



NORTHAMPTON
GATEWAY
STRATEGIC RAIL FREIGHT INTERCHANGE

APPLICANT'S RESPONSES TO RAIL CENTRAL'S DEADLINE 6 SUBMISSIONS

DOCUMENT 8.8E

The Northampton Gateway Rail Freight Interchange Order 201X

APPLICANT'S RESPONSES TO RAIL CENTRAL'S
DEADLINE 6 SUBMISSIONS | 26 MARCH 2019

www.northampton-gateway.co.uk

ROXHILL

THE NORTHAMPTON GATEWAY RAILWAY FREIGHT INTER CHANGE ORDER 201X

Applicant's Response to Rail Central's Deadline 6 – Document 8.8E

1. Introduction

- 1.1 This document responds to the **Deadline 6** submissions submitted on behalf of Ashfield Land Management Limited and Gazeley GLP Northampton s.à.r.l (“**Rail Central**”).
- 1.2 This response deals with Rail Central's Written Summary of Oral Submissions in relation to ISH 4, ISH 5 and CAH 2. The response follows the order in the Rail Central submission and uses the paragraph numbers used therein..
- 1.3 Where responses to points made previously by Rail Central have already been provided (principally in **Document series 8.8 – 8.8D**) they are not repeated nor are the matters dealt with in the Applicant's Post Hearing Submissions repeated although some supplementary observations are included where felt necessary.

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.

2. Rail Central advised at the hearing, and in this paragraph in their submissions, that Vectos were appointed in September 2018. The Applicant would refer the ExA to the note of the meeting held between the Applicant's highway consultants and Vectos in December 2018, referred to in the Applicant's Responses to Rail Central Deadline 3 Submissions (Appendix 2 of **Document 8.8B** [REP4-010]). Item 3 of that meeting note confirms that Vectos also advised Rail Central at the time of the Rail Central Stage 2 Consultation, which took place in March/April 2018.

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)

- 24 – 27 It seems that Rail Central have undertaken an exercise of comparing Appendix 2 to the Applicant's responses to ExQ1 (**Document 8.2** [REP1-020 and REP1-021]) (which contains a 'Summary of Residual Effects' from across the Northampton Gateway ES) with Tables 15.1 and 15.2 in Chapter 15 of the ES which refer to the potential 'impact interactions' of Northampton Gateway on a selection of representative receptors. It is not clear why Rail Central have undertaken that comparison. These two sets of tables (**Document 8.2** Appendix 2, and the Chapter 15 Tables) serve different purposes and present different information or judgements with regard to different receptors or groups of receptors. That there are some

differences between them is to be expected. They are not “discrepancies”. By virtue of the different roles they perform a detailed comparison is not straight-forward.

The detailed assessment of likely effects is provided in the topic specific chapters, and Chapter 15 seeks to present them with regard to a selected number of representative receptors or groups of receptors. In addition to Tables 15.1 and 15.2, the narrative of Section 15.2 (pages 2 to 9 of Chapter 15) are also directly relevant, although the narrative does not seem to feature in Rail Central's critique of the Northampton Gateway ES.

The summary of residual effects from the ES (Appendix 2 of the Applicant's responses to ExQ1 (**Document 8.2** [REP1-020 and REP1-021]) did not seek to update or amend the conclusions of the ES – it was an attempt to represent the conclusions regarding residual effects extracted from each chapter, with some tabularised for the first time, as requested by the ExA. It is understood that Rail Central does not support the methodology used for the assessment of cumulative impacts or impact interactions, but it remains unclear why Rail Central thinks the representation of the submitted residual effects in a table should require an update to the assessment of impact interactions set out in Tables 15.1 and 15.2. The grouped receptors in Tables 15.1 and 15.2 require judgements to be taken about the overall likely cumulative impacts – different individual receptors within the categories are likely to experience different types of impact or effect, requiring a judgement about how to best describe the likely impact overall. For example, visual receptors ‘in the vicinity of the Roade Bypass’ incorporates at least five specific receptors or localised groups of receptors with different relationships to the proposed Bypass – as described in Appendix 4.5 of the ES, the likely impacts on some of those receptors by year 15 will be negligible.

With regard to air quality impacts on Roade (referred to in paragraph 25 of Rail Central's Deadline 6 submission), the Appendix 2 summary of residual effects in **Document 8.2** ([REP1-020 and REP1-021]) does refer to beneficial impacts on annual mean NO₂ at Roade receptors (page 19 of that Appendix 2). However, that table includes Roade receptors with all other receptors, and so the overall ‘negligible’ residual effect reflects the fact that most receptors see negligible effects. Table 9.25 of the ES (Chapter 9, Air Quality) shows the likely NO₂ effects in Roade and West Cottages – of 11 receptors in Roade, three show moderate beneficial effects, and 3 show slight beneficial effects, with the remainder showing negligible effects, albeit four of them show negligible positive effects. Table 15.2 refers to ‘residents in the vicinity of the Roade Bypass’, and the judgement presented reflects a more positive picture based on the detailed assessment of those relevant receptors. Paragraph 15.2.20 of Chapter 15 also seeks to summarise the overall cumulative air quality impacts.

Rail Central's submissions confirm that they do not agree with some of the summary judgements made in the assessment of impact interactions of Northampton Gateway. This has been discussed during the Examination. They have chosen to express their disagreement with judgments made as ‘discrepancies’. The cause of this disagreement is not changes created by the Applicant's preparation of Appendix 2 of

(**Document 8.2** [REP1-020 and REP1-021]) at Deadline 1, nor the updated CIA. The Applicant does not consider there is a need to update Tables 15.1 or 15.2.

Agenda Item 19: Impact with Other Schemes

28. Rail Central assert that at ISH4 Northampton Gateway acknowledged there were conflicts between the introductory sections, technical sections and conclusions of the UCIA. The Applicant did not acknowledge such conflicts. The Applicant did acknowledge that some matters might have been expressed more clearly.
- 29.- 37 The point is taken that the conclusions in Section 3 of the Updated CIA are separate from the environmental assessment of cumulative impacts and the ExA is invited to look to Section 2 of the Updated CIA for that assessment, where each topic arrives at a conclusion in relation to cumulative environmental assessment.

The conclusions in Section 3 remain the view of the Applicant but it is accepted that there is a wider planning balance and, as Rail Central say in paragraph 31, the Applicant did not dispute this at the ISH.

The applicant does not agree with much of paragraphs 36 and 37 however, given the acknowledgement of Rail Central in paragraphs 16 and 19, it is clear that the issue of the acceptability of Rail Central is a matter for the Rail Central Examination, if and when it commences.

Agenda Item 5: Socio-economic matters.

- 49 - 65 The Applicant is not clear as to the relevance of this to the Northampton Gateway application, whilst acknowledging that the ExA requested the information. It is clear that the proposal for a "spoke" at Rail Central is aspirational and is dependent upon a "LIT hub" at Magna Park that is itself an aspiration. As noted in paragraph 59, if the LIT hub is developed then the Northampton Gateway development would be a major development in the area which would have the opportunity to engage with it.

Agenda Item 6: Landscape and Visual matters.

- 68: At ISH4 the Applicant confirmed that, at a localised and site wide scale, there are some important differences between the respective site landscapes. Rail Central occupies a relatively more rural, open and cohesive landscape, whereas the Northampton Gateway site landscape is influenced by more urbanising uses and activities and is more visually enclosed and interrupted. When these baseline landscape factors are considered, alongside the respective changes that will arise from the respective developments, there is an important difference in the resultant overall landscape effects at a localised/ site scale. It should also be noted that in the amended UCIA Landscape Table provided by RC on 13 March 2019, Rail Central have reduced their own stated effect of their scheme on the local/ site landscape character from Major Adverse at Year 1 (as stated in Rail Central's submitted ES; Chapter 15; paragraph 15.302 and Table 15.21), down to Moderate Adverse at Year 1. There is no explanation or justification for this change. The Applicant's equivalent

landscape assessment of the Northampton Gateway scheme at a local/ site wide level is a Major/ Moderate Adverse effect (Significant) at Year 1. Any underestimation in this context thus lies with Rail Central's own assessment of their own scheme.

69. A cautionary approach was adopted in identifying those visual receptors that could potentially experience a 'combined' cumulative visual effect with the Rail Central proposed development. A small number of visual receptor locations (Northampton Gateway Visual Receptors P4, P11, F9 & F10, and R8) are included where there is the potential for only a very limited/ glimpsed view of one of the proposed developments as part of a 'combined' view. There is also the potential, subject to the subsequent detailed layout and design (including heights) of the respective proposed developments that only one of the schemes may be visible from these particular visual receptor locations.

In respect of Northampton Gateway Visual Receptor P11, this refers to 'Properties on Northampton Rd'. This does not cross reference directly to Willow Lodge/ Railway Cottages but to a wider collection of properties along Northampton Rd. It is accepted that subject to the subsequent detailed design and layout of the Rail Central proposed development, it may be possible that there will be no views towards the Northampton Gateway proposed development from properties along this stretch of Northampton Road.

70. This is addressed by the Applicant in the '*Response to Rail Central Cumulative LVIA Table*' at paragraphs 2.12 – 2.15 (Appendix 2 **Document 8.20** [REP6-012 and REP6-013]). The approach adopted by Rail Central to their combined cumulative visual impact judgements appears flawed. As identified in paragraphs 2.12 – 2.15, Rail Central advise in their amended Table of 13 March 2019, that from the properties on the north east edge of Blisworth (NGW Ref P10; RC Ref R18), the Rail Central development on its own would result in a Moderate Adverse residual effect, yet with the Northampton Gateway development also in place it would result in a 'combined' cumulative Minor Adverse residual effect. This follows no logic. The Applicant's combined cumulative visual effect for these properties is stated as Major Adverse.
72. The changes referred to have been taken carefully into account in the combined cumulative landscape and visual impact assessment as included within the UCIA (including the Table at Appendix 2).

Agenda Item 8: Noise and Vibration.

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

- 79-85 In Paragraphs 79-85 Rail Central reiterate complaints they have made previously as to the assessment of the operational noise that would be generated by Northampton Gateway.

The Applicant has addressed noise-related matters exhaustively in previous submissions, and so does not now look to respond to each individual matter that Rail Central raise. It confines itself to the following observations:

- First, Rail Central complain that the assessment of noise in the ES is deficient because it omits consideration of noise from warehouse mechanical plant, deferring it for later assessment pursuant to Requirement 23 of the dDCO.

As the Applicant has previously explained on various occasions (see most recently and in particular **Document 8.20** [REP6-012 and REP6-013] at paragraph 9.4 and 9.5), it is entirely appropriate that detailed assessment of the noise impact from plant and equipment is undertaken at the detailed design stage, at a point when specific occupiers and their specific plant/equipment requirements will be known. Assessment in ignorance of these matters would be entirely speculative.

Any noise that is generated from mechanical plant that the actual occupants of warehouses do ultimately employ, can be satisfactorily mitigated. In this regard there are multiple options available to mitigate noise from such plant, including careful selection of the plant type, optimising the location of the plant and specific acoustic mitigation measures for each individual item. Specific plant mitigation measures are discussed in Paragraph 8.3.63 of the ES. This process is secured by dDCO requirement 23.

Significantly, Requirement 23 has been agreed with SNC. Accordingly, the responsible public authority has no concerns in respect of this issue; it is only Rail Central which is seeking to suggest the Applicant's approach is inadequate.

The assessment methodology will be agreed with SNC and the process will demonstrate compliance with Government and local policy on noise. That means that any significant adverse effects would be avoided, and any adverse effects mitigated and minimised in the context of Government policy on sustainable development.

- Second, Rail Central make a similar complaint regarding mobile plant, such as HGV trailer mounted chillers. It is said that these have also been omitted from the assessment.

This complaint is misconceived for the same reasons as that addressed above. Such mobile plant items have not been assessed on the basis that such assessment would be wholly speculative in the absence of any information as to the occupants of warehouses and their plant requirements. However, Requirement 23 of the dDCO confirms that mobile plant such as HGV trailer mounted chillers would also fall to be assessed and mitigated in the same manner as warehouse plant. Successful mitigation will be secured at that stage, so as to preclude any significant environmental effects.

As regards the specific example cited by Rail Central in its representation, the potential use of HGVs fitted with chillers is discussed in Appendix 8.5 of the ES, under the heading "*HGV manoeuvres and loading/unloading*". There it is stated that, by way of example, a possible mitigation measure would be the provision of electrical hook-ups at the relevant warehouses so that HGV engines could be turned off during loading and unloading.

- Third, insofar as Rail Central asserts that the Applicant has underestimated the noise generated by sources which it has assessed, that assertion is also wholly rejected.

The complaint in this context is set out at Paragraph 82, where Rail Central allege that the Applicant has underestimated the noise generated by gantry cranes operating on the intermodal platform.

To be clear, there has been no such underestimation. As was stated by the Applicant's noise consultant during ISH4, the sound power levels used in the Applicant's assessment for rail mounted gantry cranes and their associated movement alarms were based on measurements made at an actual, operational container depot. On this basis, the Applicant considers the data to be entirely reliable and representative of these sources.

- Lastly, Rail Central appear to question the effectiveness of the earth bund in mitigating noise generated by warehouse and mobile plant.

While the Applicant did not identify any likely significant adverse noise effects from operational activities at the SRFI as part of the EIA, some potentially adverse impacts from specific activities were identified. In accordance with Government policy on noise, other practicable options to mitigate and minimise these specific impacts were explored, which included increasing the height of the bunding and adding further screening. This is described in Paragraphs 8.6.53 to 8.6.63 of the ES.

The earth bunding will mitigate all sources of noise from the SRFI.

(iii) Background Sound Levels

89. The note on Background Noise Levels submitted by the Applicant at **Deadline 6** explains the difference of approach between the Applicant and Rail Central (Appendix 3 **Document 8.20** [REP6-012 and REP6-013]).

ISH5: DRAFT DEVELOPMENT CONSENT ORDER

Agenda Item 5: Interaction with Rail Central

b. Footpaths – arrangements for connections

104-107 In paragraph 106 Rail Central confirm that “the only issue at large is the detailed alignment of the southern connection between the proposed rail central and NG footpaths”. Effectively this means the only issue was the plan defined in Schedule 2 of the ES as the “Rail Central footpath connections plan”.

This is an issue which will only be relevant if Rail Central is approved. Also, the footpath provision for Northampton Gateway stays the same with or without Rail Central. In other words, the footpaths connections sought by Rail Central are not part of the scheme applied for in the Northampton Gateway DCO. The issue is, for Rail Central, ensuring that, if both DCO are approved, the delivery of Rail Central is not frustrated by the Northampton Gateway proposals.

The Applicant explained why the original footpath connections proposed by Rail Central in their application were unacceptable (and likely to be unacceptable to Network Rail) in the technical note produced in Appendix 1 to Applicant's Response to ExA Second Written Questions (**Document 8.17** [REP5-021]). Revised footpath connections were proposed by the Applicant which are shown on the plan referred to in the Appendix and which is the plan referred to in Schedule 2 of the DCO.

Following ISH5 a meeting took place between the technical advisors of Rail Central and Northampton Gateway at which the suggested footpath arrangements were discussed. Rail Central has since confirmed its agreement to the Rail Central footpath connections plan.

Accordingly, point (iii) of the points referred to in paragraph 107 is satisfied.

In respect of point (i) – since the footpath connection is only part of the Rail Central Order, not the Northampton Gateway Order, it will be for Rail Central to ascertain whether the arrangements proposed are acceptable to Network Rail and inform its ExA in due course.

In respect of point (ii), again, it is for Rail Central to address the relevant scenarios, including the possible requirement for an interim solution, and include the necessary provisions in its dDCO – the arrangements for Northampton Gateway do not change. No interim solution is needed for the Northampton Gateway DCO.

Accordingly, Requirement 30, and related definitions, should remain as drafted in the dDCO (**Document 3.1E** [REP6-006]).

Agenda Item 7: the DCO and EIA.

7a: tailpieces

108-112 In these paragraphs Rail Central reiterates its complaint regarding the tailpiece included in Requirement 3(3) of the dDCO.

As the Applicant has made clear in both written submissions (see for example the Applicant's response to DCO:13 in **Document 8.19** [REP5-023]) and orally at ISH5, that complaint is fundamentally rejected.

Rail Central essentially raise two propositions.

Statute

The first is set out in Paragraphs 109-110. It is to the effect that, by providing for the potential deferral in delivery of the rail terminal, the tailpiece would result in development which "*would not comprise an NSIP*". Such assertion is misconceived. Determination as to whether development is/is not an NSIP for the purposes of Section 14 of the Planning Act 2008 turns, in the case of rail freight interchanges, on the statutory definition provided in Section 26 of that Act. Section 26(1) directs that in order for development to comprise an NSIP then "*each of the conditions in subsections (3) to (7) is expected to be met in relation to it*".

As the ExA is of course aware, the operative subsections in this context are Sections 26(4) and 26(6), which have the effect of requiring that the development include, respectively, both a rail terminal and warehousing.

Crucially, nowhere in those provisions – or indeed anywhere else in the 2008 Act – is any requirement imposed as to the relative timing in delivery of those two constituent elements.

- There is no stipulation that one or other of the elements – rail terminal and warehousing – should be delivered first.
- Nor is there any stipulation that both must come forward simultaneously.

Rather, by virtue of Section 26(2), the legislation stipulates only that both the 'condition as to provision of a rail terminal' (Section 26(4)) and the 'condition as to provision of warehousing' (Section 26(6)) should be "*expected to be met*".

The inclusion of the tailpiece for Requirement 3(3) does not have the effect of enabling 'unlawful development' as Rail Central suggest. Both terminal and warehousing will come forward. Indeed, in the absence of written agreement from the relevant planning authority, the terminal must be available for use before any warehousing is occupied. Further, following the Applicant's recent amendment as included in the dDCO submitted pursuant to **Deadline 6 (Document 3.1E** [REP6-005 and REP6-006]) whatever may be agreed by the planning authority the terminal must in any event be

provided prior to occupation of more than 140,400sqm (22.5% of the total permitted) warehousing floorspace.

As such, there can be no sensible contention that the Requirement 3(3) has the effect of meaning that Northampton Gateway is 'not an NSIP' for the purposes of the 2008 Act. Rail Central is the only party which has made a suggestion to this effect, and its approach has no regard to the language of the statute. The inclusion of, an all but, identical tailpiece in the East Midlands Gateway DCO did not cause the Secretary of State to conclude that the mechanism had the effect of rendering that Strategic Rail Freight Interchange not an 'NSIP'.

The only further point to note is that if Rail Central were correct that Requirement 3(3) has the effect of rendering Northampton Gateway other than an NSIP – which is very definitely not accepted – then the equivalent requirement in Rail Central's own dDCO has that same effect in respect of its own scheme. Rail Central's suggested provision (set out in Paragraph 112 of Rail Central's Deadline 6 document) directs only that the rail terminal "*should be constructed prior to the occupation of any rail served warehousing*". It does not secure delivery of any warehousing (that being one element of the NSIP). If the Applicant's provision is flawed (which it is not), then so is that of Rail Central. Rail Central's complaint has no merit or substance.

Policy

Rail Central's second proposition is set out in Paragraphs 110-111 of its document. This is to the effect that, by providing for the potential deferral in delivery of the rail terminal, the tailpiece would mean that the Northampton Gateway scheme is contrary to relevant policy as set out in Paragraphs 4.88/9 of the NPSNN Statement for National Networks ('NPSNN'). Again, such assertion is misconceived.

The relevant terminology in these paragraphs of the NPS is not prescriptive in the manner that Rail Central seeks to characterise it. Crucially, these paragraphs were considered by the Secretary of State when he determined to grant a DCO in respect of the East Midlands Gateway SRFI ('EMG'). Indeed, they were expressly analysed by the Secretary of State in his decision letter determining to grant the Order.

That analysis is the only *authoritative* analysis of these paragraphs in the NPSNN. There is no competing interpretation of the policy which has been favoured by the Courts, or indeed by the Secretary of State on another occasion and in another context. Accordingly, the position as to the Secretary of State's view regarding the proper interpretation of his Government's policy is unequivocal.

The ExA will have read Paragraphs 14 – 26 of the Decision Letter in respect of East Midlands Gateway (see Appendix 2 to the Applicant's Responses to Other Parties' Deadline 2 Submissions (**Document 8.9** [REP3-009])). Accordingly these submissions do not set out the text of the Secretary of State's reasoning. It is sufficient to say that the Applicant relies on that reasoning as a cogent, practical and above all correct interpretation and application of relevant policy.

Rail Central apparently accept that, were the Secretary of State's interpretation/application of policy at EMG to be applied in the present instance, then that would support the inclusion of the tailpiece in Requirement 3(3) as currently drafted. However they suggest (although they shy away from saying so expressly) that the Secretary of State's interpretation/application of policy at EMG was unlawful and that the grant of the DCO in respect of that scheme was unlawful too. The Applicant robustly rejects such assertion. Policy in the NPSNN must be applied holistically; that is, not looking at individual sentences in isolation but instead looking at relevant sections of policy in the round. Policy should also be applied practically, with an eye to reality rather than as a theoretical exercise. Both the Secretary of State's understanding of his policy, and his application of that policy (which was not challenged in any legal proceedings) in EMG are sound. The ExA should rely upon it in considering Rail Central's ill-founded complaints regarding the tailpiece in Requirement 3(3).

7b: screening under tailpieces

114. The Applicant does not agree that it is necessary to define "residual environmental effects". It is a commonly used and well understood term.

Agenda Item 8: section 106.

8a: the Community Fund

129. The Applicant is disappointed at the pejorative tone of this paragraph. As the Applicant made clear at ISH5 the situation is that Applicant made a commitment to the Community Fund which is reflected in the s.106 Agreement and the Applicant will honour that commitment even if the ExA determine, as it is entitled to do, that the Community Fund does not comply with Para 4.10 and therefore no regard should be had to it.