

TR050006: Application by Roxhill (Junction 15) Limited for an Order Granting Development Consent for Northampton Gateway Rail Freight Interchange

Agenda for the Issue Specific Hearing 3 on the draft Development Consent Order

This document sets out the agenda for the second Issue Specific Hearing (ISH3) into the draft Development Consent Order that was notified by the Examining Authority (ExA) on 23 November 2018 and in the Examination Timetable.

Date: Thursday 20 December 2018
Time: 09.30 am
Registration: From 09.00 am
Venue: Hilton Northampton, Watering Lane,
Northampton, NN4 0XW

Access and Parking: Free parking is available at the venue.

List of requested attendees:

- Roxhill (Junction 15) Limited (the Applicant)
- Highways England
- Network Rail
- Ashfield Land and Gazeley GLP Northampton (Rail Central)
- South Northamptonshire District Council
- Northampton Borough Council
- Northamptonshire County Council
- Any other interested parties with an interest in the drafting of the DCO, seeking protective provisions or any related side agreements

Agenda

1. Introductions

2. Purpose of the hearing

A second hearing on the draft DCO is being held to address matters, issues and questions identified by the ExA both during and after its initial assessment of preliminary issues, and on consideration of written representations and other documents and submissions. These may include:

- the need for changes to other legislative provisions, ensuring that these are clear and are not unduly reductive of other persons' rights;
- whether the policy tests for planning conditions set out at paragraph 55 of the National Planning Policy Framework (NPPF) and which are relevant to requirements are met; and
- the need for statutory undertaker and any other consents.

In addition to the matters identified in this agenda, the ExA will review detailed issues and questions about individual DCO provisions that it has identified in the attached schedule.

This hearing will not examine the detailed content of provisions relating to the compulsory acquisition of land or rights, or temporary possession of land. Responses to these should also be set out in written representations.

3. Specific issues and questions bearing on the DCO, raised by the Examining authority

A schedule of issues and questions is attached to this agenda. Questions will be put to the Applicant and views will be sought from interested parties present on the following.

- 1 The s.106 'Confirmation and Compliance Document', Doc 8.5 [REP1-024].
- 2 The Section 106 agreement, Doc 6.4A [REP1-003].
- 3 The relationship between the DCO and EIA – see particularly the Applicant's Post-Hearing submissions Doc 8.1 [REP1-019] and the draft DCO submitted at Deadline 2 Doc 3.1B [REP2-005], including Articles 2(6); 4; 6(3); 45(1) and (2); and Sch 1 Part 2, Further Works.
- 4 Archaeology, requirement 14 and environmental assessment. (Note that archaeology will be considered at ISH3 and **not** at ISH2. Accordingly this is the agenda item at which archaeological issues will be examined).
- 5 Other issues where the judgment in *ex p Hardy* is relevant.
- 6 Follow up on the discussion at ISH1 and submissions arising out of Questions ISH1:107A, 107B and 107C.
- 7 Powers for the provisions of the DCO, the evidence to meet the tests in the powers, and the limitations on the powers.
- 8 Associated development – including discussion of the position on the Roade Bypass.
- 9 Decommissioning, demolition and waste (Question FWQ 1.15.1).
- 10 Other matters identified by the ExA arising out of submissions at Deadlines 1, 2 and 3; the dDCO (Doc 3.1B) and other application and examination material.

The ExA may also ask those present about other questions on the schedule.

4. Discharge of requirements and conditions, appeals and disputes

The ExA will ask the bodies and local authorities whether they have any significant concerns in principle with the proposed approaches taken to the discharge of requirements, or for managing appeals or disputes arising from these, particularly the revised provisions for appeals in the Deadline 2 version of the dDCO – Doc 3.1B [REP2-005].

5. The function and structure of the draft DCO

The ExA may also 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.

6. Review of issues and actions arising

7. Next steps

8. Closure of the hearing

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Schedule of Examining Authority issues and questions relating to the draft Development Consent Order

The issues and questions set out below are based on the Applicant's draft Development Consent Order (dDCO) submitted at Deadline 2 [[REP2-006](#)¹] They will be referred to in the second issue-specific hearing (ISH3) into the dDCO on **Thursday 20 December 2018 at 9.30 am**. Unless stated otherwise, all questions are addressed to the Applicant. *Where column two lists a party, the question is directed **also** to that party.* Responses and observations from the relevant planning authorities, who have a leading role enforcing the DCO, if made, are generally welcomed on any question, whether or not the relevant authority is specified in column two. Other Interested Parties attending the hearing may also wish to respond. Questions may be expanded in the Examining Authority's (ExA's) Further Written Questions.

Abbreviations Used

Art	<i>Article</i>
dDCO	<i>Draft DCO</i>
East Midlands	<i>East Midlands Gateway Strategic Rail Freight Interchange</i>
ES	<i>Environmental Statement</i>
ExA	<i>Examining authority</i>
NCC	<i>Northamptonshire County Council</i>
PA 2008	<i>Planning Act 2008</i>
PROW	<i>Public right of way</i>
R	<i>Requirement</i>
RPA	<i>Relevant planning authority</i>
Sch	<i>Schedule</i>
SoCG	<i>Statement of Common Ground</i>

¹ [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050006/TR050006-000946-Doc%203.1B%20-%20Draft%20Development%20Consent%20Order%20\(Clean\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050006/TR050006-000946-Doc%203.1B%20-%20Draft%20Development%20Consent%20Order%20(Clean).pdf)

The Examination Library

References below eg [REP2-006] are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050006/TR050006-000653-NGRFI%20Examination%20Library.pdf>

It will be updated as the Examination progresses.

Citation of Questions

Questions in this table should be cited as follows: Hearing reference: question number, eg **ISH3:1** – refers to question 1 in this table.

Q. No	Persons in addition to the Applicant to whom the question is directed	Part of DCO	Drafting example (where relevant)	Question
1.		Preamble	Exclusion of Sch 5 para 25 from the list of powers exercised by the SoS	Given the provisions of Art 21, why is para 25 of Sch 5 omitted from the list of powers
2.	RPAs, NCC	Authorised development Arts 2 & 3		S.26 PA 2008 defines a strategic rail freight interchange and states that it must be capable of receiving at least four goods trains per day. Is this an ongoing requirement which applies throughout the life of an SRFI and if so, should it be secured by a formal requirement in Sch 2?
3.	NCC	Art 10	<i>Permanent stopping up of streets</i>	Art10 enables the permanent stopping up of streets, and provision of substitutes. The requirement in s136(1) PA 2008 is that an alternative is provided in the case of the stopping up a highway, or that the SoS is satisfied that no alternative is required. (a) Are the streets to be stopped up all highways? (b) Are there any cases where alternatives are not being provided? (c) If there are, is there evidence to enable the SoS conclude that an alternative is not required, and what is that evidence?
4.	HE	Art 10 and Sch 4 Column 2	<i>M1 slip road</i>	The M1 slip road to be provided appears to be shorter but wider than the length to be stopped up. See doc 2.3B [APP-022]. This may be a realignment as well as widening. Other plans need to be consulted. See Doc 2.4B [APP-028]; which describes the new Jn 15. However,

				<p>technically the new substitute appears to end short of the dumb-bell roundabout.</p> <p>(a) Is this the case?</p> <p>(b) Why does Art 10 stop up part of the slip road when there does not appear to be any stopping up of the other redundant parts of the Junction?</p>
5.	NCC	Art 10 and Sch 4 Column 2	<i>A508 highway; The three stoppings up at the Rookery Lane/ Ashton Road/ A506 jn (x, xii and xiv on Doc 2.3E [APP-025])</i>	<p>The three stoppings up at the Rookery Lane/ Ashton Road/ A506 jn (x, xii and xiv on Doc 2.3E [APP-025]) are replaced by a new junction in three separated parts (xi, xiii, and xv), one for each of the stoppings up. When combined they appear to be an alternative. But taken separately they would be inadequate. For example if the portion of Rookery Lane to be stopped up, which is currently the mouth of the junction with the A506, was only replaced by the corresponding new highway it would not reach the A506 because the new part of the A506 is located further east. The stopped up part of Rookery Lane is marked xii and the alternative is marked xiii on Inset 5C. Is not something needed on sequencing to enable the SoS to be satisfied that there will be an alternative? If so, please could the Applicant provide suitable drafting?</p>
6.	NCC, Messrs AW, W & R Irlam	Art 10 and Sch 4 Column 2	<i>A508 highway The three stoppings up at the Rookery Lane/ Ashton Road/ A506 jn (x, xii and xiv on Doc 2.3E [APP-025])</i>	<p>The Relevant Representation from Berrys on behalf of AW, W & R Irlam says this:</p> <p>“The current layout [of the junction] facilitates tractors with cultivators, long combine harvester headers, etc., to swiftly across [sic] the junction without any road furniture/ structures impeding the route. The revised layout includes a central island which will impede or possibly even prevent agricultural vehicles swiftly and safely crossing. ...</p> <p>The conclusion is that if the DCO is granted then it must</p>

				<p>incorporate a further revision to the road layout at this junction to ensure the on-going safety of large vehicles including agricultural machinery. Any change to junction layout must also minimise land taken from agricultural production.”</p> <p>Does the Applicant propose any redesign of the junction? If so, how?</p> <p>Does this representation go to the question of whether the stopping up can be approved at all, because of the design of the alternative? Or does it go to the question of whether the adverse impact of the NSIP would outweigh the benefits, rather than to whether there is an alternative highway? Or does it go to something else, and if so, to what?</p>
7.	NCC	11	<i>Temporary stopping up of streets</i>	Please can the Applicant explain how these temporary stoppings up relate to the development or to matters ancillary to the development (bearing in mind the words of s120(3) of PA 2008); or give some other power for the SoS to include Art 11.
8.	NCC	12 and Sch 5 Pt 1	<i>Stopping up of Bridleway KZ10 and RZ1</i>	In the case of the stopping up of Bridleways KZ10 and RZ1 and their replacement by a crossing of the new Roade Bypass from points 18-21-20 do they not need to be done together as KZ10 and RZ1 currently connect together. Otherwise, on the moving of one without the other, it would terminate in what appears currently to be a field. See Doc 2.3D [APP-024]. Currently the crossing 18-21-20 is provided in two parts, one relating to each of the two stoppings up.
9.	NCC	12 and Sch 5 Pt 2	<i>Stoppings up where no alternative is to be provided</i>	As to the stoppings up in Part 2, where no alternative is to be provided, a judgment is needed on each of them as to whether no alternative is required. They are KZ19, RZ3

				<p>and RZ6.</p> <p>In the case of the stopping up of Bridleway RZ6 at the roundabout on Stratford Road it is not clear whether or not the new highway will reach all the way to Point 25, where the stopping up begins. This needs to be clarified. Please will the Applicant explain why an alternative is not required? Will horses and pedestrians be able to reach the carriageway?</p>
10.	NCC	12 and Sch 5 Pt 3	<i>New PROWs to be created</i>	<p>The Explanatory Memorandum does not explain why these new PROWs are to be created. Please will the Applicant explain why, and what power in PA 2008 they submit enables the SoS to include this, and guide the ExA to the evidence in the application which shows that the power may be exercised in this case.</p> <p>Please will the Applicant explain how the PROWs listed in Sch 5 Pt 3 fall within the Works described in Sch 1.</p>
11.	NCC	12 and Sch 5 Pt 3	<i>New PROWs to be created: cycle track between points 9 and 10 on Doc 2.3C [APP-023]</i>	<p>The new cycle track between points 9 and 10 on Doc 2.3C [APP-023] however runs straight into and becomes a footpath at point 10. Looking at the illustrative masterplan [APP-066] an entrance into the site is anticipated there, with a 20 cycle rack space. A cycle track might therefore be acceptable as long as the entrance is there. But if it is not, the cycle path will not be needed but will still be available and there might be a temptation to ride on along the footpath. That might be an adverse impact to weigh under s104(7) against benefits.</p> <p>Please could the Applicant comment and address how the adverse impact could be avoided or mitigated?</p> <p>This cycle path is in the area of Works No 6 but does not</p>

				appear to be described in Sch 1. Please can the Applicant comment and clarify? Is it necessary to describe it in Works No 6? (For clarity, the posing of the last question does not imply that the ExA has a view.)
12.	NCC	Art 13 - accesses	<i>Art 13(5) permits some closures without substitutions. The justification is given in para 7.41 of the EM</i>	<p>Please will the Applicant explain why closing access H is acceptable? The adjacent land appears to be the development site (in which case would not the reason for the closure of E be applicable – the site is being developed and the access is not needed), but the reason refers to the adjacent landowner having a nearby alternative access?</p> <p>Please will the Applicant explain and clarify the reason no replacement is needed for J?</p> <p>The ExA is having difficult seeing that the closure of AG on the Roade Bypass is explained in the EM.</p> <p>The same applies to AR (which includes a crossing of the WCML which may already be in existence). Note that Land Plan 2.1D [AS-019] has rights to be acquired on the line of this access, presumably so as to provide it (shaded blue). (There is also a khaki thick dashed shading on this route, which is not listed in the Legend to that plan. Please could the Applicant address that also?).</p> <p>And also to C on Inset 1A of Doc 2.3A [APP-021].</p> <p>Please can the Applicant fully explain AG, AR and C so that the SoS can know how they relate to the development and are within s120(3), or provide explanation and evidence of the use of some other power to which the Applicant directs the ExA.</p>

13.	NCC	Art 17(1)	<i>Art 17(1) revokes the Northampton Church Lane, Blisworth) Weight Restriction) Order 1971 which imposes a 3 ton (sic) restriction on Church Lane, Blisworth. According to Google Maps Church Lane is a short lane of about 100 metres leading from Stoke Road to the High Street.</i>	It is currently not clear to the ExA that Art 17(1) makes a provision which is "related to, or to matters ancillary to, the development" – the test in s120. The EM appears to give no explanation. Will Church Lane be covered by a new weight restriction? Please can the Applicant and NCC explain the reason for this revocation, direct the ExA to the relevant evidence or otherwise explain the connection?
14.	NCC	Art 19	<i>There are zones, which the EM explains are shown on Doc 2.6C [APP-054] where a weight restriction of 7.5 tonnes is applied.</i>	The ExA presumes that the reason is mitigation explained in the transport section of the ES. Please can the Applicant however explain and point the ExA to the relevant sections? Please can the Applicant also demonstrate that the Article satisfies the tests in s120(3)?
15.	NCC, Highways England	Art 20	<i>The EM says this is for agreements to construct highways and alterations in accordance with the DCO.</i>	Please will the Applicant explain how these meet the "relate" test in s120. Without limiting the generality of this question, please consider particularly how the works in Art 20(1)(a) and (d) meet the "relate" test.
16.	Environment Agency, NCC, Highways England	Art 21	<i>This Article allows for drainage into watercourses, public sewers and drains in connection with the carrying out or maintenance of the development. Consent is</i>	Is this Article affected by s150 PA 2008? See also the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 Sch 1 and the reference to the Water Resources Act 1991 Sch 25 paras 5 and 6. Please will the Applicant supply evidence that s150 does not apply, or direct the ExA to where the consent under s150 can be found.

			<i>needed, not to be unreasonably withheld, from the watercourse etc owner. Consent is deemed after 28 days unless there is an express decision. There are other safeguards – see the terms of the Article for details.</i>	
17.		42	<i>Defence to statutory proceedings in nuisance</i>	The ExA notes that this is based on the model order. Would the Applicant please comment on the necessity for this given Article 5 and the decision of the House of Lords in <i>Allen v. Gulf Oil Refining</i> [1981] A.C. 1001?
18.	Natural England	43	<i>Felling or lopping of trees and removal of hedgerows</i>	Is this Article affected by s150 PA 2008? The list in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 includes s.16 of the Wildlife and Countryside Act 1981, which is a power to grant licences for various activities to do with fauna and flora. The ExA notes that Natural England has not raised any objection. How does Art 43 relate to s.16? Is s16 abrogated by anything in the DCO as a whole?
19.	Environment Agency	46(1)(a)(formerly 46(3))	<i>"(a) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 () in relation to the carrying on of a relevant flood risk</i>	Will the Applicant please explain how Reg 12 relates to the development (so that Art 46(1)(a) is within s120(5) PA 2008 and direct the ExA to where evidence of the consent of the Environment Agency as required by s150 PA 2008 and the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 is to be found, or provide such consent?

			<i>activity for the purpose of the works" does not apply</i>	
20.		46(1)(b) (formerly 46(3))	<i>"(b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991" do not apply</i>	(a) Will the Applicant please explain how these paragraphs of Sch 25 WRA 1991 relate to the development (so that Art 46(1)(b) is within PA s120(5). (b) Will the Applicant please explain who are the "appropriate agencies" under paragraphs 5 and 6 of Sch 25 WRA 1991 and direct the ExA to where provide evidence of the consent of the Environment Agency as required by s150 PA 2008 and the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 can be found, or provide such consent?
21.		46(1)(c) (formerly 46(3))	<i>"(c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991() in relation to watercourses for which Northamptonshire County Council is the drainage board concerned;" does not apply</i>	(a) Will the Applicant please explain whether there are any such watercourses to which the development relates, or whether s.23 relates to another matter for which provision may be made in the order? That is needed if s120(5) (a) is to authorise the provision. (b) s23 of the Land Drainage Act 1991 is listed in Schedule 2 Pt 1 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462 and therefore s150 applies. Please will the Applicant direct the ExA to where evidence of the consent of the drainage board can be found, or provide such consent?
22.		46(7) (formerly 46(9))	<i>"(7) Schedule 14 (miscellaneous controls) to this Order which makes provision applying/ modifying and excluding statutory provisions which relate</i>	(a) The Article says these relate to matters for which provision may be made by the order. Please will the Applicant to confirm this statement and explain the connection so as to demonstrate with evidence that there is a power for the SoS to make Art 46(7), and state which power is being relied on? (b) Please will the Applicant state whether s150 does or

			<i>to matters for which provision may be made by this Order has effect”</i>	does not apply to Art 46(7) and, if it does, point the ExA to evidence of the relevant consents or provide the consents?
23.	NCC, Highways England	2	<i>Definition of HGV</i>	The Article 2 definition Uses 7.5 tonnes. But other websites including https://www.gov.uk/government/publications/guide-to-lorry-types-and-weights HGV = vehicle over 3,500 kgs, i.e.3.5 tonnes. Please will the Applicant, Highways England and the County Council clarify and if 7.5 tonnes is intended explain and justify, so as to avoid any confusion.
			<i>Explanatory Memorandum</i>	
24.		1.2	<i>States the DCO has been drafted in accordance with the October 2015 version of Advice Note 15. Since then, in July 2018, a new version was issued.</i>	Please will the Applicant confirm that the DCO has been drafted in accordance with the new version?
25.		3.2	<i>This says the Main Site is the area for Works 1-7. But the August and November drafts of the DCO definition of Main Site says it is Works 1-6.</i>	Will the Applicant please explain which it is to be?
26.		3.2	<i>This also says the highways works are Works 8, 9 and 11 – 17. But the August and November drafts of the DCO say they are 7, 8, 9 and 11-17.</i>	Will the Applicant please explain which it is to be? (Work 7 is the work on the A508 to create the new access, temporary access, widening of the A508 up to Jn 15 and associated work)

27.		All		<p>Given the above questions on powers, and bearing in mind also para 1.4 of Advice Note 15, please will the Applicant update the Explanatory Memorandum to explain, for each and every provision of the DCO, which power in the PA is being used to make that provision, having regard also to, for example, s120 and all its subsections, s.150, and any other limits on the powers to make the DCO and its provisions?</p> <p>(The ExA appreciates that in many cases the provisions have appeared in other DCOs but that is not necessarily an assurance of validity.) Please can the update also include an explanation of how the tests for the powers in PA 2008 being used to make this DCO are met?</p>
			Section 106 agreement	
28.	SNDC, NBC and NCC			<p>Please will the relevant planning authorities and the County comment on the fact that some parts of the main site are not to be bound by the s106 agreement? Please will those of them who are to be parties to the s106 agreement (currently SNDC and NCC) please confirm that they are satisfied, after proper consideration, that the development cannot be constructed, occupied or used by any person without compliance with the obligations entered into by the First Owners, the Second Owner and the Developer in the s106 agreement? Should any other parts of the land over which the proposed development is to be carried out (whether on or off the Main Site) be bound by the s106 agreement and if so, why?</p>