

**From:** Denis Winterbottom <[Denis.Winterbottom@cherwellandsouthnorthants.gov.uk](mailto:Denis.Winterbottom@cherwellandsouthnorthants.gov.uk)>

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**To:** Northampton Gateway <[NorthamptonGateway@pins.gsi.gov.uk](mailto:NorthamptonGateway@pins.gsi.gov.uk)>

**Cc:** Thomson, Morag <[MoragThomson@eversheds-sutherland.com](mailto:MoragThomson@eversheds-sutherland.com)>

**Subject:** ISH 5 - Northampton Gateway dDCO - Additional Requirement 32

Submission with respect to a proposed additional Requirement 32.

Further to ISH5 the Council was given to understand the applicant intends to submit a further revised version of the dDCO and will seek to include an additional requirement concerning the provision of the rail connection to the site.

The purpose of this requirement would be to ensure that any rail connection provided to the NG site would not prevent the making of a rail connection to the site of the proposed Rail Central RFI. To achieve this objective the wording of the requirement seeks to task the relevant planning authority not approve any rail connection that would impede the making of a rail connection to the site of the proposed Rail Central RFI site.

The wording for Requirement 32 provided to SNC prior to ISH5 is that below. During ISH5 it was suggested the reference to Network Rail would be removed; (this is presumed to be the text shown struck out below)

“32. If the Rail Central Order is approved by the Secretary of State, prior to the approval of the details of works comprised in Works No 1 (1)(d) under requirement 8, the relevant planning authority will only approve the details if satisfied that the works are compatible with the Rail Central development (meaning that the works do not prevent the construction of a new railway line from the Rail Central development to connect with the existing Northampton Loop railway line ~~to the satisfaction of Network Rail~~).

The final decision of whether to permit a connection to the rail network is a matter for Network Rail, the body responsible for operation of the rail network, in doing so it will necessarily rely on in-house technical expertise and knowledge of the railway assets.

A decision as to whether a proposed rail connection would preclude the making another rail connection not only requires the assessment of the details of the proposed rail connection but also an assessment that the required second connection could be made. The requirement does not require the applicant to demonstrate the second rail connection is feasible.

In the absence of details to demonstrate that the second rail connection, would the decision maker be expected to seek a design of a possible second rail connection.

This would be unreasonable. The local planning authority cannot be expected to incur the expense of producing a design for the second rail connection.

The issue of details could be resolved if the requirement makes clear that the details submitted must demonstrate how the second rail connection could be achieved.

However even if the LA has details to demonstrate that a second rail connection is possible, the final decision as to whether a second rail connection would be permitted would rest with Network Rail, so without confirmation from Network Rail that a second connection is feasible, the LA could have no confidence in making a decision.

The Requirement is thus dependent on the engagement of rail network operator to be effective, however the requirement includes no reference to the critical role for Network Rail.

PINs Advice Note 15 in paragraph 15.2 is clear that *“The law and policy relating to planning conditions 9, imposed on planning permissions under the TCPA1990, will generally apply when*

*considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects”.*

The additional requirement being proposed:

- is **not necessary** for the Northampton Gateway development proposed,
- It is not clear at this stage whether it may be relevant to planning, but it is **not relevant** to the proposed development .
- the requirement does not ensure all the details required would be provided, it is therefore **not precise**.
- the LA could not take enforcement action against itself, it thus **not enforceable**.
- without the engagement of Network Rail, the LA would be unable to assess the feasibility of a second rail connection, it could have no confidence that a connection would be permitted, it is thus **not reasonable in all other respects**.

Government guidance is clear “Any proposed condition that fails to meet any of the [6 tests](#) should not be used”.

*Denis Winterbottom*

Principal Planning Officer - Development Management

Place & Growth Directorate

Cherwell District and South Northamptonshire Councils

Direct Dial tel : 01327 322109 | Dept tel : 01327 322237

The Forum , Moat Lane, Towcester, Northants. NN12 6AD.

email [denis.winterbottom@cherwellandsouthnorthants.gov.uk](mailto:denis.winterbottom@cherwellandsouthnorthants.gov.uk).

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