that SSDC consider that there would be a significant loss of openness and would represent significant encroachment into the countryside (ER 5.2.5). The Secretary of State notes the scale of the development and agrees that, although not all the site would be covered by buildings, fixed infrastructure and hard surfaces, the Proposed Development would result in the loss of a substantial area of Green Belt land (ER 5.2.14). While Green Infrastructure would cover around 36% of the total site area and would provide some screening to reduce the visual impact of the Proposed Development, the Secretary of State agrees with the Examining Authority that it would not make a significant contribution to reducing the effect on the openness of the Green Belt (ER 5.2.15). The Secretary of State notes that the landscape mounds proposed as part of the Green Infrastructure would not appear as natural features in a largely flat landscape (ER 5.2.17), and would therefore contribute to encroachment into the countryside (ER 5.2.20).
14. The Secretary of State also notes the existing industrial estate is inset into the Green Belt and with the exception of the recent development on the Bericote Site the Examining Authority considered the estate to be relatively compact and that existing buildings are relatively small in scale and of low height. Therefore, the Examining Authority did not consider that the openness of the Green Belt is materially affected by other 'urbanising influences' (ER 5.2.19). The Secretary of State therefore agrees with the Examining Authority that, in addition to the harm by reason of its inappropriateness, the Proposed Development would cause substantial harm to the openness of the Green Belt and significant harm to the one of the purposes of including land in the Green Belt as a result of its encroachment into the countryside (ER 5.2.23).
15. The Secretary of State notes and agrees with the Examining Authority that it is necessary to assess the level of need for the proposal, the suitability of the site to meet any identified need and any harm that might be caused and the potential benefits of the scheme before concluding whether very special circumstances exist (ER 5.2.25).

Need for the Proposed Development

16. The Secretary of State has considered the nature of the Proposed Development and agrees with the Examining Authority that the scheme is within section 26(1) of the 2008 Act and meets the definition of an NSIP set out in section 14(1)(l) of the 2008 Act (ER 1.1.10). The Secretary of State notes that paragraph 2.56 of

the NPSNN concludes that there is a compelling need for an expanded network of SRFIs (ER 5.3.1), and that the national need is reinforced by paragraph 4.2 in the NPSNN which provides a presumption in favour of granting consent for a development that falls within the need established in the NPSNN (ER 5.3.2).

17. The Secretary of State notes that after examining the evidence for the need of the Proposed Development set out at ER 5.3 the Examining Authority found that there is a long-established and unmet need for an SRFI that would serve the needs of the Black Country and southern Staffordshire. The Secretary of State agrees with the Examining Authority that the evidence on take up of large warehousing since 2009 and the EDNA's¹ assessment of how much land is required to meet the Black Country's economic development needs demonstrates a significant level of need for additional logistics floorspace in the region and for rail linked floorspace to meet the needs of the sector (ER 7.3.1). The Secretary of State further notes that a WMI Market Area has been defined to assess local demand for warehousing (ER 5.3.51); the Examining Authority found that the strong market demand and shortage in the supply of large warehouse buildings and sites within the proposed WMI Market Area provide further evidence for the need of the Proposed Development (ER 5.3.69). The Secretary of State agrees with the Examining Authority's overall conclusions on the need for the Proposed Development as set out at ER 5.3.69.
18. The Secretary of State agrees with the Examining Authority that the Proposed Development meets the criteria for function, transport links, locational requirement, scale and design of an SRFI as set out in paragraphs 4.83 – 4.89 of the NPSNN and that the Proposed Development benefits from the presumption in favour of the grant of development consent set out in paragraph 4.2 of the NPSNN (ER 7.3.3, ER 9.2.1). The Secretary of State has assessed the justification for the Proposed Development and agrees with the Examining Authority that taking into account the NPSNN and matters considered in the Examining Authority's Report that the need for the Proposed Development has been sufficiently made.

Existing SRFI Network and Suitability of proposed site

19. The Secretary of State notes that paragraph 2.54 of the NPSNN states that a network of SRFIs is required across regions to serve regional, sub-regional and cross-regional markets and that in all cases it is essential that these have good connectivity with both the road and rail networks, in particular the strategic rail freight network (ER 3.2.2).
20. The Secretary of State has considered the three principal clusters of existing or proposed SRFIs in the West Midlands area: Hams Hall and Birch Coppice SRFI; Daventry International Rail Freight Terminal I, II and III; and Northampton Gateway Rail Freight Interchange. Rail Central Strategic Rail Freight Interchange has also been noted; however, this application has been withdrawn since the preparation of the Examining Authority's Report (ER 5.3.63). The Secretary of State agrees with the Examining Authority that none of the existing

¹ Economic Development Needs Assessment recently produced by the Black Country Authorities.

or proposed SRFIs provide easy access to the populations and businesses within the Black Country, North Birmingham, South Staffordshire or the North Staffordshire conurbation (ER 5.3.66).

21. The Secretary of State notes that the Examining Authority concludes there is a significant gap in the network of existing and proposed SRFIs along the M6/West Coast Main Line corridor between the West Midlands and the North West and therefore agrees with the Examining Authority that there is a clear need for a facility to serve the market comprising the businesses and large population within the Black Country, and the southern Staffordshire and Birmingham conurbations (ER 7.3.2).
22. The Secretary of State notes that it has been argued that the existing provisions in the wider Midlands area demonstrates that there is no need for the Proposed Development. The Secretary of State notes that the evidence submitted to the examination in relation to the operation of DIRFT I supports the NPSNN requirement that SRFIs are located close to the markets they serve (ER 5.3.67). The Secretary of State therefore agrees with the Examining Authority that this supports the Applicant's argument that the three clusters of existing and proposed SRFIs (noted above) serve different markets to that which the proposal intends (ER 5.3.67).
23. The Secretary of State also agrees with the Examining Authority that the West Midlands is not adequately served by SRFI provision and there is a clear lack of such provision to meet the needs of the Black Country and southern Staffordshire (ER 5.3.68).
24. The Secretary of State notes the Examining Authority's consideration at section 5.7 of alternative sites, informed by the Applicant's Alternative Site Assessment and the additional evidence received from the Applicant and other Interested Parties. The Secretary of State considers that full consideration has been given to possible alternative sites to locate a SRFI that serves the Black Country and southern Staffordshire and agrees with the Examining Authority that this assessment has demonstrated that no suitable alternatives are available (ER 7.3.9).

Capacity on the Rail Network

25. The Secretary of State notes that a timetabling study to assess train paths was carried out in 2017 by external consultants, and concluded that it should be possible to choose four paths in each direction (north and south) and to increase them to 10 paths in the future based on the (then) current timetable. NR reviewed and agreed the results of that study (ER 5.5.6). Given this, and the extensive involvement of NR during the examination, the Examining Authority considered that the Secretary of State can place considerable weight on the 2017 study as an indicator that capacity would be available to serve the Proposed Development (ER 5.5.8). The Secretary of State also notes that neither the Timetabling Study nor the Applicant's assessment of potential capacity take into account any capacity that may or may not be released from HS2 (ER 5.5.10).

26. The Secretary of State agrees with the Examining Authority that the Proposed Development is capable of being served by four trains per day, in accordance with the NPSNN, with the potential, over the longer term to achieve the 10 trains per day capacity of the Extended Rail Terminal (ER 5.5.11).

Compliance with the NPSNN

27. The Secretary of State notes that there is an underlying local concern that the Applicant is not committed to use of rail freight and has proposed the Rail Terminal as a kind of 'Trojan Horse' to secure consent for large road based warehousing in the Green Belt (ER 5.6.22). In addition, the Secretary of State notes the concerns in SSDC's letter dated 28 January that there is the lack of certainty that a rail connection would be provided and the timing of such a connection, as well as concerns that the approach to phasing the rail connection would not be compliant with paragraph 4.88 of the NPSNN.
28. The Secretary of State notes the Examining Authority's recommendation at ER 12.3.1 that he may wish to satisfy himself on the appropriate approach to be taken to the interpretation and application of the objectives and requirements with regards to SRFI proposals set out in paragraphs 4.83 and 4.88 of the NPSNN. The Secretary of State has considered the interpretation of the wording of paragraphs 4.83 and 4.88, and notes the Applicant has placed great weight on the approach taken in the East Midlands Gateway Rail Freight Interchange ("EMGRFI"). It is further noted that whilst the weight to be given to that decision is a matter for the decision maker, that decision has not been challenged in the courts and is therefore a material consideration (ER 7.3.5). The Secretary of State has also considered the Applicant's late representation dated 13 December 2019 that places further weight on the approach taken in the Northampton Gateway Rail Freight Interchange ("NGRFI") decision.
29. The Secretary of State has considered the approach taken in the EMGRFI decision in that "the interpretation of these NPSNN requirements must allow for the realities of constructing and funding major projects such as this" and that it is "entirely reasonable" that a commercial undertaking should seek to generate income from the warehousing before the railway become operational. The Secretary of State agrees with the Examining Authority that the approach indicated in these statements of the EMGFI decision is consistent with the evidence submitted to this Examination of the Proposed Development as to the conditions needed to establish and operate a viable freight rail service as part of an SRFI development (ER 7.3.6).
30. The Secretary of State notes the Examining Authority's conclusion on compliance with the NPSNN set out at ER 5.6.48 to 5.6.54. The Secretary of State considers that the "less rigid interpretation" of paragraphs 4.83 and 4.88 of the NPSNN would be the correct approach as that adopted in the EMGFI decision (ER 5.6.50 and 5.6.51). He further notes that paragraph 2.45 of the NPSNN recognises that with respect to SRFIs a "degree of flexibility is needed when schemes are being developed, in order to allow the development to respond to market requirements as they arise" (ER 5.6.45). The Secretary of State considers that the Proposed Development is substantially compliant with

the NPSNN requirements for SRFIs when they are considered as a whole (ER 5.6.54). The Secretary of State also agrees with the Examining Authority that the proposed rail requirements in the draft DCO would provide a great deal of confidence that the rail facilities would be delivered as soon as is reasonably possible (ER 5.6.52 and 5.6.53).

31. The Secretary of State has also noted the Applicant's proposed amendment to rail requirement 4, which would allow the Applicant to apply to the Secretary of State for a relaxation of the requirement that the rail terminal works be completed prior to the eventualities set out, and the additional subparagraph (2), which suggests that this option might be exercised in the event that the works could not be completed within the specified timescale "due to matters outside of the control of the undertaker" (ER 5.6.55 and 5.6.56). The Secretary of State also notes the proposed amendment to draft rail requirement 6, which requires that, following their completion, the rail connection and terminal must be managed and be kept available for use "*unless otherwise agreed by the Secretary of State*" (ER 5.6.57).
32. The Secretary of State agrees with the Examining Authority that such a change to rail requirement 4 could represent a material modification to the Proposed Development and that the change to rail requirement 6 could potentially be a still more significant modification (ER 5.6.65). If a need for such a change should arise at a future date, it would be open to the Applicant to seek a formal variation to the recommended DCO. An application under that procedure could be subject to an examination process that could ensure all relevant information was available to the decision maker. In comparison, seeking a variation to a requirement is a relatively informal procedure which would not ensure proper consultation and engagement. The Examining Authority expressed the view that this was not considered to be the appropriate route to consider changes of such potential magnitude (ER 5.6.66). The Secretary of State therefore agrees with the Examining Authority that the tailpieces of requirements 4 and 6 proposed by the Applicant should not be accepted (ER 5.6.67).
33. The Secretary of State agrees with the Examining Authority that the Proposed Development complies with the policies of the NPSNN and its underlying objectives in respect of SRFI projects (ER 7.3.8).

Transport and Access

34. The Secretary of State notes that a section of one existing public footpath (PENK 29) would be formally stopped up with no substitute path being considered necessary (ER 5.9.1). The Examining Authority considered the justification presented by the Applicant that no substitute is required because PENK 29 did not connect with other footpaths and is effectively a cul-de-sac (ER 5.9.2). The Examining Authority was satisfied that this section of PENK 29 did not connect with any other public right of way ("PROW") and that walkers using it are already required to use other informal routes and footways within the highway (ER 5.9.3). There was an application for another claimed PROW but the formal consultation had not been completed at the close of the Examination and no final decision had been taken. The recommended DCO has been amended to provide that, if this claimed route is confirmed as a PROW, the Order would authorise its

stopping up to facilitate the Proposed Development with no substitute PROW being provided (ER 5.9.7). The Examining Authority was satisfied that the loss of these two PROW would be adequately mitigated for by the provision of alternative footways and cycleways alongside those new roads to be adopted (ER 5.9.9) and therefore concluded that the test in section 136(1)(b) of the 2008 Act was met (ER 5.9.10). The Secretary of State agrees.

35. In light of Highways England's ("HE") remaining concerns about the Applicant's Stage 1 Road Safety Audit in respect of the pedestrian crossing facilities at the A449 access roundabout (ER 6.2.96), and the safety concerns relating to the operation of the circulatory at Junction 12 of the M6 (ER 6.2.97), the Secretary of State sought further clarification in his letter dated 24 January 2020.
36. The Secretary of State notes in response to his letter dated 24 January 2020 that HE considers that the proposed requirement by the Examining Authority provides a solution to address the outstanding Road Safety Audit issues in relation to the A449/A45 link road crossing. However, the Secretary of State notes HE's remaining concern is that of only having a consultee role on this matter and the Secretary of State has considered the request by HE that they also provide approval on this matter. The Secretary of State is satisfied that HE is strongly placed to advise on the suitability of the crossing and is therefore content that HE provides approval on this matter. Requirement 3 of the recommended DCO (and now requirement 4 in the DCO) has been amended in line with HE's suggestion.
37. The Secretary of State further notes in response to this letter dated 24 January 2020 that the issue relating to the safety concerns of the circulatory at Junction 12 of the M6 remains unresolved. The Secretary of State notes that HE considers that the Applicant's analysis has not established the root cause of the collisions and further notes that circulatory traffic speeds could be a factor. However, the Secretary of State notes HE has not objected to the Application on these grounds or intimated that development consent should not be granted because of this outstanding issue (ER 6.2.98). The Secretary of State therefore considers that the unresolved issue in relation to the circulatory at Junction 12 is not a reason to refuse the Application, but suggests that additional investigations are carried out by Applicant to identify the cause of collisions and provide mitigation to satisfy HE's concerns.
38. The Secretary of State notes that HE is content with the proposed amendment to Work Nos 6(u) and 7(r) in Schedule 1 to the DCO (as recommended by the Examining Authority and set out in the Secretary of State's letter of 24 January) and that the amendment allays previous concerns with regards to the use of the existing A449 drainage culvert. The Secretary of State further notes that the Applicant has confirmed that such amendments would not affect the conclusions of the ES.

Air Quality

39. The Secretary of State notes that the construction phase impacts have been assessed using the guidance provided by the Institute of Air Quality Management

and all construction effects are classed as temporary (ER. 6.3.10). The Secretary of State further notes that the predicted impact on annual mean NO₂ concentrations is negligible at all receptor locations, and the impact of construction traffic on PM₁₀ and PM_{2.5} concentrations are also predicted to be negligible at all receptor locations (ER 6.3.11).

40. With regards to operational effects, the Secretary of State notes that the overall impact of the Proposed Development would result in a negligible impact at all receptors, except at two receptor locations with regards to NO₂, PM₁₀ and PM_{2.5}. The Secretary of State, however, notes that over the period 2021 to 2036 the concentrations at the two exception locations noted above are predicted to reduce significantly to be below 40µg/m³ (ER 6.3.19).
41. The Secretary of State notes that the transfer of freight to road expected as a result of the Proposed Development is anticipated to reduce HGV movements of a regional scale by 50.6 million HGV km each year. The Secretary of State is therefore satisfied and agrees with the Examining Authority that the operational development would result in a beneficial impact on air quality at a regional scale (ER 6.3.27).
42. The Secretary of State notes that the Examining Authority examined all the evidence in regard to the impact on air quality and is satisfied that the Proposed Development would not result in significant adverse effects on air quality and human health. The Secretary of State also notes that the effects would not lead to a zone or agglomeration which is currently compliant with the Air Quality Directive to become non-compliant or affect the ability of a non-compliant area to achieve compliance within the timescales reported to the European Commission (ER 6.3.48). The Secretary of State is therefore content that the requirements of paragraphs 5.10 to 5.15 of the NPSNN are satisfied. In addition, the Proposed Development would deliver significant air quality benefits at the regional scale by means of reducing the number of HGV journeys on the regional road network (ER 6.3.49).

Ecology and nature conservation

43. The Secretary of State notes that paragraph 5.22 of the NPSNN requires applicants to set out significant effects on designated sites, protected species and habitats and show how the proposal has taken advantage of opportunities to conserve and enhance biodiversity (ER 6.5.1). The Secretary of State notes the residual effects of site clearance and construction works on the principal habitats within the site, and is satisfied that taking into account the embedded mitigation, the Proposed Development is expected to have a positive impact overall with net gains of all of the main habitats outlined in the Environment Statement (ER 6.5.17).
44. The Secretary of State notes that the Statement of Common Ground (“SoCG”) with Natural England (“NE”) and SCC confirm that the scope and methodology of the ecological surveys are appropriate and accord with recognised guidance. Furthermore, the Secretary of State is content that NE agree that all issues relating to protected species and habitats have been addressed, the mitigation

measures proposed are appropriate and that the ecological enhancement measures would have a positive effect on biodiversity (ER 6.5.33).

45. The Secretary of State notes the Examining Authority's view that with all mitigation in place during the operational phase, significant residual effects are predicted only at the site or at a local scale and the principal effect will be on farmland birds. It is noted by the Secretary of State that these effects would be balanced by the provision of significant areas of new and enhanced habitat that would be managed for its ecological and biodiversity value over the long term (ER 6.5.67). The Secretary of State is therefore content that Proposed Development comply with requirements of the NPSNN in relation to ecology and nature conservation (ER 6.5.68).

Landscape and Visual Effects

46. The Secretary of State notes that the Proposed Development would represent a very considerable change in the local landscape and would transform an area of mixed use and character into an area dominated by commercial buildings across a very large site. The Secretary of State further notes that the Examining Authority agrees with SCC that the proposal would be a significant intrusion into a largely rural landscape which would have a significant urbanising effect (ER 6.8.50).
47. However, the Secretary of State notes that the site of the Proposed Development is well contained visually and in landscape terms, and he therefore agrees with the Examining Authority that there would not be a significant effect on landscape character of the wider area (ER 6.8.50).
48. The Secretary of State notes that the views from some properties at Gailey Wharf, Croft Lane, the A5 and other roads near the site perimeter would change significantly, as the Proposed Development would be seen in what are currently views of open land (ER 6.8.53). The Secretary of State further notes that landscape mounds would screen the lower parts of buildings and activity, but the upper parts of the buildings would be visible. While the landscape mounds would shorten views from the rear of these properties, the Secretary of State notes that the Examining Authority is satisfied that they would be a sufficient distance away not to significantly affect the amenity of those residents (ER6.8.53).
49. The Secretary of State notes that the Proposed Development would have a major adverse effect on the landscape at the local level and moderate to major adverse visual effect on several nearby residential receptors. However, the Secretary of State has considered that the Applicant has sought to mitigate these impacts so as to minimise the harm that is caused as far as possible and agrees with the Examining Authority that the visual effects on these sensitive receptors would be outweighed by the significant economic benefits of the Proposed Development (ER 6.8.55).

Socio-Economic Effects

50. The Secretary of State notes that the Applicant relies upon the economic benefits of the Proposed Development to demonstrate as part of its very special circumstances case to justify a grant of development consent in the Green Belt (ER 6.10.1).
51. The Secretary of State has considered that some interested parties have questioned whether the site for the Proposed Development is in a sustainable location as a large proportion of the projected 8,500 employees would commute from outside of the district, and that the figure of 8,500 jobs has also been challenged as an unrealistic assessment (ER 6.10.2). The Secretary of State notes that SSDC accepts an estimate of 8,550 on-site jobs and the proposal would also support 8,100 jobs through induced and indirect employment (ER 6.10.19), and that SCC accepts that the Proposed Development would be likely to generate over 8,000 jobs (ER 6.10.21). The Secretary of State notes the Examining Authority's questioning on the issue of potential job estimates and agrees that the estimates have been informed by an appropriate number and range of data sources and so provide robust predictions (ER 6.10.24). Furthermore, the Secretary of State is satisfied that the evidence shows that there should be no significant concern as to the availability of an adequate pool of labour to the new jobs (ER 6.10.69).
52. The Secretary of State notes that the Proposed Development would provide very significant benefits in supporting the construction employment in the West Midlands and generating over £60M direct and indirect gross value added as a result of the construction activity. In addition, the completed development would generate over £680 million annually in direct and indirect gross value added and more than £16 million in business rates (ER 6.10.69). The Secretary of State agrees with the Examining Authority that the economic effects of the Proposed Development are in line with local, regional and national policies on economic development and growth (ER 6.10.18).

Greensforge Sailing Club

53. The Secretary of State notes there was a particular concern raised regarding the potential effect of the Proposed Development on sailing conditions at Calf Heath Reservoir, and the consequential threat to the viability of Greensforge Sailing Club ("GSC") that uses the reservoir (ER 6.10.2). The Secretary of State further notes that the ES identifies that there would be a potential for significant changes in the speed and direction of the wind resulting from the Proposed Development, which would affect the wind conditions for sailing on Calf Heath Reservoir (ER 6.10.48).
54. The Secretary of State has considered the Examining Authority's concerns regarding the assumptions used and inputs into the Wind Assessment Report and notes the Examining Authority's concerns that the 'steady state' conditions assumed in the report do not reflect real conditions at the reservoir and that insufficient consideration has been given to the effects of turbulence, caused by the proposed buildings and mounds (ER 6.10.54).

55. Due to the stated findings of the assessment and the Examining Authority's concerns about the approach and methodology used, the Secretary of State notes the Examining Authority is unable to conclude that there would not be a significant adverse effect on sailing conditions on Calf Heath Reservoir, but that even where that is the case the effect would most likely be one of a reduced sailing quality rather than making sailing impossible across the majority of the reservoir (ER 6.10.59). The Secretary of State notes that currently there are no detailed proposals for landscape mounds or buildings within Development Zones A4a and A5a available, and therefore it is not possible to provide greater certainty on the potential effects on sailing conditions (ER 6.10.60).
56. The Secretary of State agrees with the imposition of an additional requirement recommended by the Examining Authority, which would require that the submission of detailed proposals for the construction of landscaped mounds immediately to the south or west of the reservoir, and for the erection of buildings in the Development Zones A4a and A5a, be accompanied by a detailed assessment of the likely effects on wind conditions on the reservoir and details of how any potential adverse effects are to be mitigated (ER 6.10.62). The Secretary of State notes the concerns raised by GSC in response to his letter dated 24 January 2020 and has considered their requests in relation to the requirements. The Secretary of State considers it appropriate to incorporate an amended version of those requests. Specifically, requirement 3 in the recommended DCO (but now requirement 4 in the DCO) has been amended to provide that the local planning authority can request the undertaker provide guidance to assist in the consideration of wind tunnel or other technical assessments, and that the undertaker must consult the local planning authority and the GSC when determining the scope, basis and methodology of those assessments. The Secretary of State is content that the proposed requirement, as amended, would provide suitable assurance to the GSC that the recreational impact of the Proposed Development would be minimised.

Archaeology and Cultural Heritage

57. The Secretary of State has considered the concerns raised by the Canal and River Trust ("CRT") regarding the effect of the Proposed Development on the setting of the Canal Conservation Area, including the listed buildings and structures within Gailey Wharf (ER 6.9.32). The Secretary of State notes the CRT have argued that whilst there are urban influences in the surrounding area, the Canal Conservation Area within and immediately adjoining the site retains a strong rural character (ER 6.9.34).
58. The Secretary of State notes that the Round House, Wharf Cottage, Gailey Wharf, Lock and Bridge form an attractive group of heritage assets, which comprise a complete set of canal architecture and have strong heritage character (ER 6.9.37). However, the Secretary of State notes that the strong heritage character is limited to a relatively small area and is partially offset by the unkempt character and generally poor-quality and temporary appearance of the buildings on the eastern bank of the canal (ER 6.9.38). The Secretary of State further notes the Examining Authority considers the section of canal that passes through and

immediately adjacent to the site is heavily influenced by past and more recent industrial and commercial development (ER 6.9.42).

59. The Secretary of State notes that the effect of the buildings in Development Zone A4 would be reduced by being set back 100m from the canal and the use of a natural colour palette to their elevations, although due to height and length of the buildings it would still be visible from Gailey Wharf (ER 6.9.43). The Secretary of State is, however, satisfied that by Year 15 the new planting would have considerably softened the visual effect on this part of the Conservation Area.
60. The Secretary of State notes that the direct effects on heritage assets would be limited and not significant in Environmental Impact Assessment terms. The Secretary of State also notes that the indirect effects include some harm to the setting of the Canal Conservation Area, but this would be less than substantial and would be offset by the public benefits of the Proposed Development (ER 6.9.54). The Secretary of State has had regard to regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and agrees with the Examining Authority that the Proposed Development is compliant with paragraphs 5.120 to 5.142 of the NPSNN (ER 6.9.55).

Habitats Regulations Assessment

61. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European Site². The Proposed Development is not directly connected with or necessary to the management of any European Site. The Secretary of State must therefore undertake an appropriate assessment if likely significant effects on the conservation objectives of a European Site, either alone or in combination with other plans or projects cannot be ruled out. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives or imperative reasons of overriding public interest apply.
62. The Secretary of State has considered the Examining Authority’s assessment at Chapter 8 of the Examining Authority’s Report of the likely significant effects of the scheme. The Applicant identified three European sites located within 10 kilometres of the scheme, which are all designated as Special Areas of Conservation (“SAC”) – Cannock Chase SAC, Motte Meadows SAC and Cannock Extension Canal SAC (ER 8.3.4). The Secretary of State notes that the Examining Authority, having considered the relevant evidence, is satisfied that the Proposed Development would not result in any likely significant effects on any European site or their qualifying features, a view which is endorsed by NE (at paragraph 5.1.7 of the SoCG between the Applicant and NE), and therefore it is not necessary to carry out an appropriate assessment (ER 8.5.2). The Secretary of State agrees with this view.

² The term “European Site” in the ER and in this decision letter includes Ramsar Sites.

Conclusion on the case for Development Consent

63. The Secretary of State notes that paragraph 2.56 of the NPSNN recognises a compelling need for an expanded network of SRFIs (ER 5.3.1). The Secretary of State further notes that paragraph 4.2 sets out a presumption in favour of granting consent to applications that fall within the need for infrastructure established in the NPSNN (ER 9.1.1).
64. The Secretary of State further notes that the Examining Authority in reaching its overall recommendation for the granting of development consent has had regard of the NPSNN, the development plan, the National Planning Policy Framework and Local Impact Reports and all other matters which it considers to be both important and relevant (ER 9.1.3).
65. The Secretary of State notes the Examining Authority has concluded that the less than substantial harm imposed on the setting and significance of the designated heritage asset comprised in the Canal Conservation Area would be outweighed by the public benefits of the Proposed Development (ER 9.2.3).
66. The Secretary of State notes that the NPSNN requires that substantial weight should be given to any harm to the Green Belt, and has taken account that the Examining Authority has noted that other elements of harm should also attract significant weight (ER 9.2.4).
67. The Secretary of State agrees with the Examining Authority that the strategic benefits of the Proposed Development in contributing to an expanded network of SRFIs would assist in achieving and promoting a modal shift of freight from road to rail, thereby playing an important part in the move to a low carbon economy. These benefits are such that they outweigh the adverse impacts identified in relation to the construction and operation of the Proposed Development (ER 9.3.1).
68. The Secretary of State notes and agrees with the Examining Authority that the national and regional need for the proposed development outweighs any harm. He therefore agrees with the Examining Authority that the very special circumstances needed to justify a grant of development consent have been demonstrated (ER 9.2.4).

Compulsory Acquisition and Related Matters

69. The Secretary of State has considered the compulsory acquisition (“CA”) powers sought by the Applicant in accordance with sections 122, 123 and 127 of the 2008 Act, the Human Rights Act 1998 and relevant guidance.
70. The Secretary of State notes the Examining Authority’s consideration of CA and temporary possession (“TP”) related matters at Chapter 10 of the Examining Authority’s Report, and that at the close of the Examining Authority examination discussions were ongoing with the Powell Family and MMS Gas Powers regarding a final agreement (ER 10.6.4). The Secretary of State has noted the

remaining concerns of Straight Mile Farm regarding the landscape bunding, and that the bunding will not be in a location that would be overbearing or oppressive in views from the rear of the dwelling, but is required to provide noise screening (ER 10.6.15).

71. The Secretary of State notes the concerns raised by Network Rail under section 127 of the 2008 Act regarding road and rail access points located within Plots 14, 18 and 61 (ER 10.7.1). The Secretary of State notes that an agreement was being prepared but was not completed before the end of the Examination. The Secretary of State has since received confirmation in response to his letter dated 24 January 2020 that the agreement has been finalised. As a result, the Secretary of State notes NR have withdrawn their objection.
72. The Secretary of State has considered the rights that would be acquired and / or created and he agrees with the Examining Authority that these are necessary to allow the realisation of the Proposed Development. The Secretary of State has considered all other objections and issues in relation to CA and TP powers noted at ER 10.5. to ER 10.10.1, and he agrees with the Examining Authority's conclusion at ER 10.10.1 that the land and rights for CA is required for the Proposed Development and the TP of land for works related to the Proposed Development would be justified. The Secretary of State agrees with the Examining Authority's findings that that is a reasonable prospect of the requisite funds for the proposed acquisition becoming available (ER 10.8.6).

Late Representations (outside formal consultation)

73. Since the close of the Examination the Secretary of State has received a number of late representations, including the correspondence referred to in this letter and published on the Planning Inspectorate's website. This includes correspondence from Gavin Williamson MP noting concerns about the Applicant's comparison between the Proposed Development with the NGRFI; and correspondence from Theo Clarke MP, which included a letter from the Stop the WMI Group.
74. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the Examining Authority's report.

Draft Development Consent Order and Related Matters

75. The Secretary of State has considered the Examining Authority's description of the evolution of the Order and their comments on the content of the Order in section 11 of the Examining Authority's report. Having concluded that development consent should be granted for the West Midlands Rail Freight Interchange project, he is satisfied that the form of the Order recommended by the Examining Authority at ER 11.5 is appropriate, subject to the modifications referred to below. In reaching this decision he has taken into account the development consent obligation completed by the applicant for the benefit of

SSDC and SCC and the bird mitigation obligation made between the owners of the bird mitigation land and SCC.

76. The main modifications which the Secretary of State has decided to make to the Order, not mentioned elsewhere in this letter, are as follows (references to article numbers, paragraphs and requirements in this paragraph are to the same as numbered in the DCO as made):
- the definition of “authorised activity” has been moved from article 2 to article 27, as it is only relevant for that article;
 - terms relevant to communications code networks have been updated to reflect changes made by the Digital Economy Act 2017;
 - the definition of “hedgerow” in article 2 has been amended as the Hedgerow Regulations 1997 do not provide a specific meaning;
 - the definition of “illustrative arrangement of railway alignment plan” has been added to article 2;
 - the definition of “traffic authority” in article 2 has been amended to reflect the term used in the Road Traffic Regulation Act 1984;
 - article 6(3) has been amended to ensure that the authorisation to maintain the development does not extend to works which could give rise to effects on the environment that should have been assessed in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 which have not been. This reflects the Secretary of State’s preferred drafting and ensures a consistency of approach across transport development consent orders. This change has been effected in corresponding provisions for subsequent approvals etc.;
 - articles 24 and 25 have been amended to ensure that any person who suffers loss as a result of interference with private rights is compensated;
 - compulsory acquisition provisions have been updated to reflect changes to the general legislation by the Housing and Planning Act 2016;
 - article 34(7) has been amended as section 152 of the 2008 Act does not apply to the Proposed Development, given section 158 of that Act is specifically disapplied by article 44(6) and there is no defence against nuisance provided in the DCO;
 - in paragraph 16(2)(e) of Schedule 2, the word “important” has been omitted as the definition of “hedgerow” would include important hedgerows as that term is used in the Hedgerow Regulations 1997;
 - the interpretation paragraph of Part 2 of Schedule 2 has been updated to reflect the changes made to that part of that Schedule as recommended by the Examining Authority and detailed in paragraph 31; and
 - paragraph 15 of Part 2 of Schedule 13 has been amended to include a second notification stage before approval requests to HE are deemed to have been granted, in line with similar provisions included in other recent transport DCOs.
77. The Secretary of State is making a number of other minor textual amendments to the draft DCO in the interests of clarity, consistency and precision. He considers that none of these changes, nor the changes set out elsewhere in this letter, either individually or taken together, materially alter the effect of the DCO.

Secretary of State's overall conclusion and decision

78. For all the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the Proposed Development and has therefore decided to accept the Examining Authority's recommendation at section 12.3 of the Examining Authority's Report and is today making the West Midlands Rail Freight Interchange Order, subject to the changes referred to above. The Secretary of State is satisfied that none of these changes constitute a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

Challenge to decision

79. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

80. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Susan Anderson

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The West Midlands Rail Freight Interchange Order 2020 is being published on the Planning Inspectorate website at the following address:

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

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).