



NORTHAMPTON
GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

**APPLICANT'S RESPONSES TO RAIL CENTRAL
DEADLINE 4 SUBMISSIONS**

DOCUMENT 8.8C

The Northampton Gateway Rail Freight Interchange Order 201X

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DEADLINE 4 SUBMISSIONS | 26 FEBRUARY 2019

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THE NORTHAMPTON GATEWAY RAILWAY FREIGHT INTERCHANGE ORDER 201X

Applicant's Response to Rail Central's Summary of Oral Submissions submitted for Deadline 4 – Document 8.8C

1. Introduction

- 1.1 This document responds to the **Deadline 4** submissions submitted on behalf of Ashfield Land Management Limited and Gazeley GLP Northampton s.à.r.l (“**Rail Central**”) (REP4-020).
- 1.2 The submissions of Rail Central are stated to be a “Written Summary of Oral Submissions made at ISH2, ISH3 and CAH”. They are a substantial expansion of the submissions made at those hearings and include new subject matter. Accordingly the Applicant feels it is appropriate that the ExA has the benefit of a response.
- 1.3 This response deals with the matters raised in the Rail Central Deadline 4 submission in the order set out in that response.

2. Applicant's response to Rail Central's Deadline 4 Submissions

Unclear Methodology (Section 2)

- 2.1 Rail Central's submission is encapsulated in its suggestion that the Northampton Gateway Environmental Statement (ES) fails to explain, justify and consistently apply the methodology applied in the ES. This allegation has been consistently rejected by Northampton Gateway for reasons previously explained in the Applicant's previous responses to Rail Central submissions (see **Documents 8.8** [REP2-011] and **8.8A** [REP3-008] in particular). Furthermore, none of the statutory consultees and local authorities have expressed any outstanding concerns in relation to the ES.¹
- 2.2 The methodology employed in the Applicant's ES is not a standardised methodology throughout the chapters but varies according to the discipline, as previously explained. Rail Central appear concerned, on the part of the public, to ensure that they are able to understand the project and participate in the decision making process. The ExA will be aware that there has been no difficulty in the public engaging with the issues and no widespread confusion expressed as to the lack of a standardised methodology, as implied.
- 2.3 Rail Central express particular concerns in relation to the CIA, although the submission by Rail Central was written prior to the submission of the revised CIA submitted shortly after **Deadline 4 (Document 8.13** [AS-040]), on 11 January 2019. The particular criticism relates to the identification of other development relevant to the CIA. The Applicant addressed this in paragraphs 1.7 – 1.11 of the revised CIA.

Inadequate description of development (Section 3)

- 2.4 This is a matter consistently raised by Rail Central however it is noticeable that other parties have not expressed such wide-ranging confusion as to the description of the development.

¹ The last issues arising, in relation to noise, having been resolved with SNC (SoCG with SNC para 7, Document 7.11).

- 2.5 An example of Rail Central persisting in its desire for Northampton Gateway to apply a particular methodology, going far beyond what is prescribed in statute or regulation, is contained in paragraph 3.2(b) of its submissions. The Applicant is criticised for its approach to primary and secondary mitigation and a failure to set such mitigation out in a particular way in the ES. However, the EIA regulations do not refer to primary or secondary mitigation nor prescribe how, or where, mitigation should be dealt with in an ES. The different chapters of the Northampton Gateway deal with mitigation in a way appropriate to the assessment being carried. It is obvious that is not standardised throughout the ES, but nor is it required to be.
- 2.6 Contrary to what the Applicant asserts, there is clarity in the dDCO as to what mitigation is consented. The mitigation being consented is that:
- embedded within the authorised development imposed by the parameters plan (such as the strategic landscape bunds and other spatial elements on the main site);
 - secured by requirements, incorporating reference to documents such as the CEMP, LEMP, Framework Travel Plan etc.;
 - in respect of the Highway Works, also secured by Parts 2 and 3 of Schedule 13.
- 2.7 It is acknowledged that the involvement of the ExA during the Examination, in challenging the identification and securing of the mitigation, has resulted in amendments to the dDCO, and other documentation, to improve the dDCO in that respect. That is a normal part of the Examination process and has not identified a failure of the ES but rather the need to capture properly the mitigation referred to in the ES in the drafting of the dDCO.
- 2.8 One matter which has caused uncertainty on the part of other parties as well as Rail Central, has been the approach to the height of the strategic landscaping bunds, referred to by Rail Central in para 3.2(c). As a result the Applicant has given further thought to the need for clarity and confirmed the position so there can be no doubt. Please see the document titled "Parameters Plan – Minor Amendments" submitted for **Deadline 5 (Document 8.15)**.
- 2.9 In relation to the points made by Rail Central regarding noise, following further discussions with the SNC noise expert, amendments have been made to the relevant requirements (see requirements 22 and 23 in the dDCO submitted for **Deadline 5 (Document 3.1D)**). SNC have confirmed that they are content that the noise impacts are acceptable subject to the amendments to the requirements (see paragraph 7.4 of SoCG **Document 7.11** submitted on 11 February 2019 [AS-058]). Also see the Applicant's further submissions on the Hardy case in response to the ExA DCO Commentary (Item 5, Applicant's Response to ExA DCO Commentary submitted for **Deadline 5 (Document 8.19)**).
- A front loaded process (Section 4)**
- 2.10 The Applicant notes the comments of Rail Central as to the need to assess environmental effects early in the development control process.

- 2.11 For the avoidance of doubt, the Applicant does not seek to depart from, or disagree with, any of the general principles established by the case law to which Rail Central refers, albeit it notes the particular facts of the decisions relied upon².
- 2.12 The Applicant, through the Application itself and through further submissions provided to the Examination, has fixed sufficient parameters so as to enable the ExA (and indeed the Secretary of State) to determine the extent of likely significant environmental effects of its development. Also the Applicant would refer to its further submissions on the Hardy case in response to the ExA's Commentary on the dDCO (Item 5, Applicant's Response to ExA DCO Commentary submitted for **Deadline 5 (Document 8.19)**).
- 2.13 To the extent it is said that the Applicant's assessment of the cumulative impacts of Northampton Gateway and Rail Central is in any way provisional, this is entirely due to the failure of Rail Central to supply information regarding its proposal (such as inadequate traffic modelling and assessment of highways impact) to enable a final assessment.
- 2.14 The Applicant notes the irony in Rail Central contending that cumulative environmental impacts should be assessed "*at the earliest available opportunity*", in circumstances where Rail Central has itself failed to include as part of its application for development consent an assessment of the cumulative impacts of Northampton Gateway and Rail Central, notwithstanding the Northampton Gateway scheme was submitted for Examination (complete with appropriately modelled and assessed highway mitigation) several months before the Rail Central application was submitted – see paragraphs 1.15 and 1.16 of the updated CIA (**Document 8.13 [AS-040]**).

Public Participation (Section 5)

- 2.15 The Applicant is aware of the need to ensure that the environmental information before the ExA is adequate, not only in terms of its content but also in terms of its form, to enable the public to participate fully in the Examination. In this regard the importance of such public participation is recognised not only in the European case law to which Rail Central refers, but also in decisions of the domestic courts; (for example, see the comments of Lord Hoffman in Berkeley v Secretary of State for the Environment [2001] 2 AC 603 at page 615 D-G).
- 2.16 The Applicant has provided environmental information, in the form of the Environmental Statement as originally submitted, together with some limited further submissions to the Examination, which is both substantive and comprehensive. The Applicant rejects entirely the suggestion made by Rail Central to the effect that such information has not been "*available and properly accessible to the public*".
- 2.17 Further, insofar as it is suggested by Rail Central that the Applicant's position is that "*the ES material was for the benefit of the decision maker [only]*" and not for others, such assertion is not correct. The Applicant does *not* suggest to the ExA that it is only necessary that the ExA understand the environmental information, and that it is not relevant whether third parties are able to access/understand that material.

²

By way of example, as the ExA will be aware, the 'cumulative impacts' at issue in Brown concerned two elements of the same scheme of development (namely airport works and works for a new freight distribution facility). The court rightly determined that where works essentially comprised part of the same scheme, they should not be disaggregated for the purposes of assessing their environmental impacts. The Applicant agrees with the position in Brown however that position is in no way analogous to that now being considered by the ExA.

2.18 The position is as follows:

- i. Rail Central accepts, as it must do, that the decision as to the adequacy of the environmental information submitted – both in terms of its substance and its 'public accessibility' – is a matter for the ExA and Secretary of State.
- ii. The Applicant contends that what is ultimately determinative is whether the ExA (and Secretary of State) accept that the environmental information is adequate (in terms of both substance and 'public accessibility'), not what Rail Central – a commercial competitor, with a vested interest in the refusal of the Application – may say about that adequacy.
- iii. As already stated, the Applicant contends that the environmental information provided is adequate – in terms of both its content and the ability of the public to access it, so as to enable public participation in the Examination process. Whilst Rail Central contend that there has been "*A failure to properly describe the development [which] critically undermines public participation*", that allegation is strongly rejected. The Applicant maintains that there has been no such failure; for the reasons already given at ISH2 and at paragraphs 2.4 – 2.12 of its Post Hearing Submissions (**Document 8.10** [REP4-011]) and paragraphs 2.1 – 2.9 above, it contends that the development has been 'properly described' for the purposes of the legislation.

Section 106 Agreement (Section 7)

2.19 A response to the points made by Rail Central is effectively contained in responses to the ExA, as follows:

- the Applicant's Response to the ExA's DCO Commentary (see item 2 at the front end of **Document 8.19**); and
- the updated Section 106 Confirmation and Compliance Document (**Document 8.5A**).

The relationship between the DCO and EIA (Section 8)

2.20 It is not clear what conclusion Rail Central are inviting the ExA to draw in this section.

Archaeology (Section 9)

2.21 No response from the Applicant is considered necessary. The ExA is reminded that the Applicant's submissions in relation to archaeology can be found at paragraphs 3.8 – 3.12 of its Post Hearing Submissions in relation to ISH3 – DCO (**Document 8.10** [REP4-011]).

CAH (Section 10)

2.22 Requirements in respect of Rail Central were included in the dDCO submitted for Deadline 4 (Requirements 30 and 31) (**Document 3.1C** [REP4-002 (tracked) and REP4-004 (clean)]). It is noted that Rail central will be submitting a suggested suite of requirements for **Deadline 5**.

- 2.23 In the meantime the Applicant has received a response to requirements 30 and 31 from Rail Central and, in light of that response, has amended those requirements and some related definitions in Schedule 2 of the dDCO. The amended requirements are contained in the dDCO submitted for **Deadline 5 (Document 3.1D)**.
- 2.24 At the time of writing a response is awaited from Rail Central to the amended requirements 30 and 31.