

Comments on SEGRO Response to Representations dated January 2023 to their Application for a non-material amendment to Northampton Gateway Rail Freight Interchange Order 2019 SI 1358

The case for a non-material change to the DCO has not been made, for the following reasons:

- 1) Application process is obviously designed to give a degree of certainty but it is not possible to give absolute certainty. Business is full of uncertainty. It was known at the time the DCO Application was submitted that connection to the WCML would be difficult due to several factors, including existing capacity, delays in providing additional capacity from HS2, the low level of progression through the GRIPS process at that point. The problems associated with HS2 are an obvious case of uncertainty. Despite all this the Applicant undertook to take the risk – the timing was their decision. The examples of uncertainty quoted in para 2.5 are not new to SRFIs: *unforeseen problems with blockades, difficulties arising from industrial action or maintenance issues requiring resources elsewhere*. This proves they were aware of the potential problems and should not be permitted to undermine the National Infrastructure legislation by seeking to benefit from making an error of judgement by failing to obtain more satisfactory assurances from Network Rail before submitting their Application for a DCO.

The Applicants responses to the significant number of objections regarding traffic generation are disingenuous. This is an area that the DCLG Guidance “Planning Act 2008: Guidance on changes to Development” specifically includes as an example of a material change: para 16, penultimate line: ***and impacts arising from additional traffic***. It is highly likely that traffic will increase over the long term as a result of opening the site to significant occupation before the rail terminal is operational for the following reasons.

- A. Page 7: ***Many responses indicate objection on the basis that the proposal will result in more road traffic on the local road network.***

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.

This response is irrelevant. The objections are based on the long-term not the short-term.

- B. Page 11, section 3: ***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.***

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.

The evidence of EMG is not comparable in this case. Northampton Gateway is in the centre of what is known as the Logistics Golden Triangle, so called as HGVs can reach 90% of the population within the 8-hour driving allowance. Consequently this location is ideal for road-based distribution, as evidenced by the significantly higher concentration of National distribution centres within the area resulting in the logistics employment levels (11%) double the national average of 5%. This is not the case at EMG.

The Applicant's association with the history of this site suggests that the prime driver for development has been the demand for road-based operations. The Applicant made a Planning Application to South Northants Council in Dec 2014 on behalf of Howdens Kitchen Ltd for 2.7 million sq ft of industrial premises with offices on this same site. The Supporting Statement to SNC made this statement on page 8, Why Northampton, last paragraph: *If the company does not have confidence that this will be delivered in Northampton within an appropriate timescale then a relocation away from the town is accepted as being necessary, even if it would be deeply regrettable.* It is interesting to note that, 9 years later, the company is still in Northampton although with an additional facility locally in a Roxhill property nearby. The NG site was Howden's preferred choice as it offered excellent road access for both the 600 daily HGV deliveries countrywide and for existing employees. They had no requirement for a rail connection.

Also in December 2014 the Applicant made a request to the ExA for the West Northamptonshire Joint Core Strategy to zone this site for development. It was turned down as it was considered inappropriate in open countryside and the company was directed to two other sites at J16 of the M1 and DIRFT, the largest SRFI in the UK and still expanding, only 18 miles up the M1.

In June 2015, Howdens withdrew their application as it was unlikely to be approved. In January 2016 Roxhill received approval for their East Midland Gateway SRFI. In November 2016, Roxhill commenced pre-application community consultations for Northampton Gateway. In October 2019 the DCO for Northampton Gateway was granted

Is Howdens waiting in the wings? A requirement for 2.7m sq.ft of commercial space would represent in excess of 50% of the NG site – a useful contribution.

- C. Page 11, section 4: ***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.***

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 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.

This assertion is misleading. The Applicant is suggesting that the uncertainty of the connection to the rail will not deter companies that need rail to occupy the units even though units already connected to rail are available at DIRFT just 18 miles up the same rail line. No similar options were available to EMG occupants.

- D. Page 13, section 2: ***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.***

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.

The Applicant's response is disingenuous. The objection refers to the traffic generated by non-rail users compared with rail users in the **long term**. The primary objective of a SRFI is to remove road-hauled freight and replace it with rail-hauled. To claim that traffic generated by a site with a significant proportion of non-rail-connected occupants will be less than with rail-connected occupants is nonsense.

E. Page 9, section 1: ***It is suggested that numbers of representations made means that the change should not be considered non-material.***

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.

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.

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.

Of the four relevant considerations, two are applicable here:

- *Environmental Statement:*
12. *A change should be treated as material if it would require an updated Environmental Statement (from that at the time the original Development Consent Order was made) to take account of new, or materially different, likely significant effects on the environment.*

Increased traffic would result in increased air and noise pollution and potential traffic congestion. In their application for the DCO, the Applicant's forecast of daily traffic movements was 16,531 daily including 4245 HGVs, 25% of the total. That represents 3 HGVs every minute over a 24-hour period entering and exiting the site onto the very busy M1 J15, the cross roads of two major traffic routes. The likely increase if the units were 50% non-rail users would be over 2100 extra HGV movements, or a total of one every 15 seconds if spread over a 24 hour period. If spread over more realistic time periods there would be a significant increase above this during normal working hours on the A508 that already carries 20,000 daily traffic movements. It is difficult to support a claim that this is not a material change to the original EIA.

- *Impact on business and residents:*
16. *The potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material. In some cases, these impacts may already have been identified, directly or indirectly, in terms of likely significant effects on the environment. But there may be other situations where this is not the case and where the impact of the change on local people and businesses will be sufficient to indicate that the change should be considered as material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic.*

This statement confirms that the potential impact of the additional traffic can be considered a material change. The argument that the number of objections is not relevant does not take into account that nearly 70% of the number of representations listed in SEGRO's Response to Representations are objecting on the same grounds, ie impacts arising from additional traffic.

Page 9, section 3: It is said that the application is not for a non-material change due to the traffic impacts.

This is not the case since the Application Statement makes it clear that the changed requested will not result in increased traffic.

This is not the case and is covered in detail above covered under P9, section1.

- 2) Page 12, section 3: **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.**

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 amendments allows for changes to a DCO and for the effects of any suggested changes to be fully considered.

The system of application amendments is intended offer minor changes without the need for revised impact assessments. To allow two thirds or more of the site to be occupied by potential non-rail users makes a mockery of the National Infrastructure legislation if an updated EIA for increased traffic is not undertaken.

- 3) Page 13, section 4: **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?**

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. 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:

“(including any warehouse erected pursuant to planning permission reference WNS/2021/1860/MAF, as amended)”

after the word “warehousing” in the last line.

Requirement 3 (3) would therefore read:

“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].

It is not clear how 232,260 M² of warehousing can be approved when the 3 mezzanine floors of this one building exceed the maximum of 155,000 M² that have been approved in the DCO for the whole site. The total 232,260 M² represents 37% of the approved floor space which, if approved, would potentially result in further applications in the future to increase the permitted areas to accommodate the shortfall in mezzanine capacity resulting from this approval.

- 4) P14, last 3 sections: **Responses which support and/or confirm the substance in the Application Statement submitted with the application**
Network Rail – confirm that they are content with the amendment – consistent with the information submitted in the Application Statement Section 2
National Highways – confirm that they are content with the amendment – consistent with the information submitted in the Application Statement.

The fact that Network Rail and National Highways have no objection is irrelevant as it is outside their remit to comment on whether this application for amendment is or is not a material amendment.

- 5) page 9, section 4: **It is said that the change would amount to a fundamental change to the rationale behind the development and therefore a material change.**
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.

It is clear from the forgoing that the amendment sought is a fundamental change, is a material change and requires a revision of the appropriate consultation and impact assessments prior to any decision being made.

10.02.23

Alastair Inglis

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