

# The Rail Central Rail Freight Interchange

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Northampton Gateway  
Examination

Written Summary of Oral  
Submissions made at DCO ISH1

Northampton Gateway PINS Reference Number  
**TR050006**

**6 November 2018**

The Applicant for Rail Central sets out below the oral submissions made on their behalf at the DCO ISH1 which took place on 9 October 2018, preceded in each case by the relevant DCO ISH1 question and the extracted section of the draft Development Consent Order ("dDCO").

**1. Submission No. 1**

DCO ISH1 Question

Q. No	Part of DCO	Drafting example (where relevant)	Question
19.	Art 11	<i>“The undertaker may during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any</i>	‘Temporary’ is not defined (the “reasonable” time limit applies to aspects of the temporary stopping up, but that is somewhat open-ended). Please give consideration to some test or limit for both the temporary stopping up and the “reasonable” time.

Extracted section of dDCO referred to

**Development consent granted by the Order**

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Nothing in this Order prevents the erection of any temporary means of enclosure and the temporary display of site notices or advertisement immediately upon this Order coming into force.

**Temporary stopping up of streets**

11.—(1) The undertaker may during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld.

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) If a street authority has received an application for consent under paragraph (3) and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

## Submission

- 1.1 Counsel for the Applicant for Rail Central submitted that, as it is drafted, Article 3(2) of the draft Development Consent Order raises a question of whether the development that is described is subject to any requirements, given the way it is phrased and that nothing in the Order prevents those developments taking place immediately. This in turn would raise the question of how it might be affected by requirements, although if it is moved to a requirement as was indicated by Northampton Gateway at the ISH, that would be an opportunity to address this concern.

## 2. Submission No.2

### DCO ISH1 Question

Q. No	Part of DCO	Drafting example (where relevant)	Question
44.	Art 46(1) – effect of other enactments (known and unknown)	-	The ExA notes the comment in the Applicant’s Explanatory Memorandum. The ExA would like to hear submissions on the effect of this on known statutes, for example the Environment Act controls on discharges to the water environment, or the on-site disposal of waste when the development is operational.

### Extracted section of dDCO referred to

#### **Disapplication, application and modification of legislative provisions**

**46.—**(1) Where an application is made to any party for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act**(b)**; and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(10) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

### Submission

- 2.1 The Applicant for Rail Central has a number of concerns about Article 46(10). These concerns are not assisted by the inadequate explanation in the Explanatory Memorandum. The Applicant for Rail Central’s concerns include that the provision would make any enactment subject to the provisions of the Order whether it would frustrate the scheme or not; and the fact that it is a blanket provision which would also catch new enactments, where Parliament has not otherwise seen fit to limit their effect.
- 2.2 However, Northampton Gateway indicated that it would delete Article 46(10) in the next draft DCO. Accordingly, Rail Central did not take time identifying the various concerns they had about it.

### 3. Submission No.3

#### DCO ISH1 Question

Q. No	Part of DCO	Drafting example (where relevant)	Question
51.	R3 Components of development and phasing	<i>"(3) A rail terminal capable of handling at least four goods trains per day must be constructed and available for use prior to..."</i>	How is a "Component" defined?  Please specify the length for the trains – this could otherwise be meaningless.
52.	R3(3)		Should not the occupation of the non-rail-served warehousing also be restricted pending completion of the rail terminal?

#### Extracted section of dDCO referred to

##### **Components of development and phasing**

3.—(1) No component of the authorised development on the main site is to commence until details of the phasing of that component have been submitted to and approved in writing by the relevant planning authority. The components for the purposes of this requirement are—

- (a) earthworks;
- (b) rail infrastructure;
- (c) roads within the main site;
- (d) surface water and foul drainage;
- (e) development plots;
- (f) landscaping and ecological mitigation; and
- (g) services,

this list can be subject to amendment by agreement with the relevant planning authority.

(2) The authorised development must be carried out in accordance with the approach to phasing set out on the main site phasing plan and the main site built development and landscape surrounds proposed components and sequence plan unless otherwise agreed in writing with the relevant planning authority

(3) A rail terminal capable of handling at least four goods trains per day must be constructed and available for use prior to the occupation of any of the rail served warehousing unless otherwise agreed in writing with the relevant planning authority.

#### Submission

- 3.1 The tailpiece in Requirement 3(3) is unlawful. It provides a mechanism by which Northampton Gateway may, by the backdoor, be authorised under a DCO to deliver a scheme which would comprise road served warehousing only and not a rail freight

interchange at all. Such a scheme would not amount to a nationally significant infrastructure project.

3.2 There are two points:

- (a) First, the tailpiece allows – albeit with the agreement of the local planning authority (but without recourse to the Secretary of State) – for the scheme to be built out without the rail terminal. As set out above, this would be unlawful. The Planning Act 2008 may not be used to grant a Development Consent Order which contains within it the capacity to approve the carrying out of a development which would neither be a Nationally Significant Infrastructure Project nor associated development.
- (b) Secondly, the potential effect of requirement 3(3) as outlined above, raises a question of compliance with paragraph 4.88 of the NN NPS, given the policy requirements for the initial stages of the development to provide an operational Network Rail network connection in areas for inter-modal handling and container storage. Compliance with the NN NPS is, of course, central to decision making under the PA 2008.

3.3 Northampton Gateway indicated that the tailpiece was meant to address the timing of the delivery of the rail terminal and not the delivery itself. The current drafting does not so limit the effect of the tailpiece.

4. **Submission No.4**

DCO ISH1 Question

Q. No	Part of DCO	Drafting example (where relevant)	Question
54.	R6(2)	“(2) This requirement is enforceable by the relevant body or bodies identified in column (4) of the table contained in requirement 6(1).”	Why is enforcement not by the district planning authorities? Highways England will not have experience or expertise in planning enforcement and the County planning authority’s expertise will lie in minerals and waste planning. In addition, the functions of the County Council are in the course of being re-arranged and redistributed in a local government re-arrangement in Northamptonshire so it would be preferable to allocate enforcement by statutory designation (eg local planning authority, or relevant planning authority) rather than name (Northamptonshire County Council). It is a criminal offence to breach a requirement, which allows for private prosecutions, so to limit the enforcing authority may be inappropriate for that reason also. The ExA invites observations from the district planning authorities, highways authority and Highways England as well as the Applicant.

[See next page for Extracted section of dDCO referred to]

6.—(1) The undertaker must use reasonable endeavours to complete the highway works identified in column (1) of the table below by no later than the stage of development set out in column (3) of the table below or such alternative later triggers as are agreed by the relevant body identified in column (4).

<i>(1) Item as described in Schedule 1</i>	<i>(2) Description</i>	<i>(3) Stage of Development</i>	<i>(4) Relevant Body</i>
7(1)	A508 dualling and main site access roundabout	To be completed prior to the occupation of first warehouse to be occupied	Northampton County Council
8(1), (2) and (3)	M1 Junction 15 improvements including A45	To be completed prior to the occupation of first warehouse to be occupied	Highways England
9(1), (2) and (3)	Saxon Avenue, C67 Watering Lane and Collingtree Footpath Bridge (highway works)	To be completed prior to the occupation of first warehouse to be occupied	Northamptonshire County Council
11(1)	M1 Junction 15A improvements	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Highways England
11(2)	M1 Junction 15A improvements (A5123)	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Northamptonshire County Council
12(1)	A508 Blisworth Road junction improvement including footway improvements	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Northamptonshire County Council
13	A508 Roade Bypass	To be completed within the earliest of:	Northamptonshire County Council
		(i) 2 years of occupation of first warehouse to be occupied; or (ii) 4 years from the commencement of Works No. 8	
14	A508/C26 Rookery Lane/ Ashton Road junction improvement	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Northamptonshire County Council
15	A508/C85 Pury Road junction improvement	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Northamptonshire County Council
16(1) and (2)	Knock Lane/Blisworth Road (Parish of Roade) improvements	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Northamptonshire County Council
17	A508 Grafton Regis improvements	To be completed prior to the opening to traffic of the A508 Roade Bypass (Works No. 13)	Northamptonshire County Council

(2) This requirement is enforceable by the relevant body or bodies identified in column (4) of the table contained in requirement 6(1).



## Submission

- 4.1 Counsel for the Applicant for Rail Central queried whether the phrase 'reasonable endeavours' in the context of requirement 6(1) was going to be amended in the revised version. Northampton Gateway clarified that the wording was as per the East Midlands Gateway Order but that Northampton Gateway were content to delete the wording. This removes the Applicant for Rail Central's concerns on this specific aspect of Requirement 6 (which related to the fact 'reasonable endeavours is neither precise or enforceable).

5. **Submission No.5**

DCO ISH1 Question

Q. No	Part of DCO	Question
107.	Environmental assessment and the DCO	<p><b>Background</b></p> <p>The DCO provides in a number of places for the authorised development to be altered. For example, in article 4 where the limits in the parameters plan can be exceeded in some circumstances, article 2 in the definition of maintenance, article 45 (works required by the protective provisions), and Further works in Schedule 1.</p> <p>Requirement 4 allows the travel plan to be varied with the agreement of the relevant planning authority. Requirement 8 provides for the submission of details which must be in general accordance with the parameters plan, but this does not appear to preclude details which exceed those limits. By Requirement 9 they can be altered with the agreement of the relevant planning authority. Requirements 11 (Landscape and Ecological Management Plan), 13 (Earthworks), 15 (Lighting), and 17 (Flood risk and surface water drainage) 18 (Surface water drainage) and 19 (Flood risk) are examples of requirements which allow for approved details to be changed, or for schemes and protections to be varied, with the agreement of usually the local planning authorities. Requirement 21, which controls the hours of construction working, allows those hours to be changed. This is not a complete list.</p> <p>The proposed development has been subject to environmental assessment as a Schedule 2 project under the Infrastructure Planning (Environmental Assessment) Regulations 2017.</p> <p><b>Issue A</b></p> <p>Article 4 provides that the authorised development must be carried out within the parameters on the parameters plan and the limits of deviation. In the case of highways works and railway works in Works Nos 1 and 2 some leeway is given to the extent of an upwards or downwards deviation of up to 1.5 metres in either direction.</p> <p>However, in the case at least of the limits of deviation, in respect of the highway works and the railway works in Works Nos 1 and 2, those limits do not apply where the relevant planning authority is satisfied that a deviation in excess of those limits “would not give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement”.</p> <p>Measurements are approximate – see article 2(3). By article 2(6) where the term “approximate” appears before a measurement that word “does not authorise any works which would result in significant environmental</p>

	<p>effects which have not been assessed in the environmental statement”.</p> <p>There is a power to maintain the authorised development in article 6 and that is constrained by Art 6(2) which states that the power “does not extend to any maintenance works which would give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement”.</p> <p>The Further works in Schedule 1, which form part of the authorised development, are extensive, and are subject to the proviso that “such works do not give rise to any materially new or materially worse environmental effects than those assessed in the environmental statement”.</p> <p>The ExA notes that the tests used in the dDCO vary. The principal tests are whether the change would “give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement” and “would result in significant environmental effects which have not been assessed in the environmental statement”.</p> <p>Where comparison with effects already assessed is to take place, the draft DCO usually compares with the assessment in the environmental statement. However environmental assessment is a process as the 2014 directive emphasises.</p> <p>The test in the environmental assessment directive (2011/92/EU, as amended by 2014/52/EU) is whether the project is “likely to have significant effects” (see Art 1 of the 2014 directive, amending Art 3 of the 2011 directive).</p> <p>Question 107A</p> <p>The Applicant, district planning authorities and county council are requested to consider the different formulations and to be ready to answer questions at the DCO ISH on (a) the need for consistency, (b) what they consider should be the correct approach, (c) the intent, meaning and drafting of article 4, (d) whether comparisons should be against the ES or effects identified and assessed in the EIA as a whole and (e) any other relevant issues concerning the test and its application in the dDCO.</p> <p>Other interested persons may also wish to participate on these issues at the ISH and should identify themselves in advance. They should avoid duplication and ensure their submissions are focussed on these points. Please see Annex F (Notification of Hearings) and provide the Case Manager with the information there requested.</p> <p>All persons making submissions at the ISH on this issue should be ready to submit them in writing following the ISH.</p>
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Extracted section of dDCO referred to

#### **Parameters of authorised development**

4. The authorised development is to be carried out within the parameters shown and described on the parameters plan and in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) in respect of the highway works deviate vertically from the levels shown on the highway plans to a maximum of 1.5 metres upwards or downwards; and
- (c) in respect of the railway works comprised in Works Nos. 1 and 2 deviate vertically from the levels shown on the railway plans to a maximum of 1.5 metres upwards or downwards,

except that these maximum limits described in (a) to (c) do not apply to constrain the authorised development when it is demonstrated by the undertaker to the relevant planning authority's satisfaction and the relevant planning authority certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement.

#### **Governance of requirements and protective provisions relating to highway works**

45.—(1) When in any requirement or in Parts 2 and 3 of Schedule 13 (protective provisions) approval or agreement is required of, or with, anybody in relation to the content, carrying out or use of the authorised development (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development which would give rise to materially new or materially worse environmental effects in comparison with those assessed in the environmental statement or any updated environmental information supplied under the 2017 EIA Regulations(a).

(2) When any details, plans or other matters have been agreed or approved by the relevant planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 13 then they may subsequently be amended by agreement with the relevant planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development which would give rise to any materially new or materially worse environmental effects in comparison with those assessed in the environmental statement or any updated environmental information supplied under the 2017 EIA Regulations.

(3) Unless otherwise stated in a requirement the requirement is enforceable by the relevant planning authority.

#### Submission

- 5.1 Counsel for the Applicant for Rail Central submitted that the point raised by the ExA regarding the varying tests for altering the draft Development Consent Order was correct.
- 5.2 In this particular instance the Environmental Statement represents a snapshot in time and is in a sense a point in a process, which, as set out in the 2017 Regulations, explicitly makes provision for information which comes in after the Environmental Statement is submitted. The 2017 Regulations define the term 'Updated Environmental Statement', to mean the

Environmental Statement submitted as part of an application for an Order granting development consent, updated to include any further information (Regulation 3(1)). 'Further information', is also a defined term, is in summary additional information which is needed to make sure the Environmental Statement satisfies the regulations. However there is then also a further defined term - 'any other information' - which is defined as any other substantive information provided by the Applicant in relation to the Environmental Statement or updated Environmental Statement. Consequently the difficulty with simply tying the caveat within the requirement to the Updated Environmental Statement is that it includes 'further information', but not anything that the Applicant submits during the course of the examination which whilst not strictly necessary to make the Environmental Statement an Environmental Statement (acknowledged to be a high hurdle), nevertheless forms part of the 'environmental information' (as defined) which the Secretary of State is obliged to take into account (Regulation 21(1)(a)-(d)), and may very well be an important consideration for the Secretary of State in concluding that the environmental effects of the proposed development are acceptable. The Environmental Statement in the A14 examination included a great number of updates and the term Environmental Statement was drafted to include such updates. At the moment the Environmental Statement in the Northampton Gateway dDCO is defined just as the single document.

- 5.3 Counsel for the Applicant for Rail Central submitted that revised drafting was required to reflect the position, and to ensure that the essential point was addressed. Counsel suggested that regulation 3 of the 2017 EIA infrastructure regulation may assist, as it seeks to define terms which explain how the regulations operate, taking on board the inevitability that important elements of the environmental information submitted on behalf of an applicant will often come in post submission.

6. **Submission No.6**

DCO ISH1 Question

Q. No	Part of DCO	Drafting example (where relevant)	Question
71.	R18 – Flood risk and surface water drainage	“ ... based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development in accordance with chapter 7 of the environmental statement ...”	Why has the assessment not already been carried out? Please comment also in relation to ex parte Hardy (referred to above in relation to Art 14(2)).

Extracted section of dDCO referred to

18.—(1) No component of the authorised development on the main site (excluding archaeological investigation, soil movement, geotechnical or ground contamination investigation and ecological mitigation works) may commence until a surface water drainage scheme for that component based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development in accordance with chapter 7 of the environmental statement has been submitted to and approved in writing by the relevant planning authority or such other approval process that is put in place under the Flood and Water Management Act 2010. The scheme must be generally in accordance with the sustainable drainage statement.

(2) The surface water drainage scheme must be implemented in accordance with the details approved by the relevant planning authority or in accordance with any variations to the details agreed in writing by the relevant planning authority.

Submission

- 6.1 Counsel for Rail Central submitted that requirement 18 in the draft Development Consent Order is another instance where the issue of an assessment not already having been carried out arose, with reference to the ex parte Hardy case.

## 7. Submission No.7

### DCO ISH1 Question

Question extracted from Agenda, located at Annex G:

#### 3. The function and structure of the draft DCO

The ExA will ask the applicant about:

- the proposed articles;
- the proposed project description (Sch 1 Parts 1 and 2);
- the proposed requirements (Sch 2);
- the need for and progress on protective provisions (Sch 13);
- the need for and progress on any planning obligations;
- the need for and progress on any related consents; and
- ongoing negotiations and statements of common ground.

### Submission

- 7.1 Counsel for the Applicant for Rail Central submitted that, regarding the protective provisions, the Applicant for Rail Central was reasonably open minded as to the best way of providing appropriate provision within the DCO to deal with overlaps and issues relating to the implementation of both the Northampton Gateway and Rail Central schemes if both were to be consented. Whether they are to do with the rail network, the highway network or otherwise, it may be that some of those overlaps are best dealt with either through provision within protective provisions for Network Rail or Highways England, or some separate provision whether it's a protective provision or requirements that cater for Rail Central. Those are matters under active consideration between the parties.
- 7.2 Counsel further submitted that the Applicant for Rail Central appreciates that they need to persuade the Examining Authority and the Secretary of State as to any suggestions to be included in Northampton Gateway's DCO. This situation that arises in this case goes beyond the situation where you have two commercial developments benefiting from planning permission, on either side of the street, and where the interactions between the projects are adequately catered for by other regimes of control unaffected by the existence of planning permission. In this case both schemes will be approved pursuant to statutory instruments which can and will override other statutory controls and contain compulsory powers to allow the scheme to be implemented. Absent other provision, for example, Rail Central's DCO could potentially contain provisions that amend or disapply provisions in any DCO previously granted for the Northampton Gateway scheme. In this case the two schemes share, for example, access to Network Rail's infrastructure and there must therefore be some process for managing the interaction between them, a process that Network Rail has to be involved in. The Applicant for Rail Central thinks there is a case for that process being managed, in the public interest, through the development consent orders that authorise those developments to take place.
- 7.3 Counsel further submitted that for similar reasons, in relation to Junction 15a, it is plainly unsatisfactory to leave to 'commercial negotiation' the question of whether one scheme of

improvement is carried out which would address the impacts of both schemes (Rail Central's works) or alternatively two schemes implemented in succession, the first of which would be rendered entirely unnecessary by the second. Whilst Rail Central will undertake its works if it obtains development in any event, the important public interest in ensuring appropriate mitigation for cumulative impacts, and avoiding unnecessary disruption to an important part of the motorway network, means that it is not acceptable simply to leave this question to 'commercial negotiation' even if that did in fact provide a clear and reliable mechanism for governing the interaction (which is far from clear). A local resident or a business dependent on the efficient operation of this part of the highway network would not thank the Secretary of State for the additional and wholly avoidable disruption and adverse economic and environmental effects if Northampton Gateway were to implement its works at Junction 15a only for Rail Central to undo them and implement its own shortly thereafter. Such an obviously undesirable situation is available if careful consideration is given to the necessary provisions in this dDCO. Such consideration is clearly in the public interest, and the Secretary of State has it within his power to ensure appropriate provision is made to address these cumulative issues at this stage. The Applicant for Rail Central thinks that Highways England would have to have some role in that and that that ought to be encapsulated within a development consent order that looks to identify and then manage in the public interest the effects, including cumulative effects, on the environment and important pieces of infrastructure.