

**From:** John Webster <john.webster@osborneclarke.com>  
**Sent:** 19 March 2019 11:43  
**To:** 'Northampton Gateway' <NorthamptonGateway@pins.gsi.gov.uk>  
**Subject:** Northampton Gateway Examination - Deadline 6 Submissions for Rail Central [OC-OC\_UK.FID3489525]

Dear Kate

**Application by Roxhill (Junction 15) Limited for an Order Granting Development Consent for the Northampton Gateway Rail Freight Interchange  
Northampton Gateway PINS Reference Number TR050006**

Please find attached to this email the following which comprises Rail Central's Deadline 6 submissions:

- (1) Written Summary of Oral Submissions at ISH4, ISH5 & CAH2;
- (2) Impact Interactions Summary referred to in Paragraph 27 of the Written Summary of Oral Submissions at ISH4, ISH5 & CAH2.

In respect of the Hearing Action Points for ISH4, ISH5 and CAH2, Rail Central has provided a response regarding the Logistics Institute of Technology within the Written Summary of Oral Submissions at paragraphs 49 - 65. The submission of a list of points of difference of Applicant's cumulative visual impact assessment contained within the Updated Cumulative Impact Assessment table in Appendix 2 was submitted to PINS on Wednesday 13 March 2019 (copy email attached).

In respect of the Footpath Connections, Rail Central and Northampton Gateway technical experts attended a meeting on 14 March 2019, where both temporary and permanent solutions for footpath routes were discussed between parties. Rail Central is still in the process of considering the impact of those changes and will provide an update on their position to the ExA by Deadline 7, Tuesday 26 March 2019.

Kind regards,

**John Webster**  
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# The Rail Central Rail Freight Interchange

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## Northampton Gateway Examination

Written Summary of Oral Submissions  
made at ISH4, ISH5 and CAH2 on  
behalf of Ashfield Management  
Limited and Gazeley GLP  
Northampton s.à.r.l.

**Northampton Gateway PINS Reference Number  
TR050006**

**19 March 2019**

**Written Summary of Oral Submissions**

**ISH4, ISH5 and CAH2**

**12 and 13 March 2019**

**Appearances on behalf of Ashfield Land Management Ltd and Gazeley GLP Northampton s.à.r.l.**

**Counsel**

Hereward Phillpot QC

Mark Westmoreland Smith

**Instructing solicitors**

Osborne Clarke

**Expert witnesses who addressed the examination at ISH4**

Andy Ricketts, Turley

Nick Gallop, Intermodality

Anthony Tugwell, Vectos

Chris Frain, RSK

Alex Priestley, Spectrum Acoustic Consultants

Dominic Meyrick, Hoare Lea

## **ISH4: CUMULATIVE AND INTERACTION ISSUES**

### **Agenda Item 3: update from Ashfield Land and Gazeley GLP Northampton ("Rail Central") as to progress with its accepted application**

1. Leading Counsel for Rail Central updated the ExA on its own its application for an order granting development consent for the Rail Central Strategic Rail Freight Interchange in two parts: first, by summarising the contents of a letter submitted by Rail Central to PINS dated 11 March 2019 ("the Letter"); and, secondly, by setting out the implications of the contents of that letter for the Northampton Gateway ("NG") examination.

#### **(1) The letter**

2. Rail Central has made a request to PINS to defer the start of the Rail Central examination. The Rail Central application included a broad suite of highway mitigation measures. As explained in the Letter, in September 2018, just prior to the formal submission of the Rail Central DCO application, transport consultants Vectos were appointed by Rail Central to provide advice in respect of the forthcoming DCO process. They subsequently engaged with the Transport Working Group and with highway representatives of NG; both of which provided comments on the presentation of and overall performance of the highway mitigation proposed in the DCO submission. These comments have also been made more formally through their respective submissions of Relevant Representations to the Rail Central DCO application. As a result of this process it has become apparent that the proposed highway mitigation package is not likely to perform as was expected at the time the application was submitted.
3. In light of this Rail Central has concluded that there is a need for and has commissioned a detailed strategic review of the package of highway mitigation that will form part of the Rail Central scheme. This strategic review is currently being progressed but has identified that further consideration and refinement is required in respect of the proposed highway mitigation for Rail Central.
4. The advice is, on the basis of the review to date, that changes to the existing highways mitigation package are very likely and that such changes will require a formal request to amend the Rail Central application. Such changes will be confined to the highways mitigation package and will not affect the main Rail Central SFRI site.
5. At this stage, the precise nature and extent of the possible changes to the highway mitigation package, and therefore to the application itself are not known. However, it is expected that the nature and extent of the changes will have been established by mid-April.
6. The Letter sets out a detailed timetable in five broad stages for the review and application process which is repeated below:
  - (i) Stage 1 - Confirmed outputs (flows) from strategic highway modelling (now completed);

- (ii) Stage 2 - Agreement of strategic highway modelling outputs (flows) with Highways England ("HE") and Northampton County Council ("NCC") (end of March);
  - (iii) Stage 3 – Scheme formulation (including on-going cumulative assessment) and identification of revised highway mitigation package (mid-April);
  - (iv) Stage 4 – Further design and confirmation of cumulative assessment (end of May); and
  - (v) Stage 5 - In principle agreement of revised highway mitigation package to be sought with HE and NCC (mid-June).
7. Rail Central is currently at Stage 2 of the above process.
  8. If the changes are of the nature and scale currently expected, it is anticipated that the Rail Central examination could start in September 2019.
  9. If the works are more extensive than currently anticipated such that further environmental assessment under The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 is required, it is anticipated that the Rail Central examination would start in November 2019.
  10. The Letter asks PINS to make the determination on deferral in mid-April once Stage 3 has been completed and PINS have been provided with a description of the proposed changes.

## (2) Consequences of the Letter

11. So far as the consequences of the contents of the Letter for the NG examination are concerned, there are two related elements to consider: first, the implications of the change of timing of the Rail Central examination; and, secondly, the implications of the need to amend the Rail Central scheme.

### *(i) Timing*

12. The extent of the delay is such that decision-making on the two schemes will clearly no longer align. The NG decision will be made some time in advance of a decision on Rail Central. The likely relative timing of the examination and determination of the two applications was not clear at the start of the NG Examination, but it is now.
13. As a result, Rail Central's view is that any consideration by the Secretary of State of whether it would be appropriate to permit both schemes having regard to the NN NPS, the benefits and impacts of each and the public interest will now necessarily take place at a later stage when the Secretary of State is determining the Rail Central application.
14. Provided that requirements are included on the NG DCO sufficient to address interactions and avoid physical prejudice (and these seem close to being agreed), then the decision to approve NG does not in itself prevent Rail Central going ahead.

15. Further, whereas at the outset of the examination it was possible that the Secretary of State's decision might have required a choice to be made between the two schemes, that is no longer the case. Thus the potential need for this examination to consider issues of comparative merit falls away.
16. Ultimately, the question of whether the Rail Central scheme is appropriate and acceptable will be made in the context of the NG scheme having been decided.

*(ii) Change to the Rail Central scheme*

17. As set out above, some components of the Rail Central highways mitigation package will very likely need to change following review. Those changes along with changes to the assessment of traffic flows will also change the highways and transportation impacts, and will have implications for the assessment of other environmental effects, such as air quality, which are sensitive to changes to those elements of the scheme. The assessment of those impacts and effects will form part of the process of review.
18. For the purposes of the NG examination that effectively prevents any reliable detailed assessment of the cumulative highways impacts at this stage. Any cumulative assessment is limited by the information reasonably available. This ought not to present a problem for the NG examination. All NG can do is make a cumulative assessment of the basis of available information.
19. The assessment of the revised RC scheme will, of course, need to consider the cumulative impacts with NG, and will need to demonstrate that they are acceptable. This is not a decision the Secretary of State now needs to make in order to determine the NG application.

**Agenda Item 3b (additional agenda item): updated CIA methodology (issues raised by Rail Central) including Agenda Item 18 (Impact Interactions) and Agenda Item 19 (Impact with Other Schemes).**

**(1) Agenda Item 18: Impact Interactions**

20. Oral submissions were made by Mr Andy Ricketts of Turley on behalf of Rail Central, in reference to the Response to the NG Updated Cumulative Impact Assessment ("UCIA") submitted by NG at Deadline 5.
21. Submissions were made as to the point set out in paragraph 4 of this document, namely that an update to impact interactions was required to be made by NG, but was not to be found in the UCIA.
22. NG has assessed the summary of the impact interactions in Chapter 15 of its Environmental Statement (ES), within two summary tables (Tables 15.1 and 15.2) which is linked to residual effects identified in the topic chapters of the ES.
23. At Deadline 1, NG submitted an update (which it referred to as a summary) of the residual effects identified within the ES. This was provided by NG in Appendix 2 of Document 8.2.

24. The Rail Central team has carried out a comparison of the original effect interactions reported in Tables 15.1 and 15.2 of the NG ES and the summary of residual effects provided at Deadline 1. Although there was some uncertainty as to whether ‘grouped’ receptors had actually been addressed in the summary residual table, the benefit of doubt was given where it was not clear. Therefore a fair comparison of the original CIA (Chapter 15) and the residual effects can be made.
25. The output of this exercise confirmed 20 discrepancies<sup>1</sup>. These discrepancies could materially alter the original conclusions on impact interactions set out in Tables 15.1 and 15.2 of the NG ES as some residual effects have changed from being insignificant to significant or from beneficial to negligible. The following examples were provided:

<b>Effect and Receptor</b>	<b>Original CIA in Chapter 15 of the NG ES</b>	<b>Summary of Residual Effects (<i>Appendix 2 of Document 8.2, submitted at Deadline 1</i>)</b>
Landscape and visual impacts during operation to residents near the bypass	Negligible to minor adverse	Up to moderate adverse
Air quality during operation at residents close to the bypass	Minor to moderate beneficial	Negligible

26. Based on the above, the impact interactions are not clear, and are likely to have changed. NG will need to clarify this matter.
27. It was agreed that the identified discrepancies would be provided by Rail Central to the ExA at Deadline 6.

(2) Agenda Item 19: Impact with Other Schemes

28. In response to questions by the Examining Authority on Rail Central’s response to NG’s UCIA, the following concerns were discussed:
- (i) The NG UCIA has minimal assessment of cumulative impact, almost entirely focusing on comparative analysis (see further below the summary of submissions made by Leading Counsel in relation to this matter);
  - (ii) The purpose of the UCIA remains unclear. It states that it provides only an update in relation to the in-combination effects of NG and Rail Central, yet some of the technical content provides an update to the cumulative assessment of these two projects and other projects (e.g. landscape). The decision making process should be informed by an up to date assessment of cumulative impacts

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<sup>1</sup> A 19 discrepancies were cited at ISH4. However, a further review of the comparison matrix identified a potential further discrepancy so 20 discrepancies have now been identified. The additional one related to onsite ecological receptors during operation, which was not covered in the original CIA Impact Interactions table in Chapter 15. However, a potential beneficial interaction (possibly, though non-definitively non-significant, due to the terminology used) was identified in the residual effects table.

of all projects as a whole. At ISH4 NG acknowledged there were conflicts between the introductory sections, technical sections and conclusions of the UCIA.

29. In addition, Leading Counsel for Rail Central drew attention in this context to the suggestion made in the UCIA that the cumulative landscape and visual effects were “unacceptable”, and that this was also the case for the Rail Central scheme on its own (UCIA paragraphs 3.8 and 3.14), but that the longer term (year 15) landscape and visual effects of the NG scheme were not even be significant in EIA terms (Doc. 8.13, paragraph 2.31).
30. Rail Central submitted that not only is this not a conclusion that can properly be drawn by the NG CIA, the very fact that it is said also has important implications for the approach that the ExA and Secretary of State should take to the UCIA as a whole.
31. It is indisputable (and NG did not appear to dispute it at the ISH) that any assessment of the acceptability of particular landscape and visual impacts requires a striking of the planning balance taking account of:
  - (i) The statutory framework for the determination of applications for DCOs by reference to relevant national policy statements;
  - (ii) The relevant policy guidance in the NN NPS that would apply in determining the Rail Central application, including the presumption in favour of the grant of consent (NN NPS paragraph 4.2), and the policy approach to the role of landscape and visual impacts in the determination; and
  - (iii) The public interest benefits associated with the Rail Central scheme, which would fall to be weighed in the balance against any adverse effects.
32. The UCIA does not attempt that exercise, and as part of the EIA it would be wholly inappropriate for such an exercise to be undertaken within that document.
33. EIA is to be undertaken in an objective and impartial manner by independent experts. If the ExA and Secretary of State are not confident that the UCIA is truly objective and impartial (and it clearly is not for the reasons set out in RC’s written response to that document), then at the very least they must treat it and its contents with great caution in reaching their decision.
34. The very fact that the UCIA is venturing into the subjective territory of expressing unsubstantiated and (incontrovertibly) inadequately explained adverse planning judgments about a commercial rival’s scheme demonstrates that it does not comprise an objective and impartial assessment of impact and mitigation. It is not therefore fit for purpose.
35. Instead, it comprises a highly partisan assessment which seeks inappropriately to advocate for the relative merits of the NG scheme.
36. Furthermore, the conclusion that is expressed lacks any credibility having regard to the following matters.

- (i) The policy framework in the NN NPS, which reflects a hierarchy of importance of designated landscapes, in which national landscape designations sit at the top, with policy presumptions attached, and highly valued landscapes protected by local designation sit at the bottom. These lowest level designations “should not be used in themselves as reasons to refuse consent” (NN NPS paragraph 5.156).
  - (ii) The landscape of which the Rail Central site forms part is not designated even at local level. It is not even identified as a ‘valued landscape’ for the purposes of the NPPF. It thus sits below the level of designated landscapes where the NN NPS makes clear that impact on such landscapes should not in itself be a reason to refuse consent.
  - (iii) The differences between the landscape and visual impacts of the two schemes are acknowledged and addressed in Rail Central’s cumulative and comparative assessments, but are in truth relatively limited. The similarities in terms of the receiving landscape, the nature and scale of the development and the scope for effective mitigation far exceed the differences.
  - (iv) The countervailing public interest benefits in both cases are essentially of the same nature, and are those inherent in a SRFI in this location. The main differences are that the Rail Central scheme is larger, and also has direct access to the West Coast Main Line. This inevitably means that it will deliver those benefits to a greater extent.
37. In those circumstances it is simply not credible for NG’s UCIA to suggest that on the one hand the NG scheme would not even give rise to significant long term adverse landscape effects, but on the other hand those associated with the Rail Central scheme on the adjoining undesignated land would be so severe that in and of themselves they would outweigh all of the benefits of a large SRFI in this location and displace the presumption in favour.

**Agenda Item 4: transportation cumulative and interaction impacts**

**(1) Agenda item 4(i): rail connections and capacity**

38. Oral submissions were made by Nick Gallop of Intermodality on behalf of Rail Central to cover:
- (i) the compatibility of the two Projects in respect of design and construction, in particular the design of the southern connections;
  - (ii) the capacity of the Rail Network to accommodate both Projects; and
  - (iii) the operational compatibility of the two Projects.
39. In order to determine Rail Central's stance on the relationship between the respective SRFI proposals, it was explained that Rail Central had instructed its railway engineer to assess the scope for a track layout to be achieved enabling both SRFI to be connected into the WCML Slow Lines / Northampton Loop, alongside Rail Central’s proposed connections into the WCML Fast Lines. A track layout design has been produced which

would allow the respective main line crossovers and connections to be achieved, without impacting on the length of sidings available within either SRFI, nor requiring any amendments to the respective DCO order limits. This layout has been shared by Rail Central with Network Rail and NG.

40. It was submitted that as part of the ongoing programme of GRIP3 workstreams being undertaken by Network Rail for Rail Central (through a separate Sponsor to that appointed for NG), this unified track layout design proposal will be reviewed further as part of selecting the preferred option for connection of the Rail Central site into the WCML Slow Lines / Northampton Loop. If the respective DCO determination and implementation timescales are sufficiently close together, scope would then exist for all 4 of the WCML Slow Lines / Northampton Loop connections to be installed together in a single engineering possession, minimising disruption to services.
41. Mr Gallop explained that in terms of the capacity of the rail network (ie timetable) to accommodate both projects, a number of timetable assessments have been collectively produced by Rail Central and NG. The collective view of the above studies is that sufficient capacity exists to enable both SRFI to achieve the threshold of 4 goods trains per day in and 4 goods trains per day out of each site, taking account of Rail Central and NG sharing access to capacity on the WCML Slow Lines / Northampton Loop, and Rail Central additionally having direct access to capacity on the WCML Fast Lines. In this way the requirement for both sites to achieve a minimum of 4 goods trains per day in and 4 goods trains per day out of each site, as a mixture of Class 1 express (100mph / 240m length), Class 4 intermodal (75mph / 775m length) and Class 6 conventional (60mph / 775m length) can be spread amongst 6 separate points of connection onto both branches of the WCML. A further timetable assessment is now being undertaken for Rail Central by specialist timetable planners PRA, looking at both branches of the WCML using the latest working timetable data between the North West and London, the results of which will be reviewed by Network Rail under the ongoing GRIP3 programme.

#### (2) Agenda item 4(ii): Highways and traffic

42. Oral submissions were made by Anthony Tugwell of Vectos on behalf of Rail Central, who explained that Rail Central has been undertaking a strategic review of the assessment of the transport impacts of the proposed Rail Central scheme and the proposed mitigation. This review has revealed a number of issues with the analysis and the proposed mitigation schemes.
43. Since identifying these, Rail Central has been working to address the identified issues. This has involved changes to certain elements of the analysis and will potentially lead to changes in the proposed mitigation. Current efforts are particularly focused on M1 Junction 15A. In relation to Junction 15A, NG has similarly identified a number of issues in their UCIA (para 2.218 and following).
44. A revised VISSIM model has been developed for Junction 15A which includes a refinement of the forecasting methodology. The results to date suggest the issues identified by Rail Central and subsequently by NG in the UCIA can be satisfactorily addressed. Once Rail Central has concluded the current work on the analysis of the Rail Central impacts at Junction 15A we will go on to undertake a full cumulative

analysis with the NG scheme and it is accepted that it is Rail Central's responsibility to undertake that revised CIA .

45. Rail Central are also re-visiting the analysis of other junctions within the study area.
46. It is submitted that, contrary to what has been suggested, the strategic modelling has not been updated. It is the way in which the output from the strategic modelling has been assessed and translated into a form that is suitable for detailed modelling (i.e. the refinement to the forecasting methodology for the VISSIM model covering Junction 15A referred to above) that has been comprehensively reviewed and amended in some areas.
47. Turning to the specific locations identified by the panel, and where the NG team has provided additional commentary at ISH4, M1 Junction 15A has been considered in significant detail and a revised scheme has been identified that, it is believed, will deliver benefits over the scheme included in the Rail Central DCO and will overcome the issues that have been highlighted. In relation to junctions on other routes in Northampton, including A5076/Towcester Road/Tesco (as identified by NG in the UCIA), these are similarly being reviewed as part of the strategic review and revisions to mitigation schemes included in the DCO have been identified and are being tested. Finally, turning to the reference to the A45 Queen Eleanor Interchange (and the lack of consideration in the Rail Central TA), it is noteworthy that this was screened out of the assessment process with the agreement of HE and NCC before the submission of the DCO. However, this junction is being considered once again as part of the strategic review.
48. In summary, Rail Central are confident that the issues we have identified in our strategic review and those highlighted by NG in the UCIA can be properly addressed.

#### **Agenda Item 5: Socio-economic matters**

49. The ExA has asked Rail Central within the ISH4 Hearing Action Points to explain the purpose of the Logistics Institute of Technology and how this will be secured.

##### **(1) Purpose**

50. Gazeley UK is currently in the process of establishing a Logistics Institute of Technology (LIT) based in the East Midlands which will operate on a "hub and spoke" model. The LIT comprises a partnership between Gazeley, Aston University, North Warwickshire & South Leicestershire College and Holovis (who are a designer of sensory experiences – technology which can be applied in a training context).
51. The purpose of the LIT is to attract, develop and retain the workforce that the logistics sector requires both now and in the future. This will directly help to address the logistics sector's skill requirements.
52. The "hub" location for the LIT is proposed to be at Magna Park Lutterworth (MPL), with training "spokes" being established in other locations. One such proposed location is East Midlands Airport.

53. The hub and spoke model provides a good level of geographical coverage within the East Midlands and beyond, with the potential to outreach and engage both businesses and employees. This includes the potential to specifically engage with end occupiers and employees located at major proposed developments such as Rail Central.

#### (2) The Hub at Magna Park, Lutterworth

54. The proposed LIT Hub will comprise approximately 3,700 sq. m. of floorspace including learning facilities, research and demonstration spaces.
55. The LIT hub will be a focus for the delivery of further and higher education. It will comprise a purpose-built campus with the capacity to accommodate up to 1,000 students on site. The LIT hub will offer vocational training and education which will be specifically designed to meet the evolving technical requirements of the distribution and logistics industry. This will help to ensure the employability of graduates within the industry. The LIT will offer apprenticeships in higher level technical skills up to degree level and beyond.
56. In addition to this the LIT hub will create bespoke programmes for existing employees at Magna Park and the wider area, and work with schools, colleges and universities to inspire the next generation of logistics recruits.
57. In addition to targeting the provision of logistics-focused further and higher education, the LIT will include an applied research division. This will enable knowledge transfer to occur between logistics businesses and researchers, thereby ensuring that the UK maintains and enhances its reputation as a world leader in logistics operations.
58. Applied research work will be aimed at addressing the challenges facing supply chain professionals working in distribution and logistics. Such applied research activity will specifically help to deliver the innovations that are required to secure the logistics industry's competitiveness in the UK and to reduce its environmental footprint.
59. The LIT hub will be an open facility, meaning that while it is located on Magna Park, Lutterworth, it will have the potential to engage a wider cross section of businesses and employees from across the East Midlands. This will provide an opportunity for occupiers and prospective employees at major proposed developments such as Rail Central to be proactively engaged and skills and training delivered.

#### (3) Training "spoke" facilities

60. The LIT is designed to operate on a hub and spoke basis, with potential to deliver programmes of skills and training to locations outside of the LIT hub at Magna Park, Lutterworth.

#### (4) Delivery

61. Gazeley UK has submitted a funding bid to the Department for Education (DfE) in relation to the LIT. Irrespective of the outcome of the funding application Gazeley is committed to delivering the LIT through the s106 agreement associated with the proposed expansion of Magna Park, Lutterworth.

62. Delivery of the proposed LIT will occur in advance of Rail Central becoming operational and will therefore provide an opportunity for the provision of training and skills provision, knowledge transfer and innovation.
63. A Local Employment Scheme (LES) for Rail Central is proposed and will be prepared and agreed with South Northamptonshire Council. This will ensure that employment, skills and training benefits are delivered at key milestones. The LES will, among other matters, detail how the Rail Central will operate a training “spoke” as part of Gazeley’s proposed Magna Park, Lutterworth LIT.
64. The LES would be secured through the Construction and Operational Environmental Management Plan (CEMP), with the CEMP being secured through a planning requirement.
65. The assessment of socio economic effects within the Environmental Statement does not rely on the LES (or by implication the LIT being delivered) as it is not needed to mitigate a significant adverse effect.

#### **Agenda Item 6: Landscape and Visual matters**

66. Oral submissions were made by Chris Frain of RSK, on behalf of Rail Central, who explained that Rail Central has assessed LVIA effects during construction and during operation at Years 1, 7 and 15. Year 7 effects have been assessed at the request of South Northamptonshire Council, unlike NG who have assessed Year 1 and 15 only. It would appear that South Northamptonshire Council did not make the same request of NG. Assessing Year 7 effects is useful in illustrating the effectiveness of proposed mitigation over time, and helpful in illustrating how some effects may be mitigated at an earlier or later stage. However, it is not unusual practice that operational effects are only assessed at two points, for example year 1 and year 15.
67. Mr Frain noted that as a result of the NG design and alignment of proposed diverted Public Rights of Way along the western side of their proposed screen bund, that this would afford users open views across the Rail Central site that would not be available otherwise.
68. Reference was also made by Mr Frain to his concerns regarding the robustness of the UCIA and the judgments made to inform the UCIA. The NG UCIA correctly notes that RC identifies significant residual effects to local landscape character ([AS-040] at p.14 para 2.28). Evidence was given that the NG UCIA appears to underestimate some of its own effects. For example, NG has concluded that the development of its own SRFI would give rise to no significant residual effects to local landscape character ([AS-040] p.14 para 2.31 and effects tables at Appendix 2). Mr Frain said he found it difficult to understand how NG, located in similar landscapes and proposing similar development type / scale can conclude that the permanent change to the local landscape brought about by the introduction of its scheme would not result in significant residual effects to local landscape character in its own right.
69. The UCIA also appears to confuse the assessment of cumulative visual effects with the visual effects of Rail Central in its own right and identifies cumulative effects as a result of Rail Central Only (e.g. Northampton Road - Willow Lodge/Railway Cottages)

([AS-040] p.18 paras 2.48 - 2.49). This is also addressed by Rail Central within [REP5-026] at para 22.

70. The UCIA appears to overestimate some of the assessed combined residual cumulative visual effects from fixed visual receptors (properties and settlements) ([AS-040] p.18 paras 2.48 – 2.49). This is also addressed by Rail Central within [REP5-026] at para 24.
71. The UCIA assesses significant residual cumulative visual effects at receptors where in fact no combined views of both developments may be gained. An example is Northampton Road - Willow Lodge/Railway Cottages), where the aspect to the east and views towards NG would effectively be screened by the NG mitigation, views towards NG would effectively be screened by the RC development zones, views towards the RC development zones would effectively be screened by the proposed RC mitigation (building line limits parameter, screening bunds & planting).
72. The UCIA does not appear to properly consider the effectiveness of Rail Central's proposed mitigation and residual cumulative effects (e.g. Milton Malsor) ([AS-040] Para 2.45 notes views of NG as limited and restricted to its perimeter mounding and planting). It also neglects to take account of the substantial Landscape and Visual mitigation proposed by Rail Central and which was amended to take proper regard of the issues raised during consultation. Amendments to the Rail Central scheme included sensitively designed screen bunds, which have been extended and increased in height, in combination with reducing levels and restricting the building height parameter in Zone 3a to 15m maximum above finished ground levels, increased screen planting to the north of the site, and building line limits to move buildings away from properties and roads.
73. Reference should also be made to the amended cumulative effects table requested during ISH4 and provided to PINS/NG the following day at ISH5.

#### **Agenda Item 8: Noise and vibration**

74. The topics raised by the ExA during ISH4 were as follows:
  - (i) Rail Central to clarify reasons for disagreement with the results of NG's UCIA in relation to rail noise.
  - (ii) Rail Central to clarify reasons for disagreement with the results of NG's UCIA in relation to operational noise generated from within the main SRFI site.
  - (iii) Rail Central to clarify the reasons for differences between the results of the background sound surveys carried out by RC and NG.
75. Oral submissions were made by Alex Priestley of Spectrum Acoustic Consultants on behalf of Rail Central.

#### **(i) Rail Noise**

76. It was submitted that the UCIA suggests that cumulative effects of average rail noise increased to above the threshold of significance as a result of the RC scheme in 2043.

NG explained that this assessment was based on the simple addition of the projected number of rail movements for 2043 as presented in the RC ES with the NG projected rail movements for the same year.

77. However, it is submitted by Rail Central that the 2043 rail movement forecasts include all potential allocated movements as specified by Network Rail, and these would occur whether taken up by Rail Central or NG or both, or indeed any other development. Therefore, there can be no cumulative increase in rail noise assumed in the UCIA over the long term as this is limited by Network Rail's forecast horizon.
78. The UCIA paragraph 2.131 suggests that in 2033 and 2043 there would be an increase in railway noise induced awakenings, identified at 5 receptors (previously just 3 receptors with NG only). Given the argument above in relation to Network Rail's forecast horizon, any further cumulative increases over the long term seem unlikely.

(ii) Operational noise generated from within the main SRFI site

79. NG has stated that noise from warehouse mechanical plant at the main SRFI site would be assessed at a later stage under Requirement 23 of the dDCO. This, however, should be assessed within the ES as it is a potentially significant noise source that could lead to a significant adverse effect at receptors.
80. It is submitted that the issue of warehouse mechanical plant noise was raised by a local resident (Mr Simon Duggleby) during the public consultation for Rail Central. He had moved away from another similar development near the J14 industrial park where he experienced high levels of mechanical plant noise disturbance.
81. It is submitted by Rail Central that other potentially significant sources, such as HGV trailer mounted chillers, have also been omitted from the assessment.
82. Furthermore, it is considered by Rail Central that the assumed sound power output from gantry cranes operating on the intermodal platform, and their associated alarms, has been significantly underestimated. Rail Central has obtained manufacturer's data for gantry cranes, which was based on the latest technology (quietest available) and assumed four alarms per crane (one on each corner), also based on manufacturer's data. NG have assumed sound power levels 5dB lower than Rail Central for each gantry crane. In relation to the alarms, NG have assumed just one alarm per crane with a total sound power output more than 20dB lower than Rail Central. It is unlikely these alarms would be sufficiently loud so as to be clearly audible within required safety distances.
83. NG has indicated that the proposed acoustic screening (earth bund) cannot be further enhanced and concludes that there is no further practicable mitigation that can be applied. However, no mitigation at source has been proposed, as would likely be required for warehouse mechanical plant and HGV trailer mounted chillers, which have been omitted from NG's assessment.
84. There is a requirement in NPS NN paragraph 5.195 that significant adverse impacts are avoided and adverse impacts are reduced as far as possible, through the implementation of mitigation. NG has effectively reduced the burden to provide

mitigation by omitting potentially significant sources from the assessment and by underestimating the noise output of other significant sources.

85. Generally, NG are suggesting that the cumulative impact would be dominated by Rail Central. Rail Central strongly disagree with this conclusion. While NG acknowledge the two sites would have similar sound sources, they have omitted to include a number of significant sources from their assessment and significantly underestimated the sound output of other significant sources.

### (iii) Background Sound Levels

86. The ExA highlighted the significant difference between the background sound levels used by Rail Central and NG. The UCIA paragraph 2.145 states 'the background sound values used in the Rail Central assessment are between 5 and 10 dB(A) higher during the daytime and 6 and 7 dB(A) higher during the night-time at these receptors compared with the equivalent values used for NGW.'
87. The Background Sound Level (LA90) is the baseline used for assessment of industrial/commercial sound. It is defined as the sound level that is exceeded for 90% of the measurement period. In other words, it describes the lowest 10% of measured sound levels.
88. Background Sound Levels are typically measured over 15-minute sample periods. NG carried out unattended continuous noise monitoring, measuring in contiguous 15-minute periods, for a total of four weeks. Rail Central did the same for a total of six weeks.
89. Given the extensive duration of the surveys carried out by NG and Rail Central, the subsequent size of the measured datasets, and the filtering carried out for both wind speed and direction, it is considered that the 'mean' (average) value of the measured dataset is the most appropriate indicator of typical background sound levels in this case. NG, however, have quoted 'modal' values and also 'lower quartile' values, although the relevance of the lower quartile has not been made clear.
90. For the critical night time period, the lower quartile value is more likely to be representative of background sound levels during the middle of the night, when levels are at their lowest, rather than the earlier night time period and early morning, before 7am. BS 4142 advises that impacts estimated during 'the middle of the night can be distinctly different (and potentially of lesser importance) compared to the start or end of the night-time period for sleep purposes.' It is considered that the lower quartile value is not an appropriate statistical parameter with which to determine the background sound level in this case.
91. While NG have offered a potential alternative explanation for the differences in background sound levels reported by Rail Central and NG, RC do not believe these to be credible for the reasons set out below.
92. Within the UCIA paragraph 2.146, NG suggest that 'At receptor R21, this may be due to the corresponding RC survey position being more exposed to road traffic noise from the A43 to the west.' Rail Central submits that this seems unlikely. Rail Central's road traffic noise modelling and the online Extrium England Noise Map Viewer

indicate that, at the relevant monitoring location, the M1 to the east would be dominant; the M1 is closer and has more traffic than the more distant A43 to the west. It is highly unlikely that this could account for a 5-6dB difference in background sound level between Rail Central and NG assessments at this shared receptor.

93. UCIA paragraph 2.147 states, 'At receptor R28, the NGW survey position was again at the boundary of the rear garden of the receptor, approximately 27 m from the residential building. The RC survey position was approximately 180 m to the south of the receptor, close to Courteenhall Road and the railway lines, and at a ground level 10 m higher than the receptor. This location is likely to be more exposed to the prevailing noise than the NGW receptor and could be the reason why the noise levels measured by Rail Central are different from and higher than those measured at the receptor by NGW.' It is considered, however, that the relatively low number of traffic movements on Courteenhall Road and the rail line would have little effect, if any, of the measured background sound level at the RC monitoring location.
94. It is, therefore, considered that the differences in the stated background sound levels used by Rail Central and NG are down to data processing, as described above, rather than measurement location.

#### **Agenda Item 14: Lighting**

95. Oral submissions were made by Dominic Meyrick of Hoare Lea on behalf of Rail Central. In response to a question from the ExA about NG's assertion that the two developments together would give rise to a major adverse effect, NG's expert referred to the 'dark sky' nature of the current baseline condition around both sites and his belief that, with the two sites combined, this would cause a high amount of light pollution due, in particular, to the much larger size of Rail Central. While explaining the nature of light pollution he only referred to sky glow and stated that he believed that the night time LVIA's submitted by Rail Central were a 'best case scenario' showing, as they do, the illuminated RC site on a clear night with no local weather conditions (low cloud cover, fog etc.).
96. Mr Meyrick explained that NG's assessment did not reflect the full nature of the components that make up light pollution as a whole, that is light encroachment/trespass, glare and sky glow. Mr Meyrick explained each issue but expanded on the nature of light at night in terms of sky glow, critically clarifying that, due to inter-reflection of artificial light off surfaces at night (roads, landscape, building finishes etc) there would always be some upward light into the night sky. Mr Meyrick finished by stating surprise that NG's assessment of this issue had not included a baseline survey which includes light meter measurements, nor a lighting parameter plan submission which would allow a more detailed pre / post development lighting assessment to qualify any magnitude of change due to the NG development.
97. In response to a statement made on behalf of Blisworth Parish Council, there was a discussion as to whether it was possible to measure sky glow under differing weather conditions. Both experts agreed that, at the present time, this was not possible and that no internationally recognised methodology or process currently existed to enable this to be done.

## **ISH5: ON THE DRAFT DEVELOPMENT CONSENT ORDER**

98. Rail Central made submissions at ISH5 on the draft development consent order on a number, but not all, of the agenda items. Only those agenda items on which Rail Central made submissions are covered below.

### **Agenda item 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**

99. Rail Central confirmed that Requirement 31 (as agreed with NG) should form part of the development consent order.
100. Rail Central’s position is set out in its written response to the ExA's Further Written (REP5-024) which includes its responses to the ExA’s Schedule of Questions on the Draft Development Consent Order. It is Rail Central’s response to question 27 of this schedule which is relevant (see REP5-024, pages 7-8).
101. As explained in that written response and confirmed by Rail Central in oral submissions, the underlying objective of Requirement 31 is to ensure that, in circumstances where Rail Central has satisfied the Secretary of State that its J15A works are appropriate (which would include the ability to satisfactorily provide for cumulative traffic flows including from the NG scheme) and where NG has not carried out its works to Junction 15A, the public interest is best served by only one set of works being carried out at that junction.
102. Such an approach is not dependant on knowing now what the precise Rail Central scheme at Junction 15A will be (and so Requirement 31 is not affected by the fact that Rail Central are currently reviewing the design of the works proposed at Junction 15A). The requirement will only ever bite in circumstances where the Secretary of State has approved the Rail Central order (in light of the works proposed to Junction 15A and Highways England’s advice on them). In other words the Secretary of State will have at that point determined that the Rail Central scheme, including the proposed works at Junction 15A (and consideration of cumulative effects of the NG scheme), is in the public interest.
103. Rail Central confirmed and NG agreed that the definition of “Rail Central development” in paragraph 1 of Part 1 of Schedule 2 to the draft DCO, as applicable to Requirement 31 within the NG dDCO, is broad enough to cover either a development authorised following withdrawal and resubmission of the Rail Central scheme or any amendments to the Rail Central Order as first approved.

#### **b. Footpaths – arrangements for connections**

104. Rail Central’s position in relation to the footpaths connections is set out in its written response to the ExA's Further Written Questions (REP5-024) which includes its responses to the ExA’s Schedule of Questions on the Draft Development Consent Order (Response to ExQ2.2.0.3, page 1, questions 12 and 26 to Schedule of Questions on the Draft Development Consent Order, pages 4-6 and Appendix 1).

105. In oral submissions Rail Central explained that a meeting between the relevant experts advising Rail Central and NG would take place on 14 March 2019 to discuss the footpath connection issue.
106. Rail Central confirmed that the only issue at large is the detailed alignment of the southern connection between the proposed Rail Central and NG footpaths. What the parties are trying to achieve is a means by which, if both projects precede, the footpaths in each scheme link in a sensible and commodious way that does not interfere with either scheme.
107. There are three points that remain to be ironed out:
- (i) First, the parties need to ensure that Network Rail do not have any in principle difficulty with the proposed connection. Rail Central is currently liaising with Network Rail to establish its position;
  - (ii) Secondly, there is a need to ensure that the proposals address circumstances where NG has been approved but had not yet been implemented or where the NG footpath has yet to be provided. At present, the proposed connection is a connection in circumstances where NG has been implemented and the NG footpath provided. It may be that the phasing of the two schemes is such that there is a requirement for an interim solution. Rail Central's position is simply that this scenario must be legislated for.
  - (iii) Thirdly, each side's experts need to be satisfied that the proposed connection is workable and suitable.

#### **Agenda item 7: the DCO and EIA**

##### 7a: tailpieces

##### *Requirement 3(3)*

108. Rail Central re-articulated the points it made at ISH1 in relation to Requirement 3(3) (see paragraphs 3.1 to 3.3 of REP1-028).
109. The amendment to the requirement subsequently made by NG to insert an express reference to timing does not overcome these issues as warehousing could be built and occupied under the requirement before and, indeed, without a rail terminal such that the development authorised by the DCO would not comprise an NSIP. As a consequence, the effect of the tailpiece is that the DCO authorises a development that may or may not lawfully be the subject matter of an application under the PA 2008, depending on a subsequent decision by a local planning authority. That is unlawful. Furthermore, the development to be authorised may or may not be one to which the NN NPS applies. Further and in any event, the development would not comply with paragraphs 4.88 and 4.89 of the NN NPS.
110. NG's suggested alternative approach of imposing a limitation on occupation of floorspace prior to the provision of the rail terminal (following Requirement 2(3) of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 which provides: "*The rail terminal constructed as part of Works No. 2 must be constructed*

*and available for use prior to the occupation of more than 260,000 square metres of the rail served warehousing”)* does not assist. The East Midlands Gateway approach may have been approved by the Secretary of State in that instance, but (a) that does not make it lawful, and (b) its lawfulness was not examined by the courts (either generally or in terms of the correctness or otherwise of the underlying interpretation of paragraphs 4.88 and 4.89 of the NN NPS).

111. The ExA is, of course, obliged to approach its task based on a correct interpretation of the words in the NN NPS. The same will in due course apply to the Secretary of State’s approach to his decision-making. Neither party is bound to accept that the way the Secretary of State has previously interpreted and applied those words is correct. It is plain from a reading of the relevant ExA Report (paragraphs 4.2.14, 4.2.18-4.2.28, 4.2.57-4.2.62 and 5.1.5) and the Secretary of State’s decision letter that:
- (i) The ExA and the Secretary of State did not agree on what the words of the policy meant, or how they should be applied to the facts.
  - (ii) The ExA considered the consequences of this dispute to be so significant as to warrant a recommendation that the Order should not be made.
  - (iii) In order to reach a different decision, rejecting the ExA’s recommendation, the Secretary of State felt obliged to depart from the ordinary and natural meaning of the words used in order to justify the decision that was reached.
  - (iv) The Secretary of State felt it appropriate to rely on commercial factors as a basis for giving the words used a meaning that did not reflect their ordinary and natural meaning, rather than as a basis for justifying a departure from the policy.
  - (v) A decision in this case which sought to rely on the Secretary of State’s decision in respect of the East Midlands Gateway application would be fraught with unnecessary legal risk.
112. Rail Central confirmed that its equivalent provision in its dDCO (also Requirement 3(3)) provides: *“A rail terminal capable of handling at least four goods trains per day must be constructed prior to the occupation of any rail served warehousing.”* It does not contain a tailpiece.

#### 7b: screening under tailpieces

##### *Article 6*

113. The ExA proposed an amendment to Article 6(3) as follows:

“Paragraph (1) does not extend to any maintenance works which would give rise to any significant adverse environmental effects not ~~identified~~ accepted at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations.”

114. Rail Central understands the purpose of the proposed amendment to be to ensure that the Article 6(3) limits maintenance works to works which would not give rise to

anything more than the significant adverse residual environmental effects (i.e. those effects which would remain taking account of the effect of all mitigation measures secured by the DCO and the s.106 obligation) identified in the (totality) of the environmental information. If that understanding is correct it may be that in order to address the ExA concern, Article 6(3) (and like articles) should read:

“Paragraph (1) does not extend to any maintenance works which would give rise to any significant adverse residual environmental effects not identified at the time this Order was made or in any updated environmental information supplied under the 2017 EIA Regulations.”

If that approach was adopted, it would need to be accompanied by the addition of a definition of “residual environmental effects” in Article 2.

### **Agenda item 8: section 106**

#### **8a: the Community Fund**

115. Rail Central’s position on the proposed community fund is set out in its Written Summary of Oral Submissions made at ISH2, ISH3 and CAH (REP4-020, pages 8-10, section 7).
116. In those submissions Rail Central address the distinction to be drawn between a matter which is “important and relevant” for the purposes of section 104(2)(d), and a matter which is a material consideration for the purposes of a determination of an application for planning permission pursuant to the Town and Country Planning Act 1990 (“TCPA 1990”).
117. Rail Central submitted that a matter falling within section 104(2)(d) of the PA 2008 can be regarded as an ‘obligatory’ material consideration, i.e. something the statute expressly or impliedly requires to be taken into account and that a failure to take such a consideration into account will lead to intervention by the court (cf. a ‘discretionary’ material consideration, i.e. something the decision maker is entitled (but not obliged) to take into account as he thinks fit). What is “important and relevant” to a decision under the PA 2008 is a species of obligatory material consideration.
118. Government policy contained in the NN NPS at paragraph 4.10 as to when section 106 obligations should be taken into account (i.e. when the obligation is, amongst other things, “*necessary to make the development acceptable in planning terms*”) is an ‘obligatory’ material consideration because section 104(2)(a) obliges the Secretary of State to have regard to it.
119. If something is not a material consideration at all, it, self-evidently, cannot be “important and relevant.” In other words, all matters which are “important and relevant” will necessarily also have to be material planning considerations, but the reverse is not the case.
120. A planning consideration is simply something that is relevant to the use and development of land (*Stringer v. Minister of Housing and Local Government* [1971] 1 All ER 65 at 77). However, in order to be a material planning consideration it must be relevant to the question of whether permission should be granted or refused; that is

to say a factor which has some weight in the decision-making process (even if not in itself determinative) (*R (Kides) v. South Cambridgeshire District Council* [2002] EWCA Civ 1370; [2003] P&CR 19, per Jonathan Parker LJ at paragraph 121). Those basic propositions are equally applicable whether one is considering a decision pursuant to the Town and Country Planning Act 1990 or the PA 2008.

121. Hence the submission made on behalf of NG that its community fund might be “important and relevant” to the Secretary of State’s decision on its application even if it is not a material planning consideration is entirely misconceived.

122. The judgment of the Court of Appeal in *Forest of Dean DC & Resilient Energy v Wright* [2017] EWCA Civ 2102, to which the ExA has drawn attention, is instructive in dealing with the specific issue of whether NG’s community fund is even capable of being a material planning consideration (let alone one that is “important and relevant” to the Secretary of State’s decision).. At paragraph 36 Lord Justice Hickinbottom said:

*“Both Mr Cairnes and Mr Kingston – in my view, rightly – accepted that, on a planning application, it would be unlawful for a planning authority to take into consideration a donation to a community benefit fund by a commercial wind farm developer, because such a donation would not be a material consideration.”*

123. Accordingly, the Court of Appeal expressly endorsed a concession that a payment to a community fund by a commercial developer was not a material planning consideration.

124. Exactly the same applies here. NG has simply not established a link between the planning impacts of the scheme and the community fund’s role in addressing those impacts.

125. Indeed, NG acknowledges that its assessment of the likely effects of its scheme has not identified any such planning impact which the community fund is designed to address. In the absence of such an identified effect, the fund is incapable of constituting a material consideration for the reasons set out in our written summary of the oral submissions made at ISH3. The absence of any identified effect to which the fund can be linked is why the section 106 obligation has been forced to take an approach whereby it provides criteria only for qualifying projects. There are no identified projects that the community fund is to support as of now, against which the ExA can apply the tests set by law and policy. Rail Central’s submissions explained that this problem would apply equally in circumstances in which the s.106 obligation itself set criteria which reflected the policy tests in paragraph 4.10 of the NN NPS. In short, that would simply defer to a later date the issue that the ExA and Secretary of State must grapple with and determine now if any account at all is to be taken of the community fund.

126. The ExA and Secretary of State therefore have no basis on which they could properly conclude that the community fund meets identified planning impacts of the scheme and as such meets the test in paragraph 4.10 of the NN NPS. Indeed, in its oral submissions NG expressly conceded that the fund does not satisfy the test of necessity.

127. In its earlier submissions on this subject, Rail Central said that if the payment of the community fund is not regarded as being necessary to make the SRFI development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development then in accordance with the NPS it should not be regarded by the Secretary of State as a material consideration. That must be the conclusion where NG has failed to establish any link between impacts and their mitigation under the community fund.
128. We understand that NG agree with this proposition in that NG confirmed in oral submissions that if the ExA and Secretary of State do not agree with their position that the community fund meets the paragraph 4.10 tests, then they should not take the community fund into account. Rail central agrees. Moreover, this is the only lawful approach on the basis of the evidence that the Secretary of State could take.
129. As was acknowledged, that does not prevent NG from providing an obligation to pay the community fund if it judges that is appropriate in order to secure some commercial benefit to NG other than directly influencing the outcome of the Secretary of State's decision.

#### **Item 9 – Regulation 123**

130. Rail Central confirmed, in agreement with the NG, that neither Regulation 122 nor 123 of the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations") apply to NSIPs consented under the PA 2008 regime.
131. This can be seen from the terms of Regulation 123. Regulation 123 applies by virtue of sub-section 1 to "relevant determinations". Whereas planning permission for the purposes of the CIL Regulations generally includes development consent under the PA 2008 (see Regulation 5), a narrower definition applies for the purposes of Regulation 123. This is prescribed by sub-section 4 which provides that 'determination' means a determination under the TCPA 1990. In other words, NSIPs are explicitly removed from the application of Regulation 123.

#### **Item 10: associated development, including discussion of the position on the Roade Bypass**

132. Rail Central confirmed the position that it had previously stated at ISH3 in relation to Agenda Item 3(8), namely that following receipt of NG's detailed explanation of and justification for the Roade Bypass (REP3-008, Appendix 1), it accepts that the Roade Bypass is associated development within the meaning of the PA 2008.

#### **Other matters**

##### **Requirement 32: Rail**

133. The ExA expressed concern that the current draft of Requirement 32 (as amended by the removal of reference to Network Rail) would fetter the South Northamptonshire Council's (the relevant planning authority) ("SNC") discretion.
134. Rail Central in agreement with NG submitted that there is no fetter on SNC:

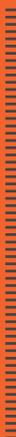
- (i) To the extent that the SNC's discretion to approve the rail scheme submitted under Requirement 32 is limited in any way it is so limited in an orthodox and legitimate manner. Requirement 32 would only bite in circumstances where the Rail Central scheme had been approved by the Secretary of State and is thus regarded to be in the public interest. Requirement 32 merely protects that public interest by ensuring both schemes can come forward, and that the implementation of one of the schemes does not inadvertently have the effect of frustrating the implementation of the other.
  - (ii) It is entirely orthodox and indeed necessary in order to achieve a public interest objective to state in a requirement or condition what that objective is. An example would be a noise requirement where the underlying environmental assessment established that the noise impacts could be mitigated to a particular level where the effects would be acceptable/ no longer significant. The requirement would seek the submission and approval of a scheme which would have to achieve the level identified in the environmental assessment. In order effectively to secure the necessary mitigation, such a requirement would need to specify the level to be achieved in order for the scheme to be judged acceptable. The principle here is the same.
  - (iii) There is nothing unorthodox or unlawful in the Secretary of State by means of secondary legislation identifying an objective in the public interest and requiring the relevant planning authority to approve details only if satisfied they would meet that objective. It is not a fettering of the relevant planning authority's discretion but an identification of the parameters in which it is free to exercise its discretion. It is an ordinary incidence of Local Government for Central Government set out the remit in which a particular arm of Local Government is free to act.
  - (iv) The public law issue of fettering of discretion arises where a body binds its own ability to freely make future decisions. This situation does not arise here.
135. As to SNC's concerns that they lack the expertise to determine an application to discharge this requirement, there is no bar on SNC consulting with Network Rail. Indeed both NG and Rail Central would expect that SNC would consult with Network Rail.
136. SNC would be in a position which is no different to when a local/ relevant planning authority is required to approve a condition or requirement that deals with a change to the highway. It will consult with and take into account any comments from the relevant highways authority.
137. Moreover, the Network Rail approval process requires consideration of other schemes that are also within the Network Rail approval process. As such when each of the NG and Rail Central schemes progress through the Network Rail authorisation process, Network Rail will be obliged to have regard to the other and ensure other interests are taken into account. Rail Central confirmed in this context that it is moving forward to the GRIP3 stage of the Network Rail approval process, which will include addressing this matter (and has signed up to the costs of doing so).

138. Finally, SNC are plainly the right body to discharge the requirement. The point of the requirement is to protect the public interest in circumstances where both schemes are consented. It is appropriate that a democratically elected and accountable public body makes decisions which are in the public interest. For clarity, it will not be SNC who are making the decision as to whether the Rail Central scheme will go ahead. All the requirement does is to ensure that nothing is approved by SNC which inadvertently frustrates the Rail Central scheme.
  
139. In discussion with Rail Central, NG agreed to amend Requirement 8 to insert words to the effect of “(including Works No. 1 and 2)” after “rail infrastructure and rail terminal” in Requirement 8(2)(a). This is purely to ensure that it is clear that Works No.1 is covered by Requirement 8.

## **CAH2: COMPULSORY ACQUISITION HEARING**

140. Rail Central confirmed that in so far as the plots within which it is interested (Plots 1/7 and 1/12), its position is set out in the Rail Central's Written Summary of Oral Submissions made at ISH2, ISH3 and CAH (REP4-020, page 13, section 10). That summary continues to reflect Rail Central's position.
141. In summary, Rail Central's position turns on ensuring appropriate requirements are contained within the NG development consent order such that there is nothing in the NG DCO that would prejudice the Rail Central scheme coming forward. Requirements 30 – 32 inclusive are designed to achieve this.
142. At the time of CAH2, Requirements 30 – 32 are agreed between Rail Central and NG. There is a single outstanding issue which relates to the detail of the footpath connections secured under Requirement 30.
143. As set out above, Rail Central and NG's experts are to meet to discuss this issue on 14 March 2019. The parties undertook to report back to the ExA on the outcome of this meeting at Deadline 6.

# The Rail Central Rail Freight Interchange

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## Northampton Gateway Examination

ISH4: Further Submission on Impact  
Interactions on behalf of Ashfield  
Management Limited and Gazeley  
GLP Northampton s.à.r.l.

**Northampton Gateway PINS Reference Number  
TR050006**

**19 March 2019**

# Northampton Gateway ISH4: Further Submission on Impact Interactions

Rail Central, Northamptonshire

March 2019

## Introduction

1. As outlined during ISH4 and documented in Rail Central's Oral Submissions at Deadline 6, Rail Central agreed to provide the output of their review of impact interactions. These are provided to support previous statements that an up to date assessment of impact interactions has not been provided as part of the Cumulative Assessment for Northampton Gateway.

## Review Methodology

2. The Rail Central team carried out a comparison of the original effect interactions reported in Tables 15.1 and 15.2 of the Applicant's Environmental Statement (ES) and the summary table of residual effects from each topic chapter provided at Deadline 1. Although there was some uncertainty as to whether 'grouped' receptors had actually been addressed in the Applicant's summary residual table, the benefit of doubt was provided, where it was not clear. Therefore, a fair comparison of the original CIA (Chapter 15) and the residual effects can be made.
3. The output of this exercise confirmed 20 discrepancies<sup>1</sup>. These discrepancies could materially alter the original conclusions on impact interactions set out in Tables 15.1 and 15.2 of the Northampton Gateway ES as some residual effects have changed from being insignificant to significant or from beneficial to negligible.

## Results

4. The review as provided below demonstrates that there are many changes to the assessment of impact interactions when compared against the summary of residual effects provided by the Applicant at Deadline 1. It is unclear whether the cumulative effects identified are significant or insignificant. The changes identified are likely to materially change the overall assessment of impact interactions and an update should be provided to ensure the Examining Authority's decision-making process is based on an up to date CIA.
5. The output of the review is provided below in Table 1.

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<sup>1</sup> 19 discrepancies were cited at ISH4, but an additional one has since been identified as outlined in Rail Central's summary of oral submissions from ISH4.

**Table 1: Rail Central Review of Impact Interactions**

<b>Effect</b>	<b>Receptor</b>	<b>Stage of operation</b>	<b>Original CIA in Chapter 15 of the NG ES</b>	<b>Summary Residual Effects (Appendix 2 of Document 8.2, submitted at Deadline 1)</b>	<b>Comments</b>
Socio-Economic impacts	Residents near the main site	Operation	Moderate beneficial to major beneficial	Negligible to major beneficial	Topic chapters do not specifically refer to residents, but to employment, housing, commuting patterns etc
Socio-economic impacts	Residents near the bypass	Operation	Moderate beneficial to major beneficial	Negligible to major beneficial	
Landscape and visual impacts	Residents near the bypass	Operation	Negligible to minor adverse	Negligible/minor adverse to moderate adverse	Conclusions of residual summary table based on landscape character changes (bypass site) and visual effects (based on receptors near Roade and the bypass)
Landscape and visual impacts	Users of local Rights of Way	Construction	Moderate adverse	Minor adverse to major adverse	Conclusions of residual summary table based on “users of PROW”
Landscape and visual impacts	Users of road network	Construction	Minor adverse to moderate adverse	Minor adverse to major adverse	Conclusions of residual summary table based on “visual effects on road users” (receptor R1-R12). The summary table addresses this receptor twice, with different residual effects stated – the full range is used here.
Landscape and visual impacts	Users of road network	Operation	Negligible to minor adverse	Negligible to moderate adverse	
Ecology & nature conservation	Onsite ecology/biodiversity	Construction	n/a	“short term adverse effects” to	Standard EIA terminology not used consistently. Benefits identified as a

**Table 1: Rail Central Review of Impact Interactions**

Effect	Receptor	Stage of operation	Original CIA in Chapter 15 of the NGES	Summary Residual Effects (Appendix 2 of Document 8.2, submitted at Deadline 1)	Comments
				"local beneficial effects"	result of ponds and to invertebrates. Adverse effects to wintering birds.
Ecology & nature conservation	Onsite ecology/biodiversity	Operation	n/a	Negligible to "local scale benefits over longer term"	(This was not initially identified as a discrepancy, as "local scale benefits" were not considered to be significant and it was not clear if it was to onsite or offsite receptors – however, given the uncertainty, it has been included, so there are 20 discrepancies in this table rather than the 19 identified in the oral submissions). Standard EIA terminology not used consistently. Benefits identified to bats and breeding birds, though unclear if these are on-site or offsite populations. Mitigation identified to avoid adverse effects.
Drainage & flood risk	Residents near the main site	Operation	Moderate beneficial	Negligible to moderate beneficial	Mitigation will ensure no significant environmental impacts, with flood benefit assumed. It is not stated if this

**Table 1: Rail Central Review of Impact Interactions**

Effect	Receptor	Stage of operation	Original CIA in Chapter 15 of the NGES	Summary Residual Effects (Appendix 2 of Document 8.2, submitted at Deadline 1)	Comments
Drainage & flood risk	Residents near the bypass	Operation	Moderate beneficial	Negligible to moderate beneficial	will specifically benefit particular residents, but this review assumes it will.
Noise & vibration	Residents near the bypass	Construction	Negligible to minor adverse with occasional major adverse	Not significant	Residual summary table identified that mitigation will avoid significant residual effects
Noise & vibration	Residents near the bypass	Operation	Negligible to minor adverse (with occasional major adverse identified in text (but not Table 15.2))	Not assessed	Residual summary table does not consider operational noise at identified receptors (or other noise effects identified in Ch 15)
Air quality	Residents near the bypass	Operation	Minor beneficial to moderate beneficial	Negligible	Unclear how Ch 15 conclusion is reached, as residents in the vicinity of the bypass would not experience a beneficial air quality effect, though residents in Roade itself may do (a "slight" – non-significant benefit according to the residual summary table).

**Table 1: Rail Central Review of Impact Interactions**

<b>Effect</b>	<b>Receptor</b>	<b>Stage of operation</b>	<b>Original CIA in Chapter 15 of the NG ES</b>	<b>Summary Residual Effects (Appendix 2 of Document 8.2, submitted at Deadline 1)</b>	<b>Comments</b>
Lighting	Residents near the bypass	Construction	Negligible to moderate adverse	Negligible to minor adverse	Measures in CEMP will minimise effects
Transportation	Residents near the main site	Construction	Moderate adverse	Negligible	CEMP and phasing will minimise disturbance
Transportation	Residents near the main site	Operation	Moderate beneficial to major beneficial	n/a	Residential receptors not explicitly or implicitly addressed in residual summary table.
Transportation	Residents near the bypass	Operation	Moderate beneficial to major beneficial	n/a	
Transportation	Users of the road network	Construction	Moderate adverse	Negligible	Residual summary table indicates that CEMP and phasing will minimise disturbance, and effects will only be temporary
Transportation	Users of the road network	Operation	Major beneficial	Negligible to moderate beneficial	Operational residual impact relates to journey length & travel patterns, driver stress and view from road.
Agricultural land	Onsite biodiversity	Construction	n/a	Minor adverse to moderate adverse	Loss of soil resource and BMV land would have implications on farmland birds etc.

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