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Date: 26 February 2019
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(Third letter)

Sent by Email only: NorthamptonGateway@pins.gsi.gov.uk

Dear Ms Mignano

Planning Act 2008 (as amended)
Application by Roxhill (Junction 15) Limited for an Order granting Development Consent for the Northampton Gateway Strategic Rail Freight Interchange Examination - Response for Deadline 5 (Third Letter)

Since finalising the documentation for submission for Deadline 5, the Applicant has received a response from Network Rail in relation to the outstanding issues concerning the protective provisions.

The Applicant can now confirm that the protective provisions in Part 1 of Schedule 13 of the dDCO (Document 3.1D) are agreed with Network Rail subject to the following amendments:

1. The addition of the following to paragraph 4(1):

"(n) article 39 (Operation and use of railways)"

The previous (n) then becomes (o).

2. The addition of the following paragraph 4(4):

"The undertaker must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail".

The previous 4(4) then becomes 4(5).

3. Paragraph 22 is replaced by the following:

Dispute Resolution and Arbitration

22.— (1) Article 49 (arbitration) does not apply to this schedule.

(2) All parties involved in settling any difference shall use reasonable endeavours to do so within 42 working days from the date of a dispute first being notified in writing by one party to the other.

(3) In the absence of the difference being settled within the period referred to in sub paragraph (2) the difference shall be referred to and settled by a single arbitrator to be agreed between the parties except that, failing agreement between the parties of the arbitrator to be appointed, an arbitrator shall be appointed following the expiry of 14 working days from the expiry of the 42 day working days referred to in sub paragraph (2) on the application of either party by –

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(a) in the case of matters relating to paragraph 11 of this part of Schedule 13, the president of the Institution of Engineering and Technology; and

(b) in the case of matters of all other matters relating to this part of Schedule, the president of the Institute of Civil Engineers.

(4) All parties involved in settling any difference by arbitration will use reasonable endeavours to deal with such matters expeditiously and in accordance with the timetable set out in sub paragraph (5) unless that timetable is varied in accordance with sub paragraph (6)(b) to allow for the consents referred to in sub paragraph (6)(a) to be obtained.

(5) The timetable referred to in sub paragraph (4) is:

(a) the parties must make submissions to the arbitrator in writing, and copied to the other party, within 42 working days of the arbitrator's appointment;

(b) any comment on the submissions made by either party must be submitted to the arbitrator within 42 working days of the receipt of the submission under (a);

(c) a maximum of 42 working day's extension to either or both of the periods referred to in (a) and (b) is to be allowed should a party request such an extension prior to the relevant period expiring unless the arbitrator is of the view that such an extension would be manifestly unreasonable or unnecessary; and

(d) a decision must be issued within 42 working days of the receipt of the submissions under paragraph (b) or any extension to such period allowed under (c) subject to sub paragraph (6).

(6) The parties recognise that:

(a) Network Rail's compliance with the arbitration timetable referred to at sub-paragraph (5) will be subject to the obtaining by Network Rail of necessary clearance consents and other engineering, regulatory and stakeholder (internal and external) consents required under statute, by regulations or by NR governance procedures; and

(b) the timetable set out in sub paragraph (5) shall be varied by the arbitrator to accommodate the consents and procedures referred to in sub paragraph (6)(a).

(7) Network Rail must use reasonable endeavours to pursue any consents referred to in (6) expeditiously.

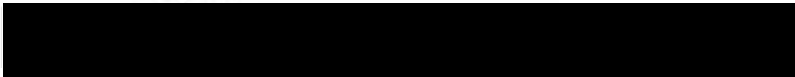
(8) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine, or in the absence of such determination, equally.

The above changes to the dDCO will be incorporated in dDCO to be submitted for Deadline 6.

Also with this letter the Applicant encloses the signed (second) Statement of Common Ground between the Applicant and Network Rail (Document 7.13A).

Please do not hesitate to contact me or my colleague, Laura-Beth Hutton, should there be any queries.

Yours sincerely


Morag Thomson
Partner
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