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05 September 2023

By email - [REDACTED]@sstaffs.gov.uk (cc: wminsterchange@planninginspectorate.gov.uk)

Dear Michael,

Proposed Non-Material Change to The West Midlands Rail Freight Interchange Order 2020 (as amended by The West Midlands Rail Freight Interchange (Correction) Order 2020) (“the Order”) – Applicant Response to SSDC Consultation Response

CBRE Ltd (“CBRE”) writes on behalf of Four Ashes Limited (“FAL”) to respond to queries raised by South Staffordshire District Council’s (“the Council”) Ecologist in the Council’s consultation response dated 14 July 2023 in relation to the proposed Non-Material Change to the Order (“the NMC”).

The Council raised the following observations in its consultation response, which are reproduced in full below:

- It is noted that the alterations will lead to an impact or reduction in the scale of areas of landscaping or habitat creation. For instance, the road level amendments and Rail Infrastructure Area are to impact upon Work Area No. 6, wherein the mounds to be built are proposed, in part, to be utilised for habitat creation. Elsewhere, the extension of Zone C to the south of Rail Terminal for Buffer Stops, will result in a net reduction in area identified as Landscaping (Works No. 6) land on the certified Development Zone and Green Infrastructure Parameters Plans by 0.2489ha, whilst the extension of Zone C to north of Rail Terminal for Double Track Under Bridge No.1, will lead to the loss of a further 0.0347ha of landscaping.*

Paragraph 5.22 of the NPSNN [National Policy Statement for National Networks] requires applicants to ensure that the ES clearly sets out any significant effects on designated sites, protected species and habitats and shows how the proposal has taken advantage of opportunities to conserve and enhance biodiversity.

The NMC submission does not include a Biodiversity Metric, in order to demonstrate what impact the proposed amendments to the scheme will have upon the development's overall Biodiversity Unit score. The Council would not wish to see a reduction in the overall Unit score of the development and in a wider sense, would wish to see how any reduction feeds into the value of the entire site, to ensure that there is no net biodiversity loss arising across the wider scheme as a consequence of the amendments, contrary [to] the requirements of the above noted Policy Statement.

- It is acknowledged that the SoS is the competent Authority for consideration of this application. The LPA considers that the changes proposed via the NMC, to the consented development, would not result in a change to traffic flows and therefore the need [for] an updated HRA to consider NOx deposition would not be triggered on the basis of the changes.*
- Whilst additional land not originally forming part of the DCO is to be included within the site, such is within the ownership of the applicant and therefore will not require compulsory acquisition.*
- No new impacts upon the reasonable amenity of residents are considered to arise as a consequence of the proposed amendments.*

The Council summarises the information it requires from the applicant in order to confirm it has no objection to the proposed NMC:

"Given the above, subject to a Biodiversity Metric being provided, to demonstrate that the NMC will result in a reduction in the scheme's overall biodiversity value and given the loss in area of landscaping, should this prove to be the case that as a consequence there would be no net loss in value across the entire site, no objection to the amendments are offered."

The applicant met with the Council and its Ecologist on Monday 24 July 2023 in order to provide factual background to the relevant ecological information submitted with the NMC application, including the Environmental Implications Report ("EIR") and to confirm how the applicant should best address the query summarised above.

In order to address the information request summarised above, the remainder of this letter addresses the following matters:

- Summary of the approach to biodiversity net gain established by the Order and the associated Environmental Statement.
- Summary of the existing habitat / originally proposed habitat creation within the 0.2489ha 'Landscaping' area to the south of Rail Terminal and 0.0347ha 'Landscaping' adjacent to Bridge B1 and an explanation of how the proposed loss of existing habitat / original proposed habitat creation arising would need to be compensated for.
- Overview of how the Council will be able to secure the necessary mitigation to compensate for any loss of ecological value arising from the NMC through future detailed design submissions pursuant to Order Requirement 12 and 16.

Biodiversity Net Gain and the Order

The Council has requested that the applicant provides information in terms of calculating the existing Biodiversity Units ("BU") and proposed BU within the 0.2489ha 'Landscaping' area to the south of the Rail Terminal and 0.0347ha of 'Landscaping' area adjacent to Bridge B1, using the relevant DEFRA metric. This is requested by the Council in order to understand any potential loss of biodiversity and quantum of proposed compensation.

The 2018 Environmental Statement ("the ES") submitted with the original DCO application provided an assessment of the ecological baseline, ecological effects of the proposed development and embedded mitigation measures.

The following ES appendices comprise part of the overall embedded mitigation in respect of habitat creation:

- ES Technical Appendix 10.4 (Updated Framework Ecological Mitigation and Management Plan – July 2019¹).
- ES Technical Appendix 12.9 (Green Infrastructure Summary Schedule²)

Paragraph 3.5.8 of ES Technical Appendix 10.4 defines the biodiversity net gain to be targeted as part of embedded habitat creation measures: "*The development will deliver a biodiversity net gain for native broadleaved woodlands and semi-improved grassland in area terms and native species rich hedgerows in terms of linear metres. These features will be linked together and with existing retained habitats where possible.*"

¹ Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR050005/TR050005-001024-Four%20Ashes%20Limited%20-ES%20-%20Vol%202%20Technical%20Appendix%2010.4%20Updated%20FEMMP%20%20Clean%20.pdf>

² Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR050005/TR050005-000386-Doc%206.2%20ES%20LVIA%20App%2012.9%20-%20GI%20Summary%20Sched.pdf>

As noted at paragraph 6.5.17 of the Examining Authority Report dated 27 November 2019³, Table 10.11 of ES Chapter 10 provides a summary of the residual effects of the site clearance and construction works on principal habitats within the site:

"Taking account of the embedded mitigation, the development is expected to have a positive impact in overall terms, with net gains in all of the main habitats as detailed below:

- 1.27 ha increase in the area of semi-improved grassland;
- An increase of 1.837km in the total length of hedgerows;
- An increase of 18.53ha in the area of woodland;
- An increase of 783 in the number of individual trees although there would be a net decrease of -56 in the number of tree groups.
- An increase in the number of ponds by a minimum of 10.

ES Technical Appendix 12.9 also provides a summary of the green infrastructure planting and habitats to be delivered, based on the design information underlying the now-approved Green Infrastructure Parameter Plan. An extract from ES Technical Appendix 12.9 is provided in **Figure 1** below.

Figure 1: Extract from Green Infrastructure – Planting and Habitats Schedule (ES Technical Appendix 12.9)⁴

OVERALL SUMMARY

Landscape Area/ Habitat/ Feature

			Removed (or part removed)	Conserved/ Retained	Proposed	Net Gain/ Loss
Woodland	Unit Ha	Existing 25.47	Removed (or part removed) 15.57	Conserved/ Retained 9.90	Proposed 34.10	Net Gain/ Loss 18.53
Tree Groups	No.	141	56	85	0	-56
Individual Trees	No.	300	129	171	912	783
Hedgerows	m	23,196	8,857	14,339	10,694	1,837
Water Features/ Wetlands/ Ponds (Max Capacity)	Ha	0.37	0.21	0.16	6.22	6.00
Water Features/ Wetlands/ Ponds (Permanent Water)	Ha	0.37	0.21	0.16	1.19	0.98
Semi improved grassland	Ha	20.43	16.15	4.28	17.42	1.27
Public Rights of Way (PROW)/ Footpaths (not roadside)	Ln	520	520	0	5,125	4,605

Notes:

- 1 All areas and quantities are approximate.
- 2 All areas and quantities are based upon the GI Parameter Plan, with the exception of Hedgerows and Individual Trees, which are based upon the Illustrative GI Plan (7121 L 08).
- 3 Proposed Tree Groups are included within the Proposed Woodland category.
- 4 The Existing PROW/ Footpaths total comprises approx 520m for the PROW in the north west part of the Site. The canal towpath is not included within this calculation
- 5 The canal is excluded from any water/ wetland calculations.
- 6 The Proposed Water Features/ Wetlands/ Ponds is based upon the Proposed Drainage Strategy and includes both permanently wet and other dry/ intermittently wet features as differentiated in the schedule.
- 7 Minor changes to the calculations may arise subjects to the detailed alignment and final positioning of the development roads and plot accesses.

Order Requirement 12(1) requires a phase-specific Ecological Mitigation and Management Plan ("EMMP") to be submitted to and approved by the Council prior to commencement of the relevant phase, where a phase

³ Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR050005/TR050005-001463-West%20Midlands%20DCO%20Report%20Final.pdf>

⁴ Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR050005/TR050005-000386-Doc%206.2%20ES%20LVIA%20App%2012.9%20-%20GI%20Summary%20Sched.pdf>

incorporates ecological mitigation or management. The EMMP must be in accordance with the principles set out in the framework ecological mitigation and management plan, i.e. ES Technical Appendix 10.4.

In summary, the definition of biodiversity net gain enshrined in the Order and associated ES requires net gains for native broadleaved woodlands and semi-improved grassland in area terms and native species rich hedgerows in terms of linear metres. There is no approved baseline BU or proposed development target BU metric (using the DEFRA metric) which is required to be achieved pursuant to the Order and therefore no ability to compare an approved BU baseline with an approved BU target for the development to be delivered pursuant to the Order. Rather, in this case the baseline and proposed quantum of the three habitats constitutes the necessary ecological mitigation in terms of net gain required by the Order

We note that paragraph 5.22 of the NPSNN requires EIA Development should be accompanied by an ES which clearly sets out any likely significant effects on designated sites of ecological importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, as that the ES considers the full range of potential impacts on ecosystems. The approved 2018 ES fulfils this requirement and was not required, in the context of the NPSNN, to provide a biodiversity net gain assessment based on BU. The EIR considers the 2018 ES assessments as relevant and confirms in EIR Section 4.3 that there are no new or different likely significant environmental effects arising from the NMC and the conclusions presented in the 2018 ES are considered to remain valid.

In order to be consistent with the framework provided by the Order, the applicant details in the following section how the proposed NMC affects the ability for the proposed development to achieve net gains for native broadleaved woodlands and semi-improved grassland in area terms and native species rich hedgerows in terms of linear metres, in relation to the 0.2489ha 'Landscaping' area and 0.0347ha of 'Landscaping' area adjacent to Bridge B1.

Existing habitat / original proposed habitat creation to be lost and mitigation

The EIR was submitted as part of the NMC application. As set out section 1.2 of the EIR, the document provides a review of the proposed design changes and the amended development as a whole, in the context of the assessment findings reported in the 2018 ES.

EIR Table 4.2.1 summarises as follows in respect of the completed development effects, in terms of ecology:

"In consideration of the updated baseline conditions, the proposed changes are unlikely to affect the operational phase assumptions or the assessment of effects undertaken for the operational phase, as report in Chapter 10 of the 2018 ES. The proposed changes are not anticipated to affect the agreed ecological mitigation and compensation measures detailed."

"In respect of the proposed amendments, whilst the landscaping plan is subject to change, the net reduction in landscaping area would be 0.2489ha, representing a negligible change in the context of the overall land proposed for landscaping (and ecological provisions). Accordingly no new or materially different significant residual effects would arise and the conclusions presented in the 2018 ES are considered to remain valid."

In terms of landscape and visual impact, which also considers loss of existing vegetation, the completed development effects in relation to the 0.2489ha of land are summarised as follows:

"Whilst the green infrastructure would be amended as a result of the rail sidings extension, the net reduction in landscaping area would be 0.2489ha, which would be negligible in the context of the overall land proposed for landscaping, and the changes proposed are not considered to prejudice the overall landscape design and mitigation measures of the green infrastructure proposals. Tree group (G6 in Appendix 12.7 of the 2018 ES)

consists of a group of 7No. Lombardy Poplar trees. These were shown as being retained on the consented Green Infrastructure Parameters Plan yet will now be removed to facilitate the extended rail area. The loss of these trees will not be significant in landscape, visual or arboricultural terms and will be compensated for by extensive new tree and other planting as part of the green infrastructure proposals, including within the green infrastructure areas close to the existing trees. This will result in no material change to the landscape and visual impacts resulting from the amended proposed development, in comparison with the consented development.”

In ecological terms, the net reduction of 0.2489ha of proposed Landscaping area will include the loss of 7no. Lombardy poplar, which were identified on the previously approved Green Infrastructure Parameters Plan for retention and are now shown on the proposed Green Infrastructure Parameters Plan to be removed. These are not considered of notable ecological value and whilst detailed landscape plans are not yet available (as they are yet to be agreed with the Council through discharge of Requirements 12(1) and 16(1) for the Green Infrastructure), it is considered feasible that at least 7no. additional trees can be incorporated into the GI in proximity to the losses, e.g. within the proposed Landscaping adjacent to Development Zone A1, in addition to the 912no. detailed in Figure 1 above. As described in the section below regarding order mechanisms to secure necessary mitigation, the Council will be able to review proposed mitigation and decide whether mitigation is sufficient for the necessary pre-commencement requirements to be discharged.

A further 0.0347 ha of GI would be lost to facilitate widening of the Rail Infrastructure (Zone C) area to north of Rail Terminal for Double Track Under Bridge No.1. This area of Landscaping was not identified on the Landscape Features Proposed plan as one of the net gain habitat types within ES Technical Appendix 12.9 (ref: 7121-L-12 Rev E) and as such it is considered that compensating for the loss of this small area can be incorporated into the wider scheme, through maximising biodiversity benefits of all green infrastructure proposed and eventually approved by the Council.

In summary, the conclusions of the submitted EIR in respect of the three areas of habitat loss discussed above remain valid; no new or materially different significant residual ecological effects would arise from the proposed NMC and it is considered that no net loss of the three target ‘net gain’ habitats would arise from the NMC compared with the consented development.

Order Mechanisms for the Council to Secure Necessary Mitigation

This section provides an overview of the Council’s ability to secure appropriate ecological mitigation to ensure no net loss of the three target ‘net gain’ habitats’ in relation to the three areas of habitat loss discussed in the preceding section, using existing Order requirements.

The Council will be able to secure the delivery of the mitigation identified in the previous section through its review and determination of future submissions made to the Council in order to discharge the following pre-commencement Order requirements, should the NMC be approved:

- **Requirement 12(1) Ecological Mitigation and Management Plan:** the Ecological Mitigation and Management Plan relating to phases of development is required to be in accordance with ES Technical Appendix 10.4 (the Framework Ecological Mitigation and Management Plan) – which specifies at para 3.5.8 that the overall development will deliver a biodiversity net gain for native broadleaved woodlands and semi-improved grassland in area terms and native species rich hedgerows in terms of linear metres. When read alongside ES Technical Appendix 12.9, which provides a schedule for the proposed total net gain to in native broadleaved woodland and semi-improved grassland area, length of native species rich hedgerows, the EMMP provides a clear mechanism for the Council to require the applicant to demonstrate accordance with the sitewide net gain targets (i.e. how the phase contributes to this overall). The applicant is not permitted to commence development of a phase until the Council has approved the relevant EMMP pursuant to Requirement 12(1). Following our discussion on 04 September

2023, we can confirm that the applicant will provide a ‘running total’ of habitat creation in relation to the habitats identified in the ES in terms of the quantum proposed in each detailed design submission, the latest total based on detailed design submissions approved by the LPA to-date and the outstanding quantum to be delivered in future detailed design submissions. This will include an allowance for any additional trees or hedgerow lost through approved Article 41 submissions⁵.

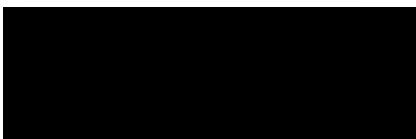
- **Requirement 16(1) Written Landscaping Scheme:** the Written Landscaping for the phase relating to either area of land will be required to be in accordance with the Green Infrastructure Parameters Plan and must include all details of soft landscaping works, including the location and number of species to be planted and details of trees/hedgerows to be retained and removed. This would provide the Council with the opportunity to review the number of species being removed and proposed compensation within that phase and ultimately approve the proposals. The applicant is not permitted to commence development of a phase until the Council has approved the relevant Written Landscaping Scheme pursuant to Requirement 16(1).

This letter responds to the Council’s request for a Biodiversity Metric to confirm there would be no net loss of biodiversity value, or any new or materially different significant effects on biodiversity, through the proposed NMC. The letter provides:

- Summary of the approach to biodiversity net gain established by the Order and the associated Environmental Statement. In this case, there is no proposed development target Biodiversity Unit metric (using the DEFRA metric) which is required to be achieved pursuant to the Order. Rather the Order and associated ES requires net gains for native broadleaved woodlands and semi-improved grassland in area terms and native species rich hedgerows in terms of linear metres.
- Summary of the existing habitat / originally proposed habitat creation within the 0.2489ha ‘Landscaping’ and area to the south of Rail Terminal and 0.0347ha ‘Landscaping’ adjacent to Bridge B1 and how the proposed loss of existing habitat / original proposed habitat creation arising would need to be compensated for.
- Overview of how the Council will be able to secure the necessary mitigation to compensate for any loss of ecological value arising from the NMC through future detailed design submissions pursuant to Order Requirements 12 and 16 in particular.

The applicant trusts the above addresses the Council’s query in order to confirm the Council has no objection to the proposed NMC. Should you have any further queries, please do not hesitate to contact me.

Yours sincerely,



Mark McFadden MRTPI
Associate Director
For and on behalf of CBRE Ltd.

⁵ Article 41 of the Order under Part 6 Miscellaneous and General relates to the felling or lopping of trees and removal of hedgerows, including, with the agreement of the LPA, where these are shown for retention in an approved Written Landscaping Scheme but later found to obstruct the construction of the authorised development.