

PINS Reference TR050006 - Northampton Gateway RFI

IP REF. SP074 - South Northamptonshire Council SNC ref 20190312/wr/ish5

(submitted by email to NorthamptonGateway@pins.gsi.gov.uk) Date – 19 March 2019

**South Northamptonshire Council – Written Submission pursuant to
ISH 5 – Draft DCO document 3.1D**

Pursuant to the matters raised at Issue Specific Hearing 5 held on 13 March 2019 the Council would make the following comments.

Schedule 2 - Part 1 - Requirements

1. **Requirement 3(4)** replace the current drafting with the following text:-
3(4) **“A rail terminal capable of handling at least four freight trains of at least 775 metres in length per day shall be maintained on the site”**.
2. A rail freight terminal with the minimum capability referred to is required to be provided under the provisions of the NPSNN in order for the project to qualify as nationally significant infrastructure. The rail terminal should therefore be maintained on the site. As worded the requirement could potentially allow for the removal of rail infrastructure such that it could no longer meet the minimum capability required within the NSPNN. The alternative requirement wording proposed would not preclude the removal or replacement of rail infrastructure to update or vary the terminal it would however ensure an operational rail terminal is maintained at the site.
3. **Requirement 3(3)** as currently drafted relates to the provision of the rail terminal and allows the applicant to seek to vary the timing by when this must be operational. It does not impose a requirement to retain the rail terminal once it has been provided. The revised wording for Requirement 3(4) makes it clear that a rail terminal must be provided and then maintained.

Requirement 5 (2)

4. This requires that acoustic fencing along the Roade bypass be in accordance with details specified within the ES. This requirement appears to conflict with Requirement 8(2)(q) which requires details of acoustic fencing to be submitted and approved by the relevant planning authority. It would be consistent if Requirement 5(2) was amended to require details of the acoustic fencing to be provided to the Roade bypass submitted to and approved in writing by the relevant planning authority. This would allow for the acoustic fencing to reflect the best current practice at the time the noise mitigation is to be installed, rather than measures prescribed in advance.

5. **Requirement 8(1)** – “The design and access statement may be reviewed and updated by the undertaker in agreement with the relevant planning authority”. This last sentence is not sufficiently clear in that it does not require the ‘agreement’ to be in writing.
6. Replacing the current drafting of Requirement 8(1) with the following text would clarify the requirement
7. **“The details of each component of the authorised development on the main site referred to in requirement 3 must be in accordance with the parameters plan and the principles set out in the design and access statement.**
8. **The design and access statement may be updated by the undertaker. A revised design access statement must be submitted to and be approved in writing by the relevant planning authority”.**

Requirement 8(2)(n)

9. This relates to details of permanent advertisements in locations S1 and S2, the display of the advertisements in these locations is identified in Works No.6 (3). The principle of the display of advertisements in these locations is thus currently affirmed by the DCO.
10. Position S2 will be visible from the M1 motorway, the display of advertisements in this location could have adverse impacts for safety on the highway,. The DCO should therefore not permit in principle the display of advertisements in location S2.
11. The Council’s view remains that the display of advertisements in locations S1 and S2 on the site should remain subject to the control regime established by The Town and Country Planning (Control of Advertisements) (England) Regulations 2007. No compelling argument has been put forward to justify the disapplication of the advertisement regulations.
12. The works identified in Schedule 1 Part 1 as Works No.6 (3) should therefore be removed from the DCO and requirement 8(2)n deleted.
13. **Requirement 8(2)** This includes no reference to approval of details of water supplies to be provided for firefighting purposes within the site. It is not

therefore evident whether such water supplies are to be provided and if so how details of these will be assessed or approved.

Requirement 10(1)

14. There are confusing references to “**ecological mitigation works**”, in 10(1), which are excluded from the remit of this requirement and to “**ecological mitigation**” in 10(1)(d) for which details are required to be submitted and approved. The meaning and intent of these should be clarified. The reference “to a written landscaping scheme for that component” being submitted is ambiguous, plans and drawings plans may also be required to be submitted, the word written should be deleted.
15. “**10.—(1)** No component of the authorised development on the main site which includes landscaping (excluding archaeological investigation, **ecological mitigation works** and geotechnical or ground contamination investigation) is to commence until a ~~written~~ landscaping scheme for that component has been submitted to and approved in writing by the relevant planning authority. (following consultation with Northampton Borough Council or any successor authority). The landscaping scheme must be carried out in accordance with the parameters plan and the landscape and ecological management plan and in accordance with the principles established in the illustrative landscape plan (main site) and must include details of all proposed soft landscaping works including—
- (a) location, number, species, size, layout, method of trees support, plant protection measures and planting density of any proposed planting;
 - (b) cultivation, importation of materials and other operations to ensure plant establishment;
 - (c) details of existing trees to be retained, with measures for their protection during the construction period in accordance with British Standard 5837:2012 “Trees in relation to Design, Demolition and Construction Recommendations”, and to include a schedule of remedial tree works to be carried out in accordance with British Standard 3998:2010; “Tree Works Recommendations” prior to construction commencing;
 - (d) details of **ecological mitigation**; and
 - (e) implementation timetable”.

Draft DCO - Document 3.1D - General points

16. The Council supported the desire of Northampton Borough Council to be consulted on applications submitted for approval of details pursuant to the Requirements of the DCO. The NBC comments are set out in *italics* below for clarity.

NBC request for consultation

Consultation with Neighbouring Authority on details submitted for Requirements

“Part 1 – Preliminary - Interpretation 2.

“relevant planning authority” – is defined at the district planning authority within whose administrative boundary that part of the authorised development relevant to the operation or enforcement of the provision in question is situated.

The majority of the site is within the administrative boundary of South Northamptonshire District Council (SNC), and therefore the majority of details would be approved by SNC. There is no requirement for consultation on the submitted details with Northampton Borough Council as the neighbouring authority, to enable the authority to assess any potential impacts within the Borough.

Northampton Borough Council would wish to be in a position to comment on any details submitted, particularly in respect of the following requirements:

- 3. – Components of development and phasing*
- 8. – Detailed design approval*
- 10. – Provision of landscaping*
- 12. – Construction and Environmental Management Plan*
- 15. – Lighting details*

Northampton Borough Council request that the DCO is amended accordingly to allow provision for consultation with the neighbouring authority on the details submitted for Requirements.”

17. To accommodate the NBC request the draft DCO Doc 3.1D has been amended to include the phrase **“(following consultation with Northampton Borough Council or any successor authority)”** within each of the requirements identified by NBC.
18. SNC suggests the requirement for consultation would be more clearly expressed by the removal of the phrase referring to consultation within each separate requirement and with the inclusion of a new requirement as drafted below :

“The relevant planning authority will notify Northampton Borough Council or any successor authority of applications submitted for the approval of details pursuant to the following numbered requirements in Schedule 2 Part 1 :-

3. – Components of development and phasing

8. – Detailed design approval

10. – Provision of landscaping

12. – Construction and Environmental Management Plan

15. – Lighting details”

Tailpieces in Requirements

19. A number of requirements below still include tailpieces these are identified below :

3. (3) ‘unless otherwise agreed in writing with the relevant planning authority’.

4. (1) ‘unless otherwise agreed in writing with the relevant planning authority’

8. (1) ‘The design and access statement can be reviewed and updated by the undertaker in agreement with the relevant planning authority.

9. The details in 8(2) (a) to (r) can be subject to alteration by approval in writing from the relevant planning authority. The authorised development must be carried out in accordance with the details as approved in writing by the relevant planning authority from time to time.

15. (2) ‘the details can be subject to alteration with the approval in writing of the relevant planning authority’.

20. In all cases where a requirement relates to the subsequent application for approval of details or for a variation to the scheme, where this is appropriate within the DCO, if the following text “submitted to and approved in writing by the relevant planning authority” is clearer than the text “agreed in writing by” which is frequently but consistently used. This amendment would provide consistency to the DCO and make clear that details must be submitted and then approved.

21. Amendments to the DCO under Part 2 – Principal Powers, paragraph 4 allow for an element of control over changes to the parameters of the authorised development that would not give rise to significant changes over and above those assessed in the Environmental Statement. The use of tailpieces is

however generally not considered good practice and has been held to be inappropriate in cases where this could result in avoidance of provisions that would otherwise be applied, e.g. notification.

22. The DCO process sets out provisions with respect to variation of proposals put forward. The extent to which the variation of proposals is appropriate outside of these provisions is moot. If variation is appropriate within the DCO process then this should be sought through a formal process that transparently demonstrates the appropriateness of the variation.

Schedule 2 – Part 2 Procedure for Approvals pursuant to Requirements

Paragraph 1 - Time periods for determination of applications for approvals of details pursuant to Requirements

23. Under the Town & Country Planning Acts and Regulations the time period allowed for the LPA to determine an application for approval of reserved matters is 8 weeks, 13 weeks for major development or 16 weeks for EIA development. The time period for approval of details required by condition is 8 weeks. See Part 5 - 27(2) & Part 6 34(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.
24. The draft DCO sets out a determination period of 42 days. This is a considerably shorter period than those determined within general planning provisions as being appropriate for proper determination.
25. The details include in Requirement 2 are effectively tantamount to reserved matters pursuant to an outline planning permission. The determination of such matters should be subject to a robust and inclusive consideration that should where appropriate include relevant interested parties. The short time scale proposed would constrain this.
26. Whilst the provision allows for extension of time by agreement the appropriate period should be the default period and not subject to further agreement which may not be forthcoming. The timescales proposed seem restrictive compared to the periods allowed within general planning provisions and particularly with respect to facilitating consultation, statutory or otherwise, and to resolving any issues that may emerge.

Paragraph 2 – Further Information

27. This sets out a process related to requests by the LPA for further information pursuant to applications submitted for approval pursuant to requirements within the DCO.
28. This sets out a period of 10 working days within which the LPA to must assess whether it requires further information and then to request this. Where consultation with relevant consultees is necessary this is relatively a short period for consultations to be sent, consultees to assess details, respond to the relevant planning authority who then will need to request any further details required. This will require all involved to prioritise this work above other work and will increase the burden on available resources.
29. The provisions provide no opportunity for the submission of details to address issues that arise from consultations or that may have been inadvertently overlooked in the original submission.
30. It is not clear what this provision is designed to achieve it is however foreseeable that this could lead to refusal of an application which might otherwise be avoided.

Additional Burdens, Resources, Charges and Cost recovery.

31. In formulating the procedures set out in Schedule 2 Part 2 the applicant has said they have relied on the guidance included in Appendix 1 to PINS Advice Note 15 'Drafting Development Consent Orders'. This PINS guidance however also makes provision for the payment of fees for applications submitted, this element is however not included in the procedure set out by the applicant.
32. The DCO will place additional burden on the relevant authority and will require resources to be allocated to this work. It is appropriate that the DCO should include an appropriate provision for the relevant authorities to recover the costs of the resources employed to undertake the additional work and in the development of procedures to meet the required timescales.
33. The DCO should include a clear provision to define the application fees payable or to allow for a 'Service Level' agreement between parties to define the service required from the relevant authority, and the means through which the authority will recover the costs incurred from the applicant. The High Speed Rail (London to West Midlands) Act 2017 incorporates this approach through the setting application fees payable or alternatively enabling parties to enter into a service level agreement.