

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 5 on the draft Development Consent Order

This document sets out the agenda for the third Issue Specific Hearing (ISH5) into the draft Development Consent Order (dDCO) that was notified by the Examining Authority (ExA) on Tuesday 5 February 2019 and in the Examination Timetable.

Date: Wednesday 13 March 2019
Time: 09.30am
Registration: From 09.00am
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

Attendees should also refer in preparation to the ExA's Commentary on the draft Development Consent Order and Schedule of Questions, issued on 5 February 2019.

The ExA has attached to the end of this agenda a list of typographical points on the dDCO for the Applicant's attention and a second list of typographical points on the draft s.106 agreement. The ExA requests that the Applicant submits a note indicating either that it accepts those points and will make the necessary changes or indicating which points it does not accept and its reasons, which should if possible be submitted prior to ISH5 or, if not, at the beginning of ISH5 (and should also be included in the Applicant's post-hearing submissions at Deadline 6 (19 March 2019)).

Agenda

1. Introductions

2. The divergence between the Applicant and Highways England (HE) on timescales for approvals – Arts 9, 13(3), 17(7), 21(4), and (10), 22(6); and deemed approvals (Sch 13 Part 2 para 15).

Concise oral submissions from the Applicant and HE.

3. The divergence between the Applicant and Network Rail (NR) – Sch 13 Part 1 para 4, possibly para 11(11) (omitted from Doc 3.1C – dDCO, but included in NR’s Deadline 3 submission of 30 November) [REP3-017].

Also, clarification of the position on para 22, no longer in DCO Doc 3.1C of 8 January 2019, but in dispute according to the Changes Tracker Doc 3.4A of 20 November 2018.

Concise oral submissions from the Applicant and Network Rail.

4. The divergence between the Applicant and Northamptonshire County Council (NCC) over (i) the scope of the undertaker's liability during the Defects and Maintenance Period, and (ii) the duration of the Defects and Maintenance period.

Concise oral submissions from the Applicant and NCC.

5. Interaction with Rail Central

- a. Junction 15A – arrangements to address the choice between the Applicant’s and the Rail Central scheme, and implementation of that choice (see also Schedule of Questions, DCO27).
- b. Footpaths – arrangements for connections; see Schedule of Questions, DCO12 and 26 and ExQ2.0.3.

6. The arrangements for dealing with submissions and appeals – Part 2 of Sch 2¹.

¹ Whilst the Applicant has largely adopted the model included in Advice Note 15, the local authorities have raised concerns about the shortening of timescales. The ExA has also raised questions. In considering what is justified the ExA proposes to take the following into consideration:

- 1 Can the Applicant establish a particular need for expedited procedures?
- 2 What are the public interest effects of applying expedited procedures and is there any material loss of relevant public engagement and oversight?
- 3 Have any steps been taken to address the additional workloads, costs and the like imposed on the RPAs by such procedures? (continued next page)

This will include the matters at item 4 of the agenda for ISH3, namely, whether the local authorities have any significant concerns in principle with the proposed approaches taken to the discharge of requirements, or for managing appeals or disputes arising from them.

Concise oral submissions from the Applicant and Relevant Planning Authorities.

7. The DCO and EIA

- a. Tailpieces – submissions on the issue raised at paragraph 3 of the ExA's Commentary on the dDCO.
- b. Screening in relation to applications made under tailpieces – submissions on the issue raised at paragraph 4 of the ExAs' Commentary on the dDCO.
- c. Ex p Hardy - submissions on the issues raised at paragraph 5 of the ExA's Commentary on the dDCO.

8. The s.106 agreement

- a. The Community Fund, and the test in the agreement for Qualifying Projects;
The ExA would like to hear submissions from the Applicant and SNC on the validity of this approach, in particular:
 - (i) how and whether the proposals are "important and relevant";
 - (ii) whether they would constitute material considerations if this were a mainstream planning application, and whether that is a relevant test;
 - (iii) whether and how they meet the policy tests;
 - (iv) when the policy test should be applied (in which respect the ExA draws attention to the definition of Qualifying Project in the agreement) and;
 - (v) the consequences of and remedies for a breach by SNC in performing its obligations in Schedule 3 of the agreement.The ExA draws attention to *Wright v. Forest of Dean* and the submissions by Rail Central at ISH3 on mandatory and discretionary material considerations and their relationship with matters which are "both important and relevant".
- b. Securing and enforcing the scheme to control lorry routeing from the Main Site.
- c. Schedule 4, para 3.2 – return of any unexpended Highway Capacity Contribution; the ExA requests submissions from the Applicant and

This is a non-exhaustive list. If the Applicant or any interested party wishes to suggest other factors or challenge the relevance of those listed above the ExA will hear argument on that.

If the answers to these sorts of questions are all positive then there may be case for expedited procedures.

County Council on the appropriateness of a five-year period for expenditure and therefore completion of the improvements to the Queen Eleanor Interchange and other mitigation specified at para 3.1.

- d. Air Quality contribution – comment and explanation for why this is not paid direct to the Borough.
- e. Update from the Applicant and relevant planning authorities (RPAs) and County Council on the current position in relation to the s.106 agreement, what further changes, if any, are intended and the schedule for its execution, and delivery of a certified copy of the executed document to the ExA.
- f. Update from the Applicant on the Confirmation and Compliance document Doc 8.5 [REP1-024].
- g. Update from the RPAs and County Council on title investigation and confirmation.

9. Regulation 123 (2)(2A) and (3) of the CIL Regulations 2010 (as amended) in relation to the Queen Eleanor Interchange, the Wootton Gyrotory, Junctions 15, 15A and the financial contributions to the improvement of the A5076 corridor referred to at paragraph 12.8.19 of Chapter 12 of the ES, and the larger Rail Central schemes also referred to at that paragraph.

Confirmations are requested from the RPAs, County Council, Highways England, Rail Central and Applicant that the delivery of none of these schemes pursuant to the Application (or in Rail Central's case their application) is affected by the restrictions in that Regulation. The parties are reminded that the definition of "relevant infrastructure" in Reg 123 includes "type of infrastructure" and that "type of infrastructure" is also referenced in Reg 123(3). The ExA appreciates that it has raised this question in part in earlier questions; however, it was not raised in relation to all the schemes listed above and the answers thus far seem to have focused only on whether or not the junctions are listed in the A45/M1 NGMS Memorandum of Understanding rather than the charging authority's infrastructure list. The "type of infrastructure" point also does not appear to have been addressed. A clear statement would be very helpful.

10. Associated development – including discussion of the position on the Roade Bypass.

11. Plans

- a. Schedule 1 to the dDCO – plans.
The Applicant is asked to double check Schedule 1 and the cross-referencing.
- b. Change to Inset Plan 1A of Doc 2.3A.

- c. The M1 slip road – Submissions from the Applicant and Highways England, by reference to plans to answer Question ISH3: 4(a) and (b). Please will the Applicant arrange for the relevant plans to be available on screen at the hearing.¹
- d. Renumbered plans in Schedule 16. There may be two discrepancies; Appendix 2.1 of the Environmental Statement (Doc 5.2) and Plan 2.15. According to Schedule 16 a version of Appendix 2.1 was received on 8 January 2019 (Deadline 4). However, the last version actually received was on 30 November 2018 (Deadline 3). The other document, 2.15 (The Rail Central footpath connections plan), is mentioned in Schedule 16, however the ExA is having difficulty tracing this. If it has been submitted could the Applicant please say when and, if not, could it be supplied?

12. Any matters the ExA wishes to raise arising from responses to the Schedule of Questions (DCO1-51) and Further Written Questions issued on 5 February 2019.

13. Review of issues and actions arising

14. Next steps

15. Closure of the hearing

¹ For ease of reference the questions were: 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, technically the new substitute appears to end short of the dumb-bell roundabout.
(a) Is this the case? (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?

Typographical matters – CORRECTIONS ARE IN BOLD OR AS DESCRIBED

1. Art 19(2)(b)(ii) – would this be better as ‘for police, ambulance, fire and rescue authority or traffic officer purposes’ to mirror wording used in Art 18(2)(b)(i)?
2. Art 19(2)(b)(v), third line, no comma after ‘for’
3. Art 21(5), second line ‘... **or** make changes...’
4. Heading to Art 31 – ‘Application of Part 1 of **the** Compulsory Purchase Act 1965’
5. Art 32(6)(a), last line, remove ‘s’ from ‘consents’
6. Art 32(10), third line, add ‘s’ to ‘provision’
7. Req 1 - ‘sustainable transport working group’ means the group the membership, duties and protocol of which....”
8. Req 4(3)(a) – ‘s’ required after ‘warehouse’?
9. Req 4(6) – ‘The membership, role and protocol...’
10. Req 10(1)(a) ‘... Location, number species, size, layout and method of trees’....’
11. Req 12(1), third line – ‘phase-specific’
12. Req 22, second line ‘phase-specific’ (hyphen needed).
13. Req 23(1), first and second line ‘noise-making’ (hyphen needed).
14. Req 23(3) ‘Chapter 8’ should be lower case for consistency
15. Req 26(1)(b), first line – space required between ‘25’ and ‘for’
16. Sch 13, Part 1, para 10, sub-section (d) needs to be run into sub-section (c), with consequential re-labelling of subsections (e) and (f).
17. Sch 13, Part 1, para 10(e), requires a comma after ‘may’ in the first line.
18. Sch 13, Part 1, para 11(9), ‘network’ needs a capital.
19. Sch 13, Part 1, para 16, penultimate line should be ‘**be**’ not ‘he’.
20. Sch 13, Part 1, para 22 (4)(c), ‘days’ requires an apostrophe. Should reference to ‘Paragraph 4 (a) and (b)’ be ‘sub-paragraph 4(a) and (b)’?
21. Sch 13, Part 2, para 2(2)(i) is ‘the’ required before ‘construction phase’?
22. Sch 13, Part 2, para 2(2) ‘County Highway Works’ – close the space between ‘15, 16’. ‘Commuted Sum’, close the space between ‘and to’.
23. Sc 13, Part 2 ‘Detailed Design Information’ – comma needed after ‘drawings’?
24. Sch 13, Part 2, para 2(2) Detailed Design Information (n) – is an ‘s’ required after ‘standard’?
25. Sch 13, Part 2, para 2(2) Detailed Design Information (o) – close space between ‘out in’?
26. Sch 13, Part 2, para 2(2) Detailed Design Information (p) – semi-colon needed at the end.

27. Sch 13, Part 2, para 2(2) Detailed Design Information (t) – no full stop needed.
28. Sch 13, Part 2, para 2(2) Dilapidation Survey – semi-colon needed at the end.
29. Sch 13, Part 2, para 2(2) Programme of Works – capital needed for 'phase'.
30. Sch 13, Part 2, para 2(2) Utilities – comma needed after 'pipes' and space needed in front of the semi-colon.
31. Sch 13, Part 2, para 4(3)(b), second line, comma needed in front of 'all relevant...'?
32. Sch 13, Part 2, para 4(5), possessive apostrophes needed for 'undertakers' and 'Contractors'?
33. Sch 13, Part 2, para 5(1), 'in house' needs hyphenating?
34. Sch 13, Part 2, para 5(4)(a), comma needed between '5(1)(a) and (b)' and spaces between (b) and (d).
35. Sch 13, Part 2, para 7(1)(a), penultimate line, replace 'area' with 'agreed'.
36. Sch 13, Part 2, para 8, first line, replace 'of the' with 'a'?
37. Sch 13, Part 2, para 12(1)(a), last line, insert 'it' in front of 'is responsible'?
38. Sch 13, Part 3, para 2(2)(d), semi-colon needed at the end.
39. Sch 13, Part 3, para 2(2)(e), 'Method Statements' is capitalised but is not subsequently.
40. Sch 13, Part 3, para 2(2)(h), 'post construction' needs hyphenating.
41. Sch 13, Part 3, para 2(2), 'Commuted Sum'; replace with - 'means such sum as shall be calculated for each Phase as provided for in paragraph 9(2) of this **part of** this Schedule and to be used to fund the future cost of maintenance **of** the County Highway Works'.
42. Sch 13, Part 3, para 2(2) Detailed Design Information (c), semi-colon needed at the end.
43. Sch 13, Part 3, para 2(2) Nominated Persons - possessive apostrophes needed for 'undertakers' and 'Contractors'?
44. Sch 13, Part 3, para 2 Road Safety, replace 'mans' with 'means'.
45. Sch 13, Part 3, para 3(5), replace 'have' with 'has'.
46. Sch 13, Part 3, para 3(7), remove 's' from 'highways'.
47. Sch13, Part 3, para 4(3)(b), comma needed after '...Highway Works)' in the second line?
48. Sch13, Part 3, para 4(5), possessive apostrophe needed for 'undertakers'.
49. Sch13, Part 3, para 4(7), remove 's' from 'highways' and change 'undertaken' to 'undertaker'.
50. Sch13, Part 3, para 4(10), remove 's' from 'highways' and add 's' to 'incur'.
51. Sch13, Part 3, para 4(11), capitalise the initial 'the'.
52. Sch13, Part 3, para 5(1)(d), space needed between '(a), and (b)' within the bracketed section.
53. Sch13, Part 3, para 5(4)(b), no brackets needed around '5'.
54. Sch13, Part 3, para 6(2), second bracket required after '...Winter Maintenance)'.
55. Sch13, Part 3, para 8(2)(a), in the seventh line 'county' needs capitalising.
56. Sch13, Part 3, para 11(1)(a), insert 'it' in front of 'is responsible'?

57. Sch13, Part 3, para 13(2)(a), insert 'part of this' in front of 'Schedule'.
58. Sch13, Part 3, para 13(2)(b), full stop required.
59. Sch13, Part 3, para 14(1), first line, capitalise 'part'.
60. Sch13, Part 4, para 2 "Cadent", penultimate line, should read '...any successor to their licence...'
61. Sch13, Part 4, para 2 "specified works" (b) requires a bracket at the end.
62. Sch13, Part 4, para 5(3), second line requires a space after 'apparatus'.
63. Sch13, Part 4, para 6(1), last line add 's' to 'paragraph'.
64. Sch13, Part 4, para 6(3) anti-penultimate line, 'undertakers' requires a possessive apostrophe.
65. Sch13, Part 4, para 8(5), first line remove 's' from 'paragraphs'.
66. Sch13, Part 4, para 12 second line – is 'or' required in front of 'Cadent'?
67. Sch13, Part 4, para 12(2), remove 'to' from the first line.
68. Sch13, Part 5, para 3, first line – there appears to be something missing between 'build over or within...'. Third line, add 'y' to 'an'.
69. Sch13, Part 5, para 4(a), second line remove 's' from 'legislations'?
70. Sch13, Part 6, para 2 "alternative apparatus", second line, replace 'efficient' with 'efficiently'?
71. Sch13, Part 6, para 6(4) and (5), change '48' to '49'.
72. Sch13, Part 6, para 7(1), change '48' to '49'.
73. Sch13, Part 6, para 10(1), last line – should this be part of (b) rather than a separate sub-clause?
74. Sch14, para 3(5), is 'a' required in front of 'protected street...'?
75. Sch15 2 (e) – 'occupier-specific' (hyphen needed).
76. Sch15 para 5 (f) (g) and (h) – 'expert' should be gender neutral.
78. Sch15 para 5 (g) should the Northampton Gateway Transport assessment be more precisely defined by reference to the Environmental Statement?
79. Schedule 16 – January and February 2019 plan revisions; Documents 2.3D; 2.5C; 2.4D; 2.4P; 2.1; 2.1B; 2.1D; 2.7C have been amended, and consequently the revision numbers in the third column of Schedule 16 will need to be updated. There has also been an amendment to the Book of Reference which may affect the third column submission date for the BoR. The design and access statement has not changed, but it is described on its face as "Doc 6.9 Rev S2" (italics added). Please will the Applicant add the words in italics to avoid confusion later. Please also add the document numbers for the changes to the environmental statement.

Typographical matters ds.106

1. Clause 1.1 – definition of 'Parishes' – insert 'civil' before "parishes of Blisworth, Courteenhall, Milton Malsor and Roade" (the ExA presumes that it is not intended to refer to the Church of England ecclesiastical parishes)
2. Clause 1.1 – reinsert the definition of BCIS Index from the first version of the ds.106 (the All in Tender Price Index of Building Cost Information Service as published by the Royal Institution of Chartered Surveyors) as it is still employed in the definition of 'Relevant Index'.
3. Clause 1.2.6 reinsert the word 'persons' at the end as it appears to have been over-deleted from the original version.
4. Schedule 2, para 3.2 – Roade not Road