The Planning Inspectorate

Meeting note

File reference	
Status	**Final**
Author	Callan Burchell
Date	29 March 2016
Meeting with	Four Ashes Limited
Venue	Temple Quay House, Bristol
Attendees	Morag Thomson – Eversheds Sue Willcox – Quod The Planning Inspectorate Susannah Guest - Infrastructure Planning Lead David Price – EIA Manager Callan Burchell - Assistant Case Officer
Meeting objectives	Introduction to the Four Ashes Strategic Rail Freight Interchange (SRFI) scheme
Circulation	All attendees

Summary of key points discussed and advice given:

The developer was reminded of the Planning Inspectorate's openness policy that any advice given will be recorded and published on the planning portal website under s51 of the Planning Act 2008 (as amended by the Localism Act 2011) (PA 2008) and that any advice given does not constitute legal advice upon which the developer (or others) can rely.

Introductions were made by everyone present, and individual roles were explained.

Project Introduction

The developer introduced the scheme to the Inspectorate and noted its location in the West Midlands, indicating that the relevant host boroughs would be South Staffordshire Council and Staffordshire County Council.

The developer made the Inspectorate aware of the current proximity to the M6, A449 and M54 and current rail links. The developer additionally noted its proximity to the SI Group Chemical Plant and i54 Hi-Tech Business Park.

The developer highlighted that they were aware of Highways England's proposals for an M54 – M6/M6 toll scheme. The Inspectorate enquired about the proximity and the developer noted the potential inter-relationships between these schemes.

The developer indicated that the scheme could be about 220ha in total incorporating about 5-6 million ft^2 of floorspace and being capable of taking up to 10 775m trains a day. The developer stressed that these figures were very provisional at this stage.

The developer noted the work that had previously informed preparation of the Regional Spatial Strategy and considered this supported a strategic need in the location for a Strategic Rail Freight Interchange.

Environmental

The developer made the Inspectorate aware that EIA regulations 6 and 8 are likely to be submitted for scoping by June 2016. The developer and the Inspectorate discussed the pros and cons associated with an early scoping request. The Inspectorate highlighted that the role of the scoping process is to support the refinement of the scope of the Environmental Statement (ES) and that timing was an important factor in determining efficacy. The Inspectorate also explained how advice given under s.51 of the PA2008 could be used to support pre-application decision making.

The developer queried whether any new advice or publications were being prepared by the Inspectorate and they were advised that an Advice Note on the Water Framework Directive was being prepared and also highlighted that the new EIA regulations transposing the new EIA Directive should be available in the near future. The Inspectorate briefly discussed some of the new measures included within the Directive although it was noted that this was subject to the transposition.

The developer provided a high level overview of the key features of the site and wider locale.

Consultation

The developer informed the Inspectorate that South Staffordshire Council have not had prior experience of a Nationally Significant Infrastructure Project and of the Planning Act 2008 process. The developer has provided an overview of the process and consultation requirements of the Act. The developer had advised the host borough to read the Inspectorate's published guidance. The Inspectorate enquired as to whether the Council had considered the relevant delegation of powers.

The Inspectorate advised the developer that it was beneficial to seek to avoid confusion by over-lapping or closely over-lapping consultation periods in respect of, for example, scoping consultation undertaken by the Inspectorate upon receipt of a scoping request and a developer's statutory or non-statutory consultation.

Timetable

The developer made the Inspectorate aware that on 12 April 2016 they will be presenting the proposed project to South Staffordshire Council's Cabinet.

The developer made the Inspectorate aware of an early indicative timetable that could include non-statutory consultation during summer 2016, statutory consultation in

early 2017 and formal submission in late 2017.

Queries

The developer made the Inspectorate aware that they may be considering an element of B2 manufacturing use within the site and were in the process of discussing options for how such development could be included within a Development Consent Order. There was discussion in respect of the provisions of PA2008 s26 and the National Network National Policy Statement. The developer suggested that there could be 3 options:

1. Identify such development as Associated Development;
2. Assume s26 allows manufacturing and processing as part of the NSIP;
3. Pursue a S35 direction.

The Inspectorate agreed to give further thought to this query.

The developer requested clarification on the Inspectorate's position as to how parameters should be articulated in application documents. The developer noted a recent case in respect of the York Potash proposals where the approach of writing parameters in to Schedule 1 of the DCO had been taken. The Inspectorate explained to the developer that this approach was driven by scheme-specific circumstances.

Follow up / specific decisions?

- Agree date for next Project Update Meeting, tentatively May 2016.

Post meeting note

Following discussion at this meeting (noted under the heading "Queries" above) the Inspectorate issued the advice below on 5 August 2016.

Your query related to a potential SFRI project (currently in the Pre-Application stage) and more specifically to the inclusion of B2 floorspace in an NSIP application. It related to the suggestion that the application could include the option for a maximum percentage of the floor space to be either B2 or B8 to enable the development to meet future occupier requirements for rail serviced B2 (proposal is for a max % figure rather than its location being fixed).

Whilst the proposal was in its early stages, working assumptions were that the elements of B2 floorspace could in the region of 1m sq.ft.

Policy background

- NN NPS footnote 42 on page 20 notes that "a SRFI is a large multi-purposes FRI and distribution centre linked into both the rail and trunk road system. It has rail-served warehousing and container handling facilities and may also include manufacturing and processing activities".

- PA2008 s26 provides the requirements in respect of SRFI being in England and at least 60ha and of handling certain circumstances. S26(6) states the rail freight interchange must include warehouses to which goods can be delivered

from the railway network in England either directly or by means of another form of transport.

Considerations for approaching the application

1. Include as part of the NSIP itself

2. Treat as associated development

3. Pursue a s.35 Direction

In respect of the first option, PA2008 s26 is the primary legislation that defines a SRFI as an NSIP and therefore an application would require a Development Consent Order (DCO). Policy statements cannot amend primary legislation. NNNPS footnote 42 on page 20 states "… including manufacturing and processing activities". This is not primary legislation and therefore does not amend PA2008. However, it is a statement of the Government's policy approach. We concur with the suggestion that such a proposal (for up to 20% of floorspace be B2) would not be part of the NSIP itself.

On the third option, there is a route to seek a s35 request via the SoS Transport. The heart of this matter would appear to be a question on interpretation of legislation and guidance, rather than whether the proposal would contain an NSIP. SoS Transport may not wish the s35 route to be seen as a way of determining such matters of interpretation. There may be a route to exploring using the s35 Direction on the basis of Business and Commercial use.

In respect of the second option, it would be for an applicant to clearly demonstrate that the development is associated development (AD) by reference to the DCLG guidance and case law. In particular an applicant would seek to demonstrate a direct relationship between the AD and the SRFI, that the B2 development is subordinate to the principal development and not an aim in itself, and that it is proportionate. CLG Guidance on Associated Development states at para 6 that associated development will, in most cases, be typical of development brought forward alongside the relevant type of principal development. NN NPS footnote 42 would appear to give some comfort that manufacturing and processing activities could be included as associated development. However as you have noted CLG Guidance on Associated Development states at para 5(ii) states that associated development "should not be aim in itself but should be subordinate". From the limited information available to date, it is difficult to know whether the B2 use would be an aim in itself, however it may be possible to suggest that by virtue of the "up to 20% cap" it would be subordinate to the principal SRFI development.

Whether or not this is an acceptance issue will depend on the information submitted by an applicant to justify their arguments at acceptance. If the information provided gave rise to sufficient doubt that the use could be considered to be AD it might be open to the SoS to conclude that the application were not of a sufficient standard to examine. This could be on the basis that description of development for which development consent were sought was not sufficiently clear, the information provided is not sufficient to enable an effective examination of the issues because of concerns that part of the application could not lawfully form part of a development consent order etc. Such a decision could be subject to JR on the basis that it were unreasonable.

Should an application be accepted but a decision later made by the ExA that this element of the proposal was not AD and could not be granted by the DCO, would it be possible to continue to examine the application, with this element removed. If, in applying the Wheatcroft principles, it would be so changed as to deprive those who were originally consulted on it at the Pre-Application stage the opportunity to have their say it may not be possible to continue to examine the application as changed. The ExA would also need to consider whether the application had changed so much that it was in effect a new application. All of this would depend on the extent of the development and importance of it to the scheme.