



Department  
for Transport

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06 April 2023

Eversheds Sutherland (International) LLP  
Water Court 116 – 118  
Canal Street  
Nottingham NG1 7HF

Dear Sir or Madam

## **PLANNING ACT 2008: APPLICATION FOR A NON-MATERIAL CHANGE TO THE NORTHAMPTON GATEWAY RAIL FREIGHT INTERCHANGE DEVELOPMENT CONSENT ORDER 2019**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the non-material change application (“the Application”) by SERGO (Junction 15) Limited (previously Roxhill (Junction 15) Limited) (“the Applicant”) made on 8 August 2022 for a non-material change to the Northampton Gateway Rail Freight Interchange Order 2019 (S.I. 2019 No. 1358) (“the 2019 Order”). The Application was made under section 153 and Schedule 6 (“Schedule 6”) of the Planning Act 2008 (“PA08”). The Application was published in accordance with regulations 6 and 7 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”) and any representations on the Application were due to be submitted to the Planning Inspectorate by 26 September 2022. This letter is the notification of the Secretary of State’s decision in accordance with regulation 8 of the 2011 Regulations.

2. The 2019 Order was granted on 9 October 2019. The Northampton Gateway Rail Freight Interchange (Correction) Order 2020 (S.I. 2020 No. 1670) made on 6 October 2020 corrected errors in the 2019 Order.

3. The Development site is adjacent to Junction 15 of the M1 in Northamptonshire and the 2019 Order allows for the construction and operation of a new Strategic Rail Freight Interchange and associated infrastructure (collectively referred to as ‘the Development’) including:

- up to 468,000 sq.m of warehousing and ancillary buildings, with additional floorspace of up to 155,000 sq.m provided in the form of mezzanines;
- a new rail freight terminal and new rail infrastructure with connections to the Northampton Loop of the West Coast Main Line railway;
- highways infrastructure and improvements including an upgrade to Junction 15 of the M1 motorway, improvements to the A508 including works to deliver a new site access, and a bypass to the village of Roade; and
- other on and off-site infrastructure to enable the site to be developed and occupied as consented, including earthworks and landscaping on-site, and a range of off-site highways improvements.

4. The 9 October 2019 decision letter sets out the main reasons and considerations on which the decision to grant the 2019 Order is based, including relevant information about the participation of the public.

5. The Applicant is seeking a change to the 2019 Order to allow for the occupation of some of the warehousing floorspace in advance of the rail connections to the West Coast Main Line which are to be constructed by Network Rail. The proposed change would not impact on the delivery of the rail infrastructure to be constructed by the Applicant before the occupation of the warehousing. This means the rail terminal will still need to be delivered and completed in advance of first occupation, consistent with the DCO as approved. The change relates to the trigger for the terminal then being available for use which is dependent on the connections to the main line rail network which will be delivered by Network Rail.

## **Summary of Secretary of State's Decision**

6. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a non-material change to the 2019 Order so as to authorise the changes as detailed in the Application. The Secretary of State has also made his own changes to the order amending the 2019 Order as set out in paragraph 43 below. This letter is notification of the Secretary of State's decision in accordance with regulation 8 of the 2011 Regulations.

## **Consideration of the Materiality of the Proposed Change**

7. The Secretary of State has given consideration as to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the PA08 which requires the Secretary of State to consider the effect of the change on the 2019 Order as originally made.

8. There is no statutory definition in the Planning Act 2008 or the 2011 Regulations of what constitutes a 'material' or 'non-material' change for the purposes of Schedule 6 to the PA08 and Part 1 of the 2011 Regulations.

9. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local

Government, the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Change Guidance”), which makes the following points. First, given the range of infrastructure projects that are consented through the PA08, and the variety of changes that could possibly be proposed for a single project, the Change Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material and such decisions will inevitably depend on the circumstances of the specific case. Second, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:

- (a) A change should be treated as material if it would require an updated Environmental Statement to take account of materially new, or materially different, likely significant effects on the environment. There may be cases where the change proposed will result in likely significant effects on the environment that are entirely positive, but in such cases an updated ES will still be required, and the application will need to be treated as a material change to ensure that the regulatory requirements relating to Environmental Impact Assessments are met.
- (b) A change is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change.
- (c) A change should be treated as material if it would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing DCO.
- (d) The potential impact of the proposed change on local people will also be a consideration in determining whether a change is 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.

10. Third, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

11. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (a), (b), (c) and (d) above.

(a) Environmental Statement

The Secretary of State has considered whether the Application would give rise to any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement for the Development authorised by the 2019 Order. The Secretary of State is satisfied that the information provided by the Applicant in support of the Application and the document titled ‘Northampton Gateway SRFI DCO Amendment -

Application Statement” dated August 2022 is sufficient to allow him to make a determination on whether the Application would give rise to such effects.

The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State agrees with the Applicant’s conclusions that there will not be any materially new or materially different likely significant effects when compared to the effects set out in the Environmental Statement submitted in support of the Development authorised by the 2019 Order and as such considers that there is no requirement to update the Environmental Statement. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

(b) Habitats Regulations Assessment

The Secretary of State has considered his obligations as set out in the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if he has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposals do not alter the conclusions set out in the Applicant’s Environmental Statement for the 2019 Order. The Secretary of State is also satisfied that the proposed change does not alter the Secretary of State’s conclusion set out in paragraphs 72 and 73 of the 9 October 2019 decision letter that the Development does not lead to a likely significant effect on any protected sites or their qualifying features, and therefore he considers that it is unnecessary for him to carry out an appropriate assessment under the Habitats Regulation.

(c) Compulsory Acquisition

In respect of compulsory acquisition, the Secretary of State notes the change sought through the Application would not result in any change to the compulsory acquisition provisions in the 2019 Order, and he is satisfied that this does not raise any issues of materiality.

(d) Impacts on local people

The Secretary of State notes that the Applicant is of the view that local people will not experience a change in the environment as a consequence of the proposed changes or experience any change of amenity and the concerns and objections raised by interested parties as considered in this letter, in particular

at paragraphs 17 to 32. The Secretary of State agrees with the Applicant that the use of warehouse floor space in advance of the rail terminal being operational would not result in a Development inconsistent with the 2019 Order. He is also content that, given no change is anticipated to the impacts already assessed in the Environmental Statement for the 2019 Order, the potential impacts on local people and businesses are no greater than those that arise from the Development permitted by the 2019 Order.

12. For the reasons explained in the paragraphs above, the Secretary of State is satisfied that the change sought by the Applicant is not material and should therefore be dealt with under the procedures of non-material changes.

## **Consultation**

13. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations and consulted the persons in the manner prescribed. The Applicant undertook a consultation as required by regulation 7 of the 2011 Regulations and consulted the same interested parties and consultees that were consulted in relation to the 2019 Order. The deadline for the receipt of representations on the Application was 26 September 2022.

14. The Application was made available on the Planning Inspectorate's website on 11 August 2022, so that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

15. A further consultation was conducted on 27 January 2023 to invite representations on the responses received to the consultation on the Application and also invited representations on the submission from the Applicant dated January 2023 which set out their response to the representations on the Application. The deadline for responses to this consultation was 10 February 2023 but this deadline was extended to 15 February 2023 following a request from West Northamptonshire Council for additional time.

## **Consultation responses**

16. Representations raising concerns and objections were received from a number of interested parties including from over 180 local residents, a local organisation (Save Towcester Now) stating to represent over 1,000 local residents objecting to the proposed change and Development, 9 Parish Councils, Local MPs and a number of other bodies and organisations.

17. The points raised in the representations from Interested Parties included:

- concerns that the proposed change would allow for over more than 50% occupancy of warehousing before the operation of the rail terminal;
- objections on the basis that there would be an increase in the amount of traffic as a result of the proposed change;
- the need for an update to the traffic assessments submitted in support of the 2019 Order to take into account developments in the locality that have come

forward since the granting of the 2019 Order, or to take into account the traffic that will be generated as a result of the proposed change;

- objections in relation to any noise, air and other environmental impacts that might occur as a result of any increased traffic as a result of the proposed change;
- concerns that the change proposed by the Applicant is a material change to the 2019 Order; and
- concerns that allowing the change would mean that the rail connections would not be built at all, resulting in non-compliance with the National Policy Statement for National Networks (“NPSNN”); and that the change would result in unsustainable warehouse developments in unsuitable locations as other developments may come forward as a Strategic Rail Freight Infrastructure (“SRFI”) Nationally Significant Infrastructure Project only to apply for the removal of the rail connections elements at a later date.

18. The Secretary of State’s consideration of the materiality of the change sought by the Applicant is set out above. The Secretary of State’s consideration of the other concerns raised by Interested Parties is summarised below.

#### Warehouse Floorspace Occupancy

19. Many Interested Parties raised concerns regarding the amount of warehouse floorspace the proposed change would allow. The Applicant confirmed in their Application Statement that the proposed change would allow for the occupation of 37% of the warehousing before the rail terminal is operational. In response to concerns that the proposed change might allow for 50% or higher occupation, the Applicant explained in their response to the consultation responses published 26 January 2023 that the 2019 Order permitted up to 468,000 sq.m of conventional floorspace and up to 155,000 sq.m of mezzanine floorspace as specified in the parameters plan. The Secretary of State notes that the proposed change would allow for the occupation of up to 232,260 sq.m of warehousing and is content that 37% accurately correlates to the warehousing space that could be occupied ahead of the operation of the rail terminal.

20. In their response dated 26 September 2022, West Northamptonshire Council highlighted that there is ambiguity over the effect of the warehouse floorspace figure with respect to planning permission WSN/2022/1860/NMA (which was subsequently amended by permission WNS/2022/1633/NMA) which authorises the erection of a 215,000 sq.m warehouse development within plot 7 of Zone A4 of the Development site. The Applicant’s response of 26 January 2023 states that this warehousing development was progressed as a planning application with West Northamptonshire Council, rather than under the 2019 Order, to enable a commitment with a potential occupier and because the building exceeded the maximum height parameter on the parameters plan for buildings permitted by the 2019 Order by 8.8 metres. To ensure no ambiguity on the total warehouse floorspace proposed through this Application and the floorspace authorised by West Northamptonshire Council, the Applicant in their 26 January 2023 suggested adding the wording “*including any warehouse erected*

*pursuant to planning permission reference WNS/2021/1860/MAF, as amended*" to requirement 3(3). The Secretary of State notes that West Northamptonshire Council stated in their response of 15 February 2023 that the proposed wording by the Applicant would address the ambiguity. The Secretary of State finds no reason to disagree and therefore has included the suggested text in the amendment order. The Applicant highlighted in paragraph 3.4 of their application statement that other consented SRFIs have pre-rail or pre-terminal floorspace allowances. For example, the West Midlands Interchange development consent order permits 25% occupancy (186,000 sq.m) of the total warehousing prior to the rail terminal being completed and the East Midlands Gateway development consent order permitted 47% occupancy (260,000 sq.m) of the total warehousing space prior to a rail terminal being operational. The Applicant also suggested that similar provisions were included in the Daventry International Rail Freight Terminal ("DIRFT") but following a challenge to this assertion from Prologis, the Applicant accepted in their response published 26 January 2023 that DIRFT was different as unlike West Midlands Interchange and East Midlands Gateway, DIRFT was a replacement for a new terminal rather than a new one. The change proposed by the Applicant would not be inconsistent with what has been allowed in the two SRFI cases where new terminals were being delivered. The Secretary of State is satisfied that in considering the merits of this Application the amount of floor space that would be allowed prior to the rail terminal being operational is acceptable and he has no evidence to suggest that the impacts would be greater than that assessed for the 2019 Order.

21. The Secretary of State has considered the concerns raised by Interested Parties that the tail piece included in requirement 3(3) proposed by the Applicant would permit West Northamptonshire Council as the Local Planning Authority to grant further changes to the 2019 Order to allow more warehouse occupancy before the rail terminal is operational. The Secretary of State has also taken into account the representation from West Northamptonshire Council which commented that the tail piece would transfer the responsibility for decision-making on any future changes to the 2019 Order from the Secretary of State to the relevant planning authority and suggested its removal. The Applicant noted in their January 2023 response that West Northamptonshire Council did not support this tailpiece and were content for this to be omitted from the change sought in the Application. The Secretary of State has therefore removed the tailpiece from the amendment order.

22. Oxfordshire County Council did not object to the application but raised concerns over allowing the occupancy of warehousing space before the operation of the rail terminal in that doing so may attract customers who do not require rail connections and therefore may not become users of those connections when they become operational. In their January 2023 response, the Applicant stated that the experience of the East Midlands Gateway SRFI, which as noted above allowed for 25% occupancy of its warehousing in advance of an operational rail terminal, was that customers who occupied that SRFI in advance of an operational rail terminal did so in anticipation of the rail terminal. The Secretary of State notes an Interested Party challenged this point, as they considered that this Development is well positioned for road freight and is therefore not comparable to the East Midlands Gateway SRFI. Paragraph 4.84 of the NPSNN states "*Because the vast majority of freight in the UK*

*is moved by road, proposed new rail freight interchanges should have good road access as this will allow rail to effectively compete with, and work alongside, road freight to achieve a modal shift to rail.”* The Secretary of State therefore considers good road access at an SRFI site would not hinder a modal shift of freight from road to rail. The Secretary of State therefore accepts the Applicant’s argument that allowing the proposed change should not result in the occupation of the warehousing by users who will not become users of the rail terminal when it becomes available in the future.

### Compliance with the NPSNN

23. The Secretary of State is aware that several Interested Parties were of the view that allowing occupancy of some warehousing before the rail connections are operational would not be compliant with paragraphs 4.88 of the NPSNN which states *“it is not essential for all buildings on the site to be rail connected from the outset, but a significant element should be”*.

24. The Secretary of State accepts that on a narrow interpretation of paragraph 4.88 of the NPSNN, the Development would not provide a significant element of directly rail-connected warehousing units as a result of the proposed change. However, he considers that, reading paragraph 4.88 with paragraphs 4.83 and 4.85 of NPSNN, the proposed SRFI would be compliant with the policy in the NPSNN as a whole in that it would be developed in a form that can accommodate a rail link. In addition, the Secretary of State notes that rail connections to the main line rail network that are to be constructed by Network Rail and that Network Rail have provided evidence that while the rail connections are being actively being sought, wider factors have prevented it from being delivered to the initially stated timescale as explained further below at paragraphs 28-32. The Secretary of State notes that paragraph 2.45 of the NPSNN recognises that with respect to SRFIs a *“degree of flexibility is needed when schemes are being developed, in order to allow the Development to respond to market requirements as they arise”*. The Secretary of State therefore considers it entirely reasonable that a commercial undertaking should seek to generate income from the warehousing facilities before the rail connections becomes operational. The Secretary of State is satisfied that the Development as amended would comply with the policies of the NPSNN and its underlying objectives in respect of SRFI projects.

### Traffic impacts

25. The Secretary of State notes that a number of Interested Parties raised concerns that the proposed change would result in additional traffic on the local road network. The Secretary of State is aware that the Applicant considers that this misunderstands the effect of allowing for some floorspace occupancy before the rail connections have been constructed and are operational. The Applicant set out in their Application Statement and then again in their representation published 26 January 2023 that the rail terminal is its own traffic generator. In addition to serving buildings and occupiers located at the Development, the rail terminal itself will also function as a local hub that will attract HGV trips to and from the site. This means that until the rail connections are up and running, the levels of traffic that would occur would be less

than that assessed for the operational Development. The Secretary of State is satisfied that the traffic that is expected to occur as a result of the proposed change will not go beyond the levels assessed in the Traffic Assessment submitted in support of the 2019 Order.

26. The Secretary of State is aware that a number of Interested Parties raised concerns relating to environmental impacts from noise and pollution as a result of increase in HGV traffic. As set out above, the Applicant has confirmed that the levels of traffic expected as a result of the proposed change will be lower than the expected level of traffic from the Development when the rail infrastructure is operational. The Secretary of State is therefore satisfied that the proposed change would not result in any further environmental impacts and would remain within the parameters consented by the 2019 Order.

27. Some of the representations suggested that the Applicant's traffic surveys require an update before a decision on this Application can be made. The Secretary of State also notes the representation from Northamptonshire Police, Northamptonshire Fire and Rescue Service and Office of the Northamptonshire Police, Fire and Crime Commissioner which states that the Applicant has not conducted surveys on the traffic that is expected as a result of the proposed change. The Applicant set out in their January 2023 response that the Application will result in less traffic until the West Coast Main Line connection is made and that therefore the traffic survey does not need updating. North Northamptonshire Council and West Northamptonshire Council as the Local Highway Authorities have not challenged the Applicant's position on the traffic impact. North Northamptonshire Council stated in their response of 15 August 2022 they had no concerns or objections to the Application. West Northamptonshire Council raised concerns in their response of 15 August 2022 and 15 February 2023 regarding uncertainty over the delivery of the rail terminal, ambiguity regarding the warehouse floorspace and the tailpiece included in requirement 3(3) that has now been removed. However, West Northamptonshire Council raised no concerns regarding highway impacts. As set out above, the Secretary of State is satisfied that the traffic impacts from the Application are fully within the consented Rochdale Envelope for the 2019 Order, and the adverse impacts will be no worse than those assessed in the Environmental Statement for that Order. As to the comments about updates to take into account other developments in the locality since the granting of the 2019 Order, the Secretary of State is content that as this is a change to an existing Order and there are no significant changes to the impacts assessed in the 2019 Order, this is not necessary. Further, in respect of the representations on the need for updated traffic surveys in light of other developments that have come forward since the granting of the 2019 Order, the Secretary of State would point out that it is for the developer of these other developments and the relevant decision-maker to take into account impacts in combination with the 2019 Order.

#### Construction of the Rail Infrastructure

28. Concerns were raised about the potential for the proposed change to result in works to the rail terminal and rail connections not being completed or the removal of the requirement for the rail connections to be capable of handling at least 4 intermodal

trains per day. It was also suggested that the delivery of the 2019 Order was reliant on the high speed railway (“HS2”). In addition, West Northamptonshire Council raised concerns regarding the lack of clarity on when the rail infrastructure might be completed and suggested that the proposed change should make the timescale for the completion of these works clear.

29. The Secretary of State notes that the proposed change requires that the rail infrastructure shown in pink on the rail infrastructure plan contained in Appendix 4 of the Application Statement must be completed by the Applicant prior to any occupation of warehouse floor space. That is the rail infrastructure which provides the ability to handle at least four trains a day including trains 775m in length. With regard to the concern of the Northampton Gateway SRFI being reliant on HS2, the Applicant responded to confirm that the timing of the rail connections for the Development has nothing to do with capacity on the West Coast Main Line and so is not reliant on HS2 capacity coming forward. The delay is due to the ability of Network Rail to carry out the physical connections works to the West Coast Main Line. The Secretary of State is content that the response from Network Rail summarised below in paragraph 31 confirms the position.

30. The Secretary of state notes that the proposed amendment relates to the connection of this rail infrastructure to the West Coast Main Line. The Applicant stated that the proposed change is needed to address uncertainties in the precise timing of the construction by Network Rail of the connection to the West Coast Main Line which is a barrier to occupier interest in the warehousing being progressed. The Applicant also stated that the uncertainty has arisen from Network Rail being unable to commit to achieving possession of the main line to carry out their works, (which will require closure of the main line for around 9 days) during the post lockdown period when there is a desire to minimise disruption to passenger services and attract passengers back on to rail. To reduce disruption, Network Rail stated that they are looking to time the connections with wider essential pre-planned works. Given the uncertainty around timing for this, the Application looks to enable a certain level of occupier interest to be secured ahead of the rail connections being in place.

31. Network Rail confirmed this position in the documents attached to their late representation published on 28 March 2023 and stated support for the Application as providing a pragmatic approach to enable the Applicant to make commitments to occupiers with certainty that the facility will be delivered. They also stated that they have been working closely with the Applicant on the implementation of the Northampton Gateway SRFI since 2017 and confirmed that Network Rail will continue to work with the Applicant to ensure the rail connections are made available for use as soon as practicable. Network Rail have indicated that they are currently in negotiation with the industry regarding a 9-day closure of the line in September 2023. The Secretary of State notes the negotiations for an earlier rail connections date but takes the view that negotiations have been ongoing for some while and there remains no certainty of a firm date for the completion of these works.

32. The Secretary of State notes that the Applicant stated at the time of submitting their Application that the bulk of the rail infrastructure had been constructed and that a rail terminal operator had been selected. The Secretary of State is satisfied that this

and the response from Network Rail demonstrates a commitment by both parties to deliver the rail infrastructure and has no reason to consider that the required rail infrastructure will not be constructed in full and connection to the West Coast Main Line eventually delivered. However, given Network Rail's ongoing negotiations and the resulting uncertainty on the timetable for the completion of the rail connections, the Secretary of State does not consider that it would be appropriate to include a deadline for these works.

## **Late Representations and Consultation Responses**

33. The Secretary of State received direct responses to his consultation and correspondence on the Application received outside of the consultation periods. The Secretary of State has published the direct consultation responses and correspondence as late representations alongside this letter on the Planning Inspectorate website.

34. Unless addressed above, the Secretary of State considers that these direct responses and late representations do not raise any new issues that are material to the decision on the Application. As such, the Secretary of State is satisfied that there is not any new evidence or matter of fact in these direct responses and late representations that need to be referred again to Interested Parties before proceeding to a decision on the Application.

## **General Considerations**

### **Equality Act 2010**

35. The Equality Act 2010 includes a public-sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sexual orientation; sex; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

36. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010 and is satisfied that there is no evidence that granting the Application will affect adversely the achievement of those objectives.

### **Human Rights Act 1998**

37. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended Development. The Secretary of State considers that the grant of development consent would not contravene any human rights as enacted into UK law by the Human Rights Act 1998.

## **Natural Environment and Rural Communities Act 2006**

38. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 has to consider what action he can properly take, consistently with the proper exercise of his functions, to further the general biodiversity objective. The Secretary of State is of the view that biodiversity has been previously considered sufficiently in the application for the 2019 Order for the proposed change to accord with this duty.

## **The Secretary of State's overall conclusion and decision**

39. The Secretary of State considers that the project continues to conform with the policy objectives set out in the NPSNN and that the need for this Development remains as set out in the decision letter dated 9 October 2019. Paragraph 2.53 of the NPSNN states that it is important to facilitate the growth of the intermodal rail freight industry to support a low carbon sustainable system that is the engine for economic growth. The increasingly important role of SRFIs is also highlighted in the Future of Freight Plan and the Transport Decarbonisation Plan.

40. While the Secretary of State notes that work on the rail infrastructure is being progressed by the Applicant and the response from Network Rail demonstrates a commitment by both parties to deliver the rail infrastructure, he also notes that the Applicant has requested the proposed change in light of the uncertainties that remain in the delivery of the rail connections work, and so that it is able to confirm the timing and availability of a certain level of warehousing for occupation on the Development site to meet demand from potential occupiers.

41. The Secretary of State has considered the nature and effect of the proposed change, noting that it would have no materially new or materially different likely significant environmental effects. He is satisfied that the conclusions of the Environmental Statement submitted in support of the application for the 2019 Order remain unchanged, and notes that no new powers of compulsory acquisition are sought.

42. The Secretary of State is content that none of the specific indicators referred to in the Change Guidance, or other relevant considerations, suggest that the change sought by the Applicant is a material change and is satisfied that the change requested by the Applicant is not a material change to the 2019 Order. The Secretary of State has therefore decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change in relation to the 2019 Order so as to authorise the change sought by the Applicant.

## **Modifications to the draft Order**

43. Minor drafting amendments have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms

of the draft Order. These changes include the wording of requirement 3(3) being reworked to provide greater clarity.

### **Challenge to the decision**

44. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached to the Annex to this letter.

### **Notification of decision**

45. The Secretary of State's decision on this application is being notified as required by regulation 8 of the Changes Regulations.

Yours faithfully,

Natasha Kopala

**LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Northampton Gateway Rail Freight Interchange Order 2019 is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastmidlands/northampton-gateway-rail-freight-interchange/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).