



Department
for Transport

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Dear Mr McFadden

PLANNING ACT 2008: APPLICATION FOR A NON-MATERIAL CHANGE TO THE WEST MIDLANDS RAIL FREIGHT INTERCHANGE DEVELOPMENT CONSENT ORDER 2020

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the non-material change application (“the Application”) by Four Ashes Limited (“the Applicant”) made on 12 June 2023 for a non-material change to the West Midlands Rail Freight Interchange Order 2020 (S.I. 2020 No. 511) (“the 2020 Order”). The Application was made under section 153 and Schedule 6 (“Schedule 6”) to the Planning Act 2008 (“PA08”). The Application was published in accordance with regulations 6 and 7 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”) and any representations on the Application were due to be submitted to the Planning Inspectorate by 14 July 2023. This letter is the notification of the Secretary of State’s decision in accordance with regulation 8 of the 2011 Regulations.

2. The 2020 Order was granted on 4 May 2020. The West Midlands Rail Freight Interchange (Correction) Order 2020 (S.I. 2020 No. 1163) made on 20 October 2020 corrected errors in the 2020 Order.

3. The Development site is on land at Four Ashes near Junction 12 of the M6 motorway in South Staffordshire District. The 2020 Order allows for the construction and operation of a new Strategic Rail Freight Interchange and associated infrastructure (collectively referred to as ‘the Development’) including:

- an intermodal freight terminal with direct connections to the West Coast Main Line, capable of handling at least four trains per day, also including container storage, Heavy Goods Vehicle ('HGV') parking, rail control building and staff facilities;
- up to 743,200 square metres (gross internal area) of rail served warehousing and ancillary service buildings;
- new road infrastructure and works to existing road infrastructure;
- demolition and alterations to existing structures and earthworks to create development plots and landscape zones;
- reconfiguring and burying of electricity pylons and cables; and
- strategic landscaping and open space, including alterations to public rights of way and the creation of new ecological enhancement areas and publicly accessible open areas, including two new country parks.

4. The 4 May 2020 decision letter sets out the main reasons and considerations on which the decision to grant the 2020 Order is based, including relevant information about the participation of the public.

5. The Applicant is seeking a change to the 2020 Order to allow for amendments to the consented bridge span for Bridges Nos. 1-4, the consented bridge width for Bridges Nos. 1-3 including amendments to the general arrangement of carriageway and footway/cycleway, identified on the Bridge Plans and Highway General Arrangement Plans; amendments to certain consented finished road levels identified on the certified Development Zone, Floor Levels and Building Heights and Green Infrastructure Parameters Plans; the inclusion of 0.0308ha of additional land currently outside the Order limits and other changes within the south of Zone C to accommodate additions to the initially proposed railway infrastructure; and amendments to the proposed locations of dropped kerb crossings and new footway on Straight Mile / Woodlands Lane / Kings Road.

Summary of Secretary of State's Decision

6. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a non-material change to the 2020 Order to authorise the changes as detailed in the Application. The Secretary of State has also made his own modifications to the non-material change order as set out in paragraph 38 below. This letter is notification of the Secretary of State's decision in accordance with regulation 8 of the 2011 Regulations.

Consideration of the Materiality of the Proposed Change

7. The Secretary of State has given consideration as to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the PA08 which requires the Secretary of State to consider the effect of the change on the 2020 Order as originally made.

8. There is no statutory definition in the Planning Act 2008 or the 2011 Regulations of what constitutes a 'material' or 'non-material' change for the purposes of Schedule 6 to the PA08 and Part 1 of the 2011 Regulations.

9. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the former Department for Communities and Local Government, the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Change Guidance"), which makes the following points. First, given the range of infrastructure projects that are consented through the PA08, and the variety of changes that could possibly be proposed for a single project, the Change Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material and such decisions will inevitably depend on the circumstances of the specific case. Second, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:

- (a) A change should be treated as material if it would require an updated Environmental Statement to take account of materially new, or materially different, likely significant effects on the environment. There may be cases where the change proposed will result in likely significant effects on the environment that are entirely positive, but in such cases an updated Environmental Statement will still be required, and the application will need to be treated as a material change to ensure that the regulatory requirements relating to Environmental Impact Assessments are met.
- (b) A change is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change.
- (c) A change should be treated as material if it would authorise the compulsory acquisition of any land, or an interest in or rights over land, which was not authorised through the existing Development Consent Order.
- (d) The potential impact of the proposed change on local people will also be a consideration in determining whether a change is material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.

10. Third, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

11. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (a), (b), (c) and (d) above.

(a) Environmental Statement

The Secretary of State has considered whether the Application would give rise to any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement for the Development authorised by the 2020 Order. The Secretary of State is satisfied that the information provided by the Applicant in support of the Application and the document titled “West Midlands Interchange Proposed Non-Material Change Environmental Implications Report”¹ dated 12 June 2023 is sufficient to allow him to make a determination on whether the Application would give rise to such effects.

The Secretary of State has considered all relevant information provided and the representations provided by consultees. The Secretary of State agrees with the Applicant’s conclusions that, in relation to the proposed changes, there will not be any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement submitted in support of the Development authorised by the 2020 Order and as such considers that there is no requirement to update the Environmental Statement. As there are no new significant environmental impacts as a result of the proposed changes, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

(b) Habitats Regulations Assessment

The Secretary of State has considered his obligations as set out in the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The Habitats Regulations require the Secretary of State 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 protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if he has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network. The Secretary of State has considered the information submitted in the Application and the representations from consultees, including the concerns from Natural England set out in further detail below, and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant’s Environmental Statement for the 2020 Order. The Secretary of State is also satisfied that the proposed changes do not alter the Secretary of State’s conclusion set out in paragraph 62 of the 4 May 2020 decision letter that the Development does not lead to a likely significant effect on any protected sites or their qualifying

¹ [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050005/TR050005-001506-WMI%20\(NMA1\)%20-%20Environmental%20Implications%20Report%20-%20FINAL%20-%202020623%20\(1\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050005/TR050005-001506-WMI%20(NMA1)%20-%20Environmental%20Implications%20Report%20-%20FINAL%20-%202020623%20(1).pdf)

features. In respect of European Protected Species, the Secretary of State is satisfied that the proposed changes do not bring about the need for a new or additional licence as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective. The Secretary of State therefore considers that it is unnecessary for him to carry out an appropriate assessment under the Habitats Regulations.

(c) Compulsory Acquisition

In respect of compulsory acquisition, the Secretary of State notes the change sought through the Application would not result in any change to the compulsory acquisition provisions in the 2020 Order. With regards to the proposed changes, the Applicant either own the land required for the changes proposed as part of this application, or the changes fall within the public highway where the Applicant has powers over the Highway under the 2020 Order to complete the works. The Secretary of State is therefore satisfied that this does not raise any issues of materiality.

(d) Impacts on business and residents

The Secretary of State notes that the Applicant is of the view that proposed changes themselves will not cause any new or materially different significant environmental effects to be experienced by residents and businesses compared to those impacts that will occur as a result of the already consented development.

12. The Secretary of State agrees with the Applicant that the proposed change would not result in a development inconsistent with the 2020 Order. He is also content that, given no change is anticipated to the impacts already assessed in the Environmental Statement for the 2020 Order, the potential impacts on local people and businesses are no greater than those that arise from the Development permitted by the 2020 Order. For the reasons explained in the paragraphs above, the Secretary of State is satisfied that the change sought by the Applicant is not material and should therefore be dealt with under the procedures of non-material changes.

Consultation

13. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations and consulted the persons in the manner prescribed. The Applicant undertook a consultation as required by regulation 7 of the 2011 Regulations and consulted the same interested parties and consultees that were consulted in relation to the 2020 Order. The deadline for the receipt of representations on the Application was 14 July 2023.

14. The Application was made available on the Planning Inspectorate's website on 12 June 2023, so that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

15. A further consultation was conducted on 12 September 2023 to invite representations on the responses received to the consultation on the Application. The deadline for responses to this consultation was 18 September 2023.

16. The Secretary of State has considered the representations received in response to the consultations and the late representations and does not consider that any further information needs to be provided by the Applicant or that further consultation of those already consulted is necessary.

Consultation responses

17. The Secretary of State received five responses from statutory consultees (the Environment Agency, the Canal and River Trust, Historic England, National Highways and Staffordshire County Council) which raised no objection to the proposed changes being sought.

18. The Secretary of State received representations raising concerns from two interested parties.

19. The Secretary of State received a response from South Staffordshire Council dated 14 July 2023, which stated that the Non-Material Change submission does not include a Biodiversity Metric, to demonstrate what the proposed amendments to the scheme will have upon the development's overall Biodiversity Unit score.

20. The Secretary of State also received a representation from Natural England dated 12 July 2023, setting out that the proposed amendments outlined in the Non-Material Change submission may impact protected species.

21. The Secretary of State's consideration of the materiality of the change sought by the Applicant is set out above. The Secretary of State's consideration of the concerns raised by Interested Parties is summarised below.

Biodiversity

22. South Staffordshire Council raised a concern regarding the lack of a Biodiversity Metric included in the Non-Material Change submission. It considered this is of particular concern as the proposed alterations will lead to an impact or reduction in the scale of areas of landscaping or habitat creation. Paragraph 5.22 of the National Policy Statement for National Networks (NPSNN) requires applicants to ensure that the Environmental Statement 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. South Staffordshire Council expressed the view that they would not want to see a reduction in the overall unit score of the Development due to the proposed amendments to the Development Consent Order and 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 proposed amendments.

23. This issue was addressed by the Applicant in a meeting with South Staffordshire Council on 24 July 2023, and outlined in a letter dated 5 September 2023. The Applicant demonstrated to South Staffordshire Council an approach to ensure that any additional habitats lost outside the scope of the original order can be addressed in future landscaping schemes for the Development, thereby ensuring there will be no net loss to the Development's overall Biodiversity value.

24. The Secretary of State consulted Interested Parties on the Applicant's response and no further objections were received from statutory consultees. In a letter dated 6 September 2023 South Staffordshire Council assessed the proposed changes and offered no objections to them.

Protected Species

25. Natural England noted that the Non-Material Change submission may have an impact on protected species, and that further consideration should be given to updating relevant documents to reflect any impact and mitigation.

26. The Applicant has clarified this concern through the document titled "West Midlands Interchange Proposed Non-Material Change Environmental Implications Report" dated 12 June 2023. The Environmental Implications Report (EIR) contains updated surveys from 2021 and 2022 to identify the current conditions across the wider site, including the additional land and the status of any protected or otherwise notable species. In respect of the demolition and construction phase and the completed development phase, the EIR assesses that no new or materially different significant effects would arise, and the conclusions presented in the 2018 ES are considered to remain valid.

27. In an email dated 26 September 2023 in response to the Secretary of State's request for representations on the information contained in the Applicant's letter regarding its Environmental Implications Report submitted in support of the Application, Natural England stated that it had reviewed the information and did not have any comments.

Late Representations and Consultation Responses

28. In addition to the responses to the consultations on the Application, the Secretary of State also received late representations from Natural England and Network Rail. The Secretary of State has published this correspondence as late representations alongside this letter on the Planning Inspectorate website.

29. Unless addressed above, the Secretary of State considers that these late representations do not raise any new issues that are material to the decision on the Application. As such, the Secretary of State is satisfied that there is not any new evidence or matter of fact in these direct responses and late representations that need to be referred again to Interested Parties before proceeding to a decision on the Application.

General Considerations

Equality Act 2010

30. The Equality Act 2010 includes a public-sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sexual orientation; sex; gender

reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

31. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010 and is satisfied that there is no evidence that granting consent to the changes will affect adversely the achievement of those objectives.

Human Rights Act 1998

32. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended Development. The Secretary of State considers that granting consent to the changes would not contravene any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

33. In making a decision on the Application, the Secretary of State has had regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021. The Secretary of State notes that there will be no new environmental effects as a result of the proposed changes sought through the Application, and as such considers that no further action regarding the conservation and enhancement of biodiversity is required.

The Secretary of State's overall conclusion and decision

34. The Secretary of State considers that the project continues to conform with the policy objectives set out in the NPSNN and that the need for this Development remains as set out in the decision letter dated 4 May 2020. Paragraph 2.53 of the NPSNN states that it is important to facilitate the growth of the intermodal rail freight industry to support a low carbon sustainable system that is the engine for economic growth. The increasingly important role of Strategic Rail Freight Interchanges is also highlighted in the Future of Freight Plan and the Transport Decarbonisation Plan.

35. The Secretary of State notes that the Applicant requested the change to allow for alterations to the consented bridge span for Bridges Nos. 1-4, the consented bridge width for Bridges Nos. 1-3 including amendments to the general arrangement of carriageway and footway/cycleway, identified on the Bridge Plans and Highway General Arrangement Plans; amendments to certain consented finished road levels identified on the certified Development Zone, Floor Levels and Building Heights and Green Infrastructure Parameters Plans; the inclusion of 0.0308ha of additional land currently outside the Order limits and other changes within the south of Zone C to accommodate additions to the initially proposed railway infrastructure; and

amendments to the proposed locations of dropped kerb crossings and new footway on Straight Mile / Woodlands Lane / Kings Road.

36. The Secretary of State has considered the nature and effect of the proposed changes, noting that they would have no materially new or materially different likely significant environmental effects. He is satisfied that the conclusions of the Environmental Statement submitted in support of the application for the 2020 Order remain unchanged, and notes that no new powers of compulsory acquisition are sought.

37. The Secretary of State is content that none of the specific indicators referred to in the Change Guidance, or other relevant considerations, suggest that the changes sought by the Applicant are material changes and is satisfied that the changes requested by the Applicant are not material changes to the 2020 Order. The Secretary of State has therefore decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change in relation to the 2020 Order so as to authorise the changes sought by the Applicant.

Modifications to the draft Order

38. Minor drafting amendments have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms of the draft Order. These changes include:

- article 2(1)(a), provides for the insertion of text in article 4(a). The insertion of the suggested text as described has the effect of separating the existing words at the end of this provision. These words “to the extent of the limits of deviation shown on those plans” link back to the work plans. The Secretary of State has therefore inserted the amendment at the end of sub-paragraph (a).
- article 2(2), provides for amendments to article 4(b) and the Secretary of State feels for clarity new sub-paragraph should be substituted.
- article 3 makes provision for the certification of plans and documents. These provisions appear to the Secretary of State to duplicate the provisions already contained in article 45 in the 2020 Order and are therefore unnecessary. The provisions in article 45(1) would seem to appropriately cover the provisions in article 3(1) and (2) and are therefore not required. Article 3(3) is already covered by article 45(2).

Challenge to the decision

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

Notification of decision

40. The Secretary of State's decision on this application is being notified as required by regulation 8 of the 2011 Regulations.

Yours faithfully,

Gareth Leigh

LEGAL CHALLENGES RELATING TO DECISIONS MAKING CHANGES TO DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the PA08 to make a change to an Order granting development consent, 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 making the change is published. The West Midlands Rail Freight Interchange (Amendment) Order 2023 is 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).