

SEGRO (JUNCTION 15) LIMITED

NORTHAMPTON GATEWAY SRFI DCO AMENDMENT

RESPONSE TO REPRESENTATIONS

JANUARY 2023

This page is deliberately blank.

1.0 INTRODUCTION

- 1.1 An application for a non-material change to the Northampton Gateway Rail Freight Interchange Order 2019 SI 1358 was submitted to the Secretary of State for Transport on 8 August 2022. The application was published in accordance with the relevant regulations and any representations on the application were due to be submitted to the Planning Inspectorate made by 26 September 2022.
- 1.2 There were 197 responses published on the website as at the date of this response. Responses which the Applicant is aware of from Network Rail and National Highways have not been posted. This document provides the Applicant's response to the submitted representations.
- 1.3 From the response posted the representations appear to fall into the following broad categories:
- a. Responses which allege factual inaccuracies in the Application Statement
 - b. Responses which are based on a misunderstanding of the non-material amendment applied for and/or the reasons for it
 - c. Responses which suggest that the application should be viewed as a material change rather than non- material change
 - d. Responses which disagree with the substance of the application
 - e. Responses which support and/or confirm the substance in the Application Statement submitted with the application
- 1.4 The Applicant's response to the representations made is set out in the table which follows the update in Section 2 of this document.
- 1.5 It is hoped the response will help to inform the Secretary of State on the relevant issues however the Applicant would be happy to clarify any queries from the Secretary of State.

2.0 UPDATE ON PROGRESS

- 2.1 Section 2 of the Application Statement set out the progress with the rail infrastructure as at the time of submission of the Application in August 2022. There has been significant progress since that date. Network Rail have now carried out works within the SRFI site in readiness for the connection works. These include the creation of site compounds, piling works for the Overhead Line Equipment (OLE) and track monitoring. These works have all been done by Network Rail through Network Rail procured contracts.
- 2.2 The remainder of the construction works for the mainline connection are programmed to take place as follows, with the terminal becoming operational from April 2024:

January 23 – March 23

- Install undertrack service crossings to Northampton Loop
- Signal bases
- Commence drainage and earthworks
- Cable surveys

April 23 – June 23

- Continue with drainage and earth works
- Form cable routes
- Construct OLE
- Commence electrical work for signals and point heating
- Commence telecoms work
- Commence preparation for signalling

July 23 – September 23

- Complete earthworks
- 2-11 September Blockade: Install northern and southern connections and complete power connections
- Complete telecoms
- Prepare signalling for blockade

October 23 – December 23

- Complete tamping to track
- Complete OLE and signalling
- Commission Signalling

Jan 24 – March/April

- Completion of on site rail works by Segro which cannot be completed until after the Network Rail works have been carried out during the blockade
- Joint commissioning of works

April 2024

- Co-ordinated signalling and system integration with terminal
- Terminal Entry into service

2.3 In addition Network Rail has instigated its Network Change process which is due to conclude by 19 January 2023 and there is a programme for progressing the Implementation Agreement which should see that agreement concluded by the end of February 2023.

- 2.4 Whilst good progress is still being made, the Applicant and prospective occupiers are still in the position of not being able to progress arrangements/make commitments without the certainty that the buildings can be occupied. The arrangements with Network Rail currently do not provide that certainty. There is of course increased confidence but no guarantees and with such high value transactions it is not possible to simply proceed at risk (see paragraph 2.19 of the Application Statement).
- 2.5 The completion of the Implementation Agreement will provide further confidence but will not provide certainty since there are still circumstances in which Network Rail may be delayed in meeting its programme, for example, unforeseen problems with blockades, difficulties arising from industrial action or maintenance issues requiring resources elsewhere.

RESPONSES WHICH ALLEGE FACTUAL INACCURACIES IN THE APPLICATION STATEMENT	Relevant section of Application Statement	Number of Representations*:
<p>It is said that the figures in paragraph 3.5 of the Application Statement are incorrect, and that the amendment sought would allow over 50% of the warehousing to be built rather than the 37% referred to. Reference is made in the representations to the original scheme being for a total of 468,000 m². of warehousing and the reference in the proposed amendment (of 232,260 m²) is not 37% of the original floorspace but is nearer 50%.</p> <p>This is incorrect because the floorspace permitted by the DCO is up to 468,000 m² of conventional floorspace <u>and</u> up to 155,000 m² of mezzanine floorspace. This is specified on the Parameters Plan which is in the Examination Library (Rep 5-010 (Document 2.10 RevS2)). The note to the floorspace schedule refers to the mezzanine floorspace authorised by the DCO.</p>	Para 3.5	6
<p>It is said that the reference to DIRFT in paragraph 3.3 and 5.8 of the Application Statement is misleading since DIRFT was a replacement terminal rather a new one</p> <p>It is accepted that the DIRFT situation is not on all fours with Northampton Gateway. However, the other DCO referred to (EMG and WMI) both involve new rail terminals equivalent to Northampton Gateway and are more recent than the DIRFT DCO. Their relevance as more recent precedents does not appear to be disputed.</p>	Section 3	1
<p>RESPONSES WHICH ARE BASED ON A MISUNDERSTANDING OF THE AMENDMENT AND/OR THE REASONS FOR IT</p>		
<p>It is said that the application is seeking 80% occupancy prior to the rail connections being made.</p>	Para 3.5	41

<p>This misunderstanding, represented in standard text from many objectors, is based also on a misunderstanding of a previous version of the proposed non-material application which was consulted upon prior to the application being finalised. In that version alternative amendments were consulted upon, one of which proposed a threshold of 371,612 m² including allowance for mezzanine space (as consented under the DCO). The DCO Parameters Plan permits a maximum floor space of 468,000 m² plus 155,000 m² of mezzanine space (a total of 623,000s m²). Hence, the relevant percentage was 60% 371,612/623,000) not 80%.</p> <p>Following pre-application consultation, it was decided not to pursue that version. As stated in paragraph 3.5 of the Application Statement submitted with the amendment application, the application seeks 37% occupation prior to the rail terminal being operational.</p>		
<p>Many responses indicate objection on the basis that the proposal will result in more road traffic on the local road network.</p> <p>This misunderstands the effect of the rail terminal not opening until some floorspace is occupied. Put simply, the rail terminal is its own traffic generator, and that traffic will not take place until the rail terminal is open. That traffic exceeds any additional road traffic to and from the warehousing allowed to be occupied in the short-term arising as a result of the lack of availability of the terminal</p>	<p>Paras 5.10 – 5.15. Appendix 9</p>	<p>123</p>
<p>It is suggested that the delay in the timing of the rail connections is related to the need for increased capacity on the mainline generally, or to be provided by HS2, and that the Applicant knew that would be the case.</p> <p>This is incorrect. The timing of the rail connections has nothing to do with capacity on the mainline. It is entirely down to the ability of Network Rail to carry out the physical connection works.</p>	<p>Appendix 6</p>	<p>5</p>

<p>It is said that the change would result in the removal of the requirement for the rail connection to be capable of handling at least 4 intermodal trains per day, including 775m length trains.</p> <p>That is not the case. The change requires that the rail infrastructure shown on the rail infrastructure plan (referred to in the amendment) must be completed prior to any occupation. That is the rail infrastructure which provides the ability to handle at least four trains a day including 775m in length, which is why it is not necessary to refer to those features in the amended wording. It is only the mainline connections that may be delayed until after the occupation of up to 232,260 m². of warehouse floorspace.</p>		1
<p>Work has not started on the Rail Head</p> <p>This is incorrect. The Application Statement sets out the position at the date of submission of the application. The construction of the rail terminal is very well advanced and will be complete before any occupations as required by the proposed change</p>	Section 2	1
<p>It is said that the request for a change arises out of Segro’s preference, and “shift” to “contract build” rather than speculate. Spec units could have been built much sooner.</p> <p>This is referred to in many responses in a standard form and is incorrect. It is not at all clear to the Applicant where it has come from or what it is based on. The Applicant does not as a general rule build any units speculatively. Out of all the floorspace at East Midlands Gateway only one, relatively small, unit was built speculatively. There has been no change in the Applicants business model, the Applicant develops its sites by building to suit for specific occupiers. It is not clear what relevance this point has. Speculatively building warehousing that could not be occupied, as appears to be suggested, is not a credible business model.</p>		21
<p>RESPONSES WHICH SUGGEST THAT THE APPLICATION SHOULD BE VIEWED AS A MATERIAL CHANGE RATHER THAN A NON-MATERIAL CHANGE</p>		

<p>It is suggested that numbers of representations made means that the change should not be considered non-material.</p> <p>The guidance on whether or not a change is to be considered material or non- material is contained in the DCLG Guidance “Planning Act 2008: Guidance on changes to Development Consent Orders”, at paras 9 to 16. That guidance sets out a “starting point” for assessing the materiality of the change. Reference is made in the guidance document to four relevant considerations, and it is clear from the Application Statement that none of those circumstances apply.</p> <p>It is also clear from the guidance that the materiality of a change must relate to the substance of the change rather than the reaction to it. It is well established that sheer weight of objection is not a material planning consideration, it is the substance of the objection which is of relevance.</p> <p>The Applicant is not aware of any impacts or consequences which are not addressed in the Application Statement, and which might be a basis upon which the application could be argued to be material.</p>	<p>Paras 5.16 – 5.22</p>	<p>1</p>
<p>Some representations seek to apply guidance related to non-material amendments to a planning permission to this situation.</p> <p>That guidance does not apply. The relevant guidance is contained in the DCLG Guidance “Planning Act 2008: Guidance on changes to Development Consent Orders”.</p>		<p>2</p>
<p>It is said that the application is not for a non-material change due to the traffic impacts.</p> <p>This is not the case since the Application Statement makes it clear that the changed requested will not result in increased traffic.</p>	<p>Paras 5.10 – 5.15. Appendix 9</p>	<p>65</p>
<p>It is said that the change would amount to a fundamental change to the rationale behind the development and therefore a material change.</p>	<p>Section 5</p>	<p>13</p>

<p>The amendment sought does not represent a fundamental change. As explained in the Application Statement the change would not have implications for the impacts assessed, compulsory purchase or the impacts on business and residents. Furthermore, the change sought is in line with the amount of floorspace allowed to be occupied in advance of terminals becoming operational in other DCO which were adjudged to be compliant with the NPS.</p>		
<p>RESPONSES WHICH RELATE TO THE SUBSTANCE OF THE APPLICATION</p>		
<p>Reference is made to Para 4.88 of the NPS referring to the timing of the rail connections with the suggestion that the change proposed would not comply.</p> <p>This paragraph was considered in the course of the Examinations relating to the East Midlands Gateway DCO (EMG) and the West Midlands International DCO (WMI). The latter being the most recent. The outcome is reflected in the Table in para 3.4 of the Application Statement. From that table it is also clear how “initial stages” referred to in paragraph 4.88 has been interpreted by the Secretary of State to allow for a significant percentage of the warehousing to be occupied.</p> <p>In the case of EMG and WMI neither DCO had a requirement that all on site rail infrastructure be in place in advance of any occupations. In neither DCO is there a requirement for any rail infrastructure to have been constructed in advance of occupation, whereas in the present case all the on site infrastructure is in place allowing for use of the terminal to commence immediately upon the rail connections being made. The investment made in the rail infrastructure (both by the Applicant and also Network Rail) in advance of any occupations is very significant.</p>	<p>Paras 3.1 – 3.6</p>	<p>7</p>
<p>There is concern regarding the words “unless otherwise agreed in writing” at the end of the amendment sought.</p> <p>These words are to provide flexibility in the event of any unforeseen eventuality but still maintaining control with the local planning authority who are dealing with the discharge of the</p>		<p>5</p>

<p>remainder of the requirements. The change is not dependent upon the acceptability of these words and it is noted from its representations that the local planning authority do not support it. In those circumstances the Applicant is content for the words “unless otherwise agreed in writing with the relevant planning authority” to be omitted from the change sought.</p>		
<p>It is suggested that the amendment is not necessary because, with the build out periods for units, by the time any units are built the rail connections will be in place.</p> <p>The amendment may prove not to be necessary if the programme proceeds as now hoped and expected. There has been good progress, and all are hoping that is the case. However, the application made it clear that, whilst the amendment would not necessarily have to be relied upon to allow occupations to take place, it is sought to provide certainty for the Applicant and the occupiers to make commitments.</p>	<p>Paras 2.15 – 2.21 Section 2 of this report</p>	<p>2</p>
<p>It is said that the reason for the rail condition was to prevent occupation by companies not requiring rail and the history of previous applications suggest this was wise. If the rail terminal was not operational prior to occupations then those occupants who occupy in advance of the terminal being operational would not use rail.</p> <p>The evidence provided from East Midlands Gateway SRFI demonstrates that companies who occupy an SRFI in advance of an operational terminal use do so in anticipation of the terminal and do use it when it becomes operational. There is no requirement imposed on any of the occupiers of any SRFI to use rail.</p>	<p>3.7 Appendix 7</p>	<p>5</p>
<p>It is said that the situation at EMG was different because at Northampton the timing of when the rail terminal will be operational is still unknown and may still be unknown when occupiers make commitments therefore occupiers committing in advance of the rail will have little interest in using the rail.</p> <p>The reverse is in fact true. At EMG 260,000 m² was allowed to be occupied in advance of the rail terminal being provided. Currently the rail terminal and virtually all of the rail infrastructure</p>	<p>3.7 Appendix 7</p>	<p>1</p>

<p>at Northampton Gateway is in place (apart from work which cannot be done until Network Rail have done work during the September blockade). That position was not reached at EMG until approximately 200,000 m². of warehousing had been built.</p>		
<p>It is said that the Applicant should take the risk of delay having committed to have the terminal operational before occupation in the knowledge of the uncertainty arising from dealing with Network Rail and that the Applicant should have allowed for that risk with contingency planning.</p> <p>The Applicant had every intention of providing an operational and connected rail terminal before occupations but was always aware of the risks arising from circumstances beyond its control. For that reason, the Applicant requested throughout the Examination of the draft DCO that requirement 3 (3) in the DCO be subject to the ability to vary it with the agreement of the local planning authority so that a delay could be addressed quickly if it arose. The Secretary of State omitted those words in the approved DCO. The effect is that the Secretary of State required the Applicant to demonstrate to the Secretary of State, rather than the local planning authority, that occupations could take place in advance of the terminal being operational (as with other SRFI DCO), provided there were no unacceptable consequences or impacts. The Application Statement demonstrates that there are no adverse impacts that would arise from the change sought. Indeed, the reverse is true – it would enable a development, where the infrastructure is already well advanced to progress, to build stage, enabling occupations sooner, which is in the interests of the area both in delivering the benefits of the development but also in reducing the length of time when there is the inevitable disruption caused by construction.</p>		5
<p>It is said that the if the application were to be successful it would reduce the confidence in the system because people had the right to expect the requirement to be adhered to.</p> <p>The requirements in the DCO were the ones felt appropriate by the Secretary of State at the time of the DCO being approved. There is a system for amending those requirements which is available to allow for amendments if circumstances change. The system of application for</p>		11

<p>amendments allows for changes to a DCO and for the effects of any suggested changes to be fully considered.</p>		
<p>Some of the standard form wording of the representations suggest that surveys are out of date and need updating before a decision can be made.</p> <p>The Application Statement explains how the change will result in less traffic until the mainline connections are made and not more. There is no purpose served therefore in updating any traffic surveys. This is confirmed by the position of the highway authorities.</p>	<p>Paras 5.10 – 5.15. Appendix 9</p>	<p>50</p>
<p>The Application should require Network Rail to commit to undertake the mainline works by a certain date</p> <p>It is not possible to impose obligations on Network Rail through the DCO. As explained in Section 2 of this document Network Rail are currently carrying out works and are committing to a programme however Network Rail are a separate entity with its own duties and responsibilities which go beyond Northampton Gateway and which may from time to time take priority.</p>	<p>Section 2 of this report</p>	<p>1</p>
<p>The relationship of the DCO amendment application to the full planning permission granted by WNC, which authorises the construction of 215,000 m² within the site of the NG DCO, is not clear?</p> <p>The planning permission referred to was obtained in early 2022 for a specific occupier. It was progressed as a planning application rather than under the DCO to enable a commitment from the occupier (there is the ability to occupy without any rail connection) and because the building required exceeded the height parameter on the parameters plan.</p> <p>In order to ensure there is no doubt that any floorspace related to the 2022 planning permission is covered by, and subject to, requirement 3 (3) it is suggested that the words:</p>		<p>1</p>

<p>“(including any warehouse erected pursuant to planning permission reference WNS/2021/1860/MAF, as amended)”</p> <p>after the word “warehousing” in the last line.</p> <p>Requirement 3 (3) would therefore read:</p> <p>“The rail infrastructure within the area coloured pink on the rail infrastructure plan must be completed prior to the occupation of any of the warehousing and both of the connections to the West Coast Main Line railway must have been constructed and commissioned sufficient for the rail terminal to be operational prior to the occupation of more than 232,260 square metres of the warehousing (including any warehouse erected pursuant to planning permission reference WNS/2021/1860/MAF, as amended). [unless otherwise agreed in writing with the relevant planning authority].”</p>		
<p>Responses which support and/or confirm the substance in the Application Statement submitted with the application</p>		
<p>Network Rail – confirm that they are content with the amendment – consistent with the information submitted in the Application Statement</p>	<p>Section 2</p>	
<p>National Highways – confirm that they are content with the amendment – consistent with the information submitted in the Application Statement</p>	<p>Paras 5.10 – 5.15. Appendix 9</p>	

* No claim is made to have picked up every point and there is inevitably an element of interpretation applied to the categorisation of comments made. The numbers in this column must be considered approximate.

The Secretary of State for Transport
C/O Natasha Kopala
Head of Transport Infrastructure Planning Unit
Department for Transport

Date: 13 January 2023
Your ref:
Our ref: HUTTONL\319486.000003
Direct: [REDACTED]
Email: [REDACTED]

BY E MAIL ONLY: transportinfrastructure@dft.gov.uk

Dear Madam

**The Northampton Gateway Rail Freight Interchange Order 2019 S.I. 2019 No. 1358:
Proposed Non-Material Change**

On behalf of SEGRO (Junction 15) Limited, the Applicant in relation to the proposed non-material change, please find enclosed a response to the consultation responses sent to the Planning Inspectorate. It is hoped the response will assist in providing some clarifications to several points made in the consultation responses which are misunderstanding of the proposals.

The document is entitled 'Response to Representations' and is dated January 2023.

In the event of any queries, please do not hesitate to contact Laura-Beth Hutton.

Yours faithfully

Eversheds Sutherland International LLP

Eversheds Sutherland (International) LLP

Enc