

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

Project reference TR050007

Applicant's written summary of oral submissions at ISH1 and CAH1

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1. INTRODUCTION

- 1.1. This document presents the written summary of the Applicant's oral submissions for the following hearings that took place as part of the examination on HNRFI.
 - **Issue Specific Hearing 1 (ISH1)** – Project Definition and Draft Development Consent Order, Wednesday 13 September 2023; and,
 - **Compulsory Acquisition Hearing 1 (CAH)**, Thursday 14 September 2023.
- 1.2. The hearings took place at the Leicester Tigers Conference and Events venue and were blended events with attendees on MSTeams.

2. SUBMISSIONS IN RESPONSE TO MATTERS RAISED AT ISH1

Table 2.1 Submissions in response to matters raised at Issue Specific Hearing 1 (ISH1) – Project Definition and Draft Development Consent Order

Agenda item	Matter	Applicant’s submission
1	<p>Welcome and introductions</p> <p>The ExA opened the hearing, introduced themselves and invited those parties present to introduce themselves.</p>	<p>On behalf of the Applicant, Tritax Symmetry Ltd.</p> <ul style="list-style-type: none"> • Mr Paul Maile, Eversheds Sutherland LLP • Mrs Laura-Beth Hutton, Eversheds Sutherland LLP • Mr Daniel Smyth, Savills (EIA) • Mr Stefanos Zymis, Savills (Socio-economics) • Mr Malcolm Ash, BWB Consulting (Transport) • Mrs Fiona McKenzie, Environmental Dimension Partnership (Landscape)
2	<p>Purpose of the Issue Specific Hearing</p> <p>The ExA explained the purpose of the ISH, to include discussion on the nature and scope of the application and the draft development consent order.</p>	N/A
3a	<p>Project definition and limitations</p> <p>The ExA sought clarification on the overall approach to the Environmental Assessment in light of the so called Rochdale envelope. The ExA was particularly interested to ensure that the worst-case scenarios have been assessed given the range of potential employment set out in paragraph 7.214 of Chapter 7 of the ES [APP-116] when compared with other employment levels used for</p>	<p>The Applicant agreed to submit a note explaining the approach and responding to the ExA’s questions raised at the PM and the ISH. This note is included with these Post Hearing Submissions at Appendix A. This includes:</p> <ul style="list-style-type: none"> • A paper explaining the relationship between the two models to show that the two models are robust and consistent with each other • A simple arithmetic summary setting out the derivation of 8,400-10,400 jobs • Basic arithmetic summary of the traffic model volumes <p>The Applicant has appended these documents as part of these Post Hearing Submissions at Appendix A.</p>

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	<p>assessing effects. The ExA raised this discussion as part of the Preliminary Meeting (PM) and therefore did not need to revisit in detail as part of ISH1.</p>	<p>In addition, a revised version of the Transport Assessment is submitted to address the clarification.</p>
<p>3b</p>	<p>Project definition and limitations</p> <p>The ExA asked the Applicant to explain in legal terms it considers that the energy generation elements of the Proposed Development should be restricted with particular reference to this element being 'associated development' and section 120 and paragraph 5 of Schedule 5 of the Planning Act 2008.</p> <p>The ExA also asked the Applicant to explain why in policy terms any Requirement to restrict the amount of energy generated would meet the tests for requirements, particularly the tests of necessity and reasonableness, given the overall Government policy of seeking to maximise renewable energy sources.</p>	<p>The Applicant explained its approach to the drafting of the dDCO with regard to energy provision and the NSIP threshold in the PA 2008.</p> <p>The Applicant agreed to submit a note explaining the approach and responding to the ExA's questions raised at the ISH. This note is included with these Post Hearing Submissions at Appendix B.</p>
<p>4</p>	<p>The Overall Structure of the dDCO</p> <p>The ExA invited the Applicant to explain its overall approach to the drafting of the dDCO and to clarify what matters are to be secured by alternative methods, such as</p>	<p>The Applicant set out that the DCO has its provenance in the model provisions in line with most development consent orders and it has most significantly followed drafting of other rail freight interchanges such as West Midlands Interchange, Northampton Gateway and East Midlands Gateway and all are referred to throughout the Explanatory Memorandum.</p>

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	<p>Planning Obligations and other forms of agreement.</p>	<p>The Applicant briefly outlined the structure of the DCO. Part One of the Order contains preliminary drafting in terms of definitions etc, most of which are usual and are self-explanatory. Attention is drawn to the definition of undertaker, which is different to many other orders, in that it does not seek to disapply section 156 of the Planning Act 2008, and this is in order to ensure that ultimately the final occupiers of the warehouses take the benefit of the order, whereas other infrastructure DCOs are often personalised to the applicant.</p> <p>Part Two of the Order contains the principal powers, including the power granting the development consent with reference to schedule one where the authorised development is defined by reference to the works plans, and it also importantly limits the consent to the parameters identified on the parameters plan which is relevant for the environmental assessment for the scheme and limits of deviation identified on various other DCO plans.</p> <p>Part Three deals with the street works and provides powers for various street works by reference then to the various schedules and the highway plans from speed limits and classifications and general arrangement drawings.</p> <p>Part Four of the Order then deals with some supplemental powers specifically relating to discharge of water and authority to investigate and survey land. These broadly follow model provisions and many other made DCOs.</p> <p>As the ExA is aware, the Applicant seeks powers of compulsory acquisition and temporary possession, and these are contained within Part Five of the dDCO.</p> <p>Part Six covers miscellaneous and general matters ranging from the provisions relating to operational land, the felling of trees and giving effect to various schedules that follow later in the Order.</p> <p>The Schedules then follow the operative provisions and the articles which give effect to them. Schedule One defines the authorised development and Schedule Two contains the</p>

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		<p>proposed requirements. A second part of that schedule deals with the mechanisms for how those requirements will be discharged and approved. Schedules Three to Nine all relate to Part Three of the Order which are the street powers and also public rights of way by reference to various plans. Schedules Ten, Eleven and Twelve then relate to the compulsory acquisition powers. Schedule Ten sets out particular parcels of land where only temporary possession may be taken, Schedule Eleven sets out the parcels of land where only new rights may be created, and that is to limit the powers that may be exercised on those particular parcels.</p> <p>Schedule Thirteen contains several parts which contain individual protective provisions for various third parties such as Network Rail, National Highways, the local highway authority and then various statutory undertakers where there is existing apparatus which needs to be protected, and those provisions govern the mechanisms between the parties as to how the authorised development will interact with those assets.</p> <p>Schedule Fourteen then sets out some miscellaneous controls which are various statutory provisions which the Applicant is seeking to disapply in respect of the authorised development because the DCO itself contains the relevant powers and provisions rather than those particular powers applying to the development.</p> <p>Schedule Fifteen lists the plans and documents which are specifically referred to within the Order itself which will become certified documents. This does not cover all of the application documentation but it identifies those documents through which the development is to be controlled. It is intended that this Schedule will be kept under review and where any revised documents or updated documents are submitted throughout the examination. The versions of those will be updated throughout.</p> <p>The Applicant confirmed that it is happy for the section 106 planning obligations and financial contributions to be submitted in line with the deadlines discussed in the PM.</p>

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		<p>The Applicant provided an update on the discussions and negotiations taking place with the beneficiaries of the planning obligations.</p> <p>The Applicant proposes a bus service contribution of up to £500,000 payable in various instalments related to the improvement of bus services. It is proposed that a contribution for a skills and training officer is made payable to Blaby District Council. The draft section 106 agreement also covers the payment of legal fees and notifications for updates in land ownership. Heads of terms are still the subject of discussions with the authorities and therefore these may be updated as the Examination progresses.</p> <p>In response to Leicestershire County Council's query in relation to the bus contribution, the Applicant confirmed that the proposed bus contribution is a suggestion by the Applicant and its transport team as a reasonable figure for those types of contributions based on similar developments and the intention is to continue discussions with the County Council on this matter during the course of the Examination.</p> <p>The Applicant committed to continuing these discussions and reporting on the progress through the SOCG.</p>
5	<p>ExA's Questions on the DCO The ExA asked questions about the dDCO – these were mainly based on those questions appended at Annex F(i) to the Rule 6 Letter [PD-005] with some additional questions.</p>	<p>The Applicant submitted draft responses to the ExA's dDCO questions at Procedural Deadline A as part of its Response to the Rule 6 Letter [PDA-021] (see Annex B). As outlined at the beginning of that draft response, the Applicant has now updated the document to reflect the Applicant's submissions at ISH1 and the updated document is included at Appendix C to this document with the submissions made in the ISH shown in tracked changes for ease of reference. This updated document also includes the additional questions raised by the ExA in the ISH and the Applicant's responses to them.</p> <p>Any amendments to be made to the dDCO and Explanatory Memorandum as set out in Appendix C will be included in the next versions of those documents, to be submitted at Deadline 2.</p>

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6	Next Steps	The Applicant confirmed it would ensure the next version of the dDCO to be submitted at Deadline 2 will include tracked changes against the original application submission version (as opposed to tracked changes against the version submitted on 11 September) and that all subsequent versions will be tracked against the previously submitted version.
7	Closing	N/A

3. SUBMISSIONS IN RESPONSE TO MATTERS RAISED AT CAH1

Table 3.1 Submissions in response to matters raised at Compulsory Acquisition Hearing 1 (CAH1)

Agenda item	Matter	Applicant’s submission
<p>1</p>	<p>Welcome, introductions and purpose of Hearing</p> <p>The ExA opened the hearing, introduced themselves, invited those parties present to introduce themselves and explained the purpose of the Hearing.</p>	<p>On behalf of the Applicant, Tritax Symmetry Ltd.</p> <ul style="list-style-type: none"> • Mr Paul Maile, Eversheds Sutherland LLP • Mrs Laura-Beth Hutton, Eversheds Sutherland LLP • Ms Sinead Turnbull, Tritax Symmetry Ltd (Planning Director) • Mr Jonathan Wallis, Tritax Symmetry Ltd (Development Director) • Mr David Baker, Baker Rose (Rail Infrastructure) • Mr Samuel Carter, BWB Consulting (Highways Design) • Mrs Fiona McKenzie, Environmental Dimension Partnership (Landscape) • Peter Frampton, Frampton Town Planning Ltd (Planner)
<p>2</p>	<p>General Case</p> <p>The ExA asked the Applicant to present and justify its case for Compulsory Acquisition (CA) and Temporary Possession (TP), with a focus on:</p> <p>a) review of the statutory and policy tests relevant to CA and/or TP under the Planning Act 2008 (PA2008) and DCLG Guidance.</p> <p>b) review of human rights and equality considerations.</p> <p>c) consideration of the structure and content of the Book of Reference.</p> <p>d) consideration of the structure and content of the Funding Statement.</p>	<p>The Applicant presented its general case for compulsory acquisition. As can be seen from the application documentation relating to compulsory acquisition, the Applicant's land assembly strategy has been, and continues to be, to agree voluntary arrangements and limit and reduce the extent of compulsory acquisition and temporary possession powers required.</p> <p>This strategy is evident from the varying categories of powers sought over specific parcels of land. The approach to acquisition powers is explained in the Statement of Reasons (Document 4.1 [APP-088]), but in summary:</p> <ul style="list-style-type: none"> • Land shown tinted pink (Document series 2.20 [APP-085-APP-0650]) is proposed to be subject to the compulsory acquisition of the freehold, leasehold, tenant and/or occupier interests as well as the acquisition of existing rights and/or the creation of new rights pursuant to articles 23 and 25 of the DCO. This land will also be subject to the general powers in Part 5 of the DCO such as the power to override private rights where they are inconsistent with the authorised development.

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	<p>e) consideration of the structure and content of the Statement of Reasons. f) consideration of impending legislative changes.</p>	<ul style="list-style-type: none"> • Land shown tinted blue is proposed to be subject to the compulsory creation of new rights pursuant to article 25 of the DCO and if necessary, this land will also be subject to the general powers in Part 5 of the DCO such as the power to override private rights where they are inconsistent with the authorised development. • Land shown tinted green is proposed to be subject only to the powers to acquire existing rights pursuant to article 25 of the DCO or to override third party rights or powers to extinguish, suspend or interfere with any third party rights pursuant to articles 26 and 28 of the DCO. • Land shown tinted yellow is proposed to be subject to powers of temporary possession pursuant to article 32 of the DCO. <p>There are plots of land identified white on the land plans, these plots are not proposed to be subject to any compulsory acquisition powers. These parcels comprise land which is existing adopted public highway over which the Applicant proposes only to carry out highway works or "street works" under the DCO, and therefore land rights are not required. This is explained in the Introduction to the Book of Reference (Document 4.3 [APP-090]).</p> <p>As explained in section 7 of the Statement of Reasons and as identified on the Land Plans and the Book of Reference, the Applicant has entered into voluntary agreements to secure the vast majority of the land required for the authorised development. At the time of the Application submission, the Applicant had secured voluntary arrangements in relation to over 80% of the Order Land, that is the land excluding the plots of land identified white on the land plans.</p> <p>Consistent with the Applicant's land assembly strategy, where voluntary agreements have been reached, the Applicant is seeking powers only to acquire, extinguish or override rights which might relate to the land, and not full acquisition. The exception to this is for plots 29 and 30 where powers to acquire the leasehold interests are sought in the event that vacant possession cannot be delivered by the freehold owner. Whilst this scenario is not envisaged, the powers are necessary to ensure certainty of deliverability.</p>

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		<p>The Applicant continues to seek voluntary agreement with those landowners where agreements have not yet been reached, and is pleased to advise that positive progress has been made with the owners of various parcel of land. These are parcels 15, 56, 101a, 102, 103, 104 and 116, as well as the railway land. It is hoped that agreement will be reached in the coming weeks which will take the voluntary agreements up to over 94% of the Order land to be land within the Applicant's control and not requiring the exercise of full compulsory acquisition powers. The Applicant will provide an update on those discussions at the next compulsory acquisition hearing, if one is held, or in writing in accordance with deadlines set in the Examination timetable.</p> <p>a) The Statement of Reasons sets out the Applicant's case in relation to the powers sought including how statutory and policy tests are considered to be met.</p> <p>In brief:</p> <ul style="list-style-type: none"> • The statement explains why it is considered that the significant public benefits of the Project, through the delivery of an SRFI for which the National Policy Statement for National Networks acknowledges there is a compelling need, justifies the powers sought by the Applicant; • The statement also sets out the Applicant's consideration of alternatives to compulsory acquisition including through site selection, scheme design and the approach to land acquisition through the minimisation of powers sought; • Finally, the Applicant sets out its clear intention for the use of each parcel in order to explain the purpose for which the powers are sought and to demonstrate that it seeks no more than is reasonably necessary. <p>b) The Statement of Reasons addresses Human Rights at paragraphs 6.29 – 6.36. It explains that the need for the project, as identified in the Application documents generally (and specifically in respect of 'need' which is primarily dealt with in the Planning Statement (Document 7.1 [APP-347]), the Market Needs Assessment (Document 16.1 [APP-357]) and the Logistics Demand and Supply Assessment (Document 16.2 [APP-358])) demonstrate that the need for the development and for the compulsory acquisition powers are legitimate and</p>

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		<p>justify, in the Applicant's view, the interference with the human rights of those with an interest in the land affected.</p> <p>c) The introduction to the Book of Reference explains the approach including to the categories of land as outlined earlier.</p> <p>The approach and structure follows other SRFI Books of Reference which has been informed through discussions with the Planning Inspectorate.</p> <p>The Book of Reference follows Regulation 7 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations), which sets out the information to be contained in the relevant parts, which must be contained in the book of reference:</p> <ul style="list-style-type: none"> • Part 1 identifies the names and addresses for each person within categories one and two of Section 57 of the Planning Act 2008, and those persons are people whose interests are proposed to be subject to the powers of compulsory acquisition rights, to use land or rights to carry out protective works to buildings. • Part 2 of the Book of Reference contains the names and addresses of those people who might be considered to be within category 3 of section 57 of the Planning Act 2008, being persons who the Applicant considers that if the DCO were made, would be or may be entitled to make a relevant claim. The details of what a relevant claim is set out in that in the Book of Reference. • Part 3 identifies the names of all the persons entitled to enjoy rights such as easements and private rights. • Part 4 deals with Crown interests, please see Agenda Item 4 for further information in respect of Crown Land.

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		<ul style="list-style-type: none"> • Part 5 identifies where Special Category Land is within the Order Limits. The Order Limits included small parcels of common land, which is addressed below at Agenda Item 3. <p>The Applicant's approach to the Land Plans broadly follow the Applicant's approach to minimising the interests it is seeking to compulsorily acquire. As mentioned above at item 2 (a) there are different categories of interest identified on the Land Plans which relate to the powers sought for each plot.</p> <p>In respect of the plots identified white on the Land Plans, the Applicant requires those plots only to carry out highway works which will be undertaken pursuant to the protective provisions, and land powers are not required. The plots are specifically listed in the Book of Reference in order to comply with the APFP Regulations, which require the identification of parties within the Book of Reference with "an interest in" the Order Limits. A number of parties have therefore been identified in the Book of Reference, as a result of the legal principle of ownership of the subsoil of a highway.</p> <p>d) The approach to and structure of the Funding Statement is consistent with those produced for other SRFI developments, where the promoter explains its estimated costs relating to potential compensation following the exercise of compulsory acquisition and for the funding of the development.</p> <p>As explained in the statement, the compensation estimate is based on the Applicant's experience in coming to agreements, knowledge of the market values and accepted offers.</p> <p>The statement also states the Applicant's estimate of funding the development in its entirety and then appends the Group accounts which detail the funds available to the Group, Tritax Big Box REIT PLC of which the Applicant is a subsidiary.</p>

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		<p>e) The approach to the Statement of Reasons and its contents are set out within the introduction of the statement. Broadly, it seeks to explain the project, the statutory context and the powers which are sought in the DCO. It also explains the Applicant's approach to land assembly, which, as mentioned above, is to prioritise voluntary arrangements where possible.</p> <p>The statement goes on to explain the position with regard to Crown Land and Special Category Land and the Applicant's consideration as to whether there are any category 3 persons.</p> <p>In Appendix 1 to the statement, there is an explanation as to what each parcel of land is required for (by reference to Works Numbers). Appendix 2 to the statement, sets out the current status (as at the date of submission of the statement) and the extent of negotiations with relevant parties in respect of the land plots.</p> <p>In line with the various Deadlines in the Examination, as discussed in the Preliminary Meeting, the Applicant will be updating and submitting the required Compulsory Acquisition Schedule, to include updates relating to negotiations with relevant parties in relation to all relevant land plots.</p> <p>f) The ExA confirmed at the CAH that the reference to impending legislations referred to in this Agenda Item relates to the Levelling Up and Regeneration Bill and the Neighbourhood Planning Act 2017.</p> <p>In respect of the impending legislative changes in the Levelling Up and Regeneration Bill, the Applicant agreed to submit a schedule of the relevant changes setting out the relevant impending legislative change and explaining the Applicant's views / position on each section of the Levelling Up and Regeneration Bill as it stands and whether each proposed provision would apply or not to the DCO. The Applicant appends the said schedule as part of these Post Hearing Submissions at Appendix D.</p>

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		<p>In respect of the relevant legislative changes proposed in the Neighbourhood Planning Act 2017, the Applicant's position is set out in paragraph[s] of the Explanatory Memorandum (document number 3.2, APP-086).</p> <p>Article 47 of the DCO seeks to disapply the provisions of the Neighbourhood Planning Act 2017 relating to temporary possession and that is so that Articles 32 and 33 of the DCO would stand instead of any provisions under the Act. This approach has been taken on the basis that the Applicant understands that the relevant regulations are yet to come into force in respect of the Neighbourhood Planning Act 2017 and so the Applicant seeks to ensure that the DCO will set out the position at the date the DCO is made. This is consistent with the approach taken and approved under a number of previously made Development Consent Orders.</p>
	<p>Under Agenda Item 2, the ExA invited interested parties to make representations. Representations were made by:</p> <ul style="list-style-type: none"> • Mr Killian Garvey (Kings Chambers) on behalf of Parker Strategic Land and a number of land owners (9 landowners); and • Mr Will Thomas (Shoosmiths) on behalf of Barwood Land and Parker Strategic Land and Ms Jennifer Taylor <p>In summary Mr Garvey and Mr Thomas made the following representations:</p> <p><u>a) Mr Garvey</u></p>	

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	<p>Mr Garvey raised two questions to be addressed by the Applicant:</p> <ul style="list-style-type: none"> • what is plot 101 being sought for? • where is the justification for this? <p>In expanding on the questions above, Mr Garvey firstly, stated that the draft DCO at page 71 identifies plot 101 and it states that the plot is required for the construction lay down sites and stockpiling areas for topsoil and subsoil material and construction of temporary haul roads, including access in connection with the works to junction two of the M60 nine motorway.</p> <p>Mr Garvey went on to state that the DCO suggests that Plot 101 is required for temporary use of the land for the storage of materials, construction of a temporary haul road and for access.</p> <p>The Statement of Reasons doesn't align with the description in the draft DCO. The Statement of Reasons lists Plot 101 and provides a different description.</p> <p>Secondly, Mr Garvey, asked the Applicant to confirm why specifically Plot 101 is</p>	<p>a) In response to Mr Garvey's submissions, the Applicant confirmed that it is correct that the explanation in the draft DCO is accurate and the temporary compound is required for use in connection with construction of Works 8 and 9.</p> <p>The Applicant's approach in Appendix 1 of the Statement of Reasons has been to broadly describe the use of the land by reference to the description of the work in Schedule 1 of the dDCO relevant to that work area. The Applicant noted however that Appendix 1 incorrectly refers only to Work Number 9 and should also refer to Work Number 8.</p> <p>The Applicant agreed to update Appendix 1 to the Statement of Reasons to clarify precisely the work areas required for the temporary compound area. The updated Statement of Reasons is included with the Applicant's submissions at Deadline 1 (Document 4.1B).</p> <p>The ExA advised that Mr Garvey's further representations were more specific and not to be dealt with at this general case hearing. The Applicant agreed with the ExA and will be prepared to address specific queries at the Hearing scheduled in November. In the meantime, the Applicant confirmed that it is continuing to negotiate directly with the relevant landowners (via their agents) in connection with the temporary use of relevant plots, as well as the permanent acquisition, to which the Applicant understands there is no objection.</p>

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	<p>being sought and where is the Applicant's justification for requiring Plot 101.</p> <p>Mr Garvey concluded by asking that, when the Applicant updates Appendix 1 of the Statement of Reasons (ahead of the November hearing), addresses (i) the quantum of materials that the Applicant anticipates will be required and brought onto the land and the area that will be required for storage of those materials?, (ii) if any alternatives to Plot 101 have been considered? and (iii) to what extent is access required, not just in relation to Plot 101, but more broadly when land is being sought for temporary purposes.</p> <p><u>b) Mr Thomas</u></p> <p>The representation made by Mr Thomas largely mirrored those made by Mr Garvey.</p> <p>Mr Thomas confirmed that the land in question is currently subject to compulsory powers of temporary possession in the draft DCO and is identified as plot 122 on Land Plan 7.</p> <p>Mr Thomas sought clarification from the Applicant as to why that plot of land is being required for a construction compound and lay down area in</p>	<p>The Applicant does not propose to specifically amend the Statement of Reasons to answer the questions raised by Mr Garvey in relation to plot 101, however, the Applicant is able to confirm the position as part of these Post Hearing Submissions:</p> <p>(i) Topsoil circa 20,000m³, subsoil circa 5,000m³, drainage materials and road building materials. Circa two thirds of the land will be required for storage , the other third will be required to accommodate welfare, parking, office and circulation space.</p> <p>(ii)The Applicant confirms that other locations were considered but they were severely constrained by the presence of 400,000 volt NGET apparatus. The main HNRFI site is not feasible as it may be a different contractor to the motorway slip roads due to the scale of works being undertaken simultaneously and would not meet with Construction (Design and Management) (CDM) regulations. Please also refer to the Applicant's Responses to Relevant Representations (Section 1 – Land interests) (Document number 18.2) in relation to this point.</p> <p>(iii) 24 hour access is required and will be taken off the public highway.</p> <p>b) In response to Mr Thomas' representations, the Applicant confirmed the points made in response to Mr Garvey's representations, in that Appendix 1 of the Statement of Reasons is intended to explain the purpose for which the parcels are required. The Applicant agreed to update Appendix 1 to the Statement of Reasons to clarify precisely the work areas required for the temporary compound area. The updated Statement of Reasons is included with the Applicant's submissions at Deadline 1 (Document 4.1B).</p> <p>The Applicant confirmed that it has met the relevant landowner's agent and has explained the reasons for temporary possession powers in more detail including the rationale for the size/shape of the land which is related to access and avoiding the removal of hedgerows. The Applicant confirmed it will continue to liaise with the landowner and their agent and will update the Compulsory Acquisition Schedule as required to reflect these discussions.</p>

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	<p>connection with works on the Hinckley Road and the alterations of the junction of the Hinckley Road and Stanton Lane, including access.</p> <p>Mr Thomas stated that his clients could not identify where in the Statement of Reasons or application documents generally the Applicant has provided justification for the relevant plot and the size / shape of the plot.</p> <p>Mr Thomas requested that, if justification is not included currently, can the Applicant include such justification. To include, details relating to the likely quantities of material, some explanation in writing as to why the land identified as Plot 122 is required and why it has been drawn on the plans as shown (rectangle shape) drawn on the plans in that way. Mr Thomas stated that it appears excessive considering the highways works, which it's linked to in terms of a related construction compound.</p>	
	<p>In addition to the interested party representations, the ExA raised the following additional queries at the CAH (in summary):</p>	<p>a) The Applicant confirmed that it has taken this considered, measured and deliberate land assembly approach in order to specifically reduce the extent of compulsory powers sought in line with guidance. The Applicant is a commercial developer used to dealing with voluntary arrangements in all of its other developments, where it has no such compulsory acquisition</p>

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	<p>a) Land Arrangements</p> <p>On the basis that the Applicant's approach is to entered into as many voluntary arrangements as possible, the ExA wanted to explore the risks associated with that strategy and what would happen if voluntary arrangement / contracts failed.</p> <p>The ExA confirmed that it needed to be satisfied, when reporting to the Secretary of State, that the development could be brought forward without delay and therefore wanted to explore the risks associated with the land assembly strategy and the risk that contracts could fail.</p> <p>b) Human Rights</p> <p>In respect of human rights, the ExA confirmed that the decision would be subject to the Human Rights Act and the ExA wanted to discuss Article 8 in particular, a right to respect for private and family life.</p> <p>The ExA requested confirmation of:</p> <ul style="list-style-type: none"> • the number of dwellings and the number of caravans currently on site and the number to be demolished or removed, • the number of dwellings currently occupied, 	<p>powers, and has been content to approach this development and land assembly of this site in the same way.</p> <p>Given the Applicant's development experience, it does not envisage a scenario whereby contracts fail and indeed in its deliberately measured approach to compulsory acquisition, the limited example where it has sought 'backup powers' is in relation to two leasehold interests in the middle of the site, which are Plots 28 and 29. The Applicant has taken this approach in the event that the freeholder of the Plots does not deliver or is not able to deliver vacant possession in respect of those particular interests.</p> <p>The Applicant does not consider its land assembly approach to be a risk to development delivery and notes that it is consistent with the approach to compulsory acquisition taken on all other SRFI DCOs. The Applicant does not consider it appropriate or justifiable to seek full acquisition where it has secured voluntary agreements.</p> <p>b) The Applicant agreed to produce a document confirming the position on those matters requested by the ExA. This note is included at Appendix E.</p>

Agenda item	Matter	Applicant's submission
	<ul style="list-style-type: none"> • the number of caravans that are currently occupied; • how many would be subject to compulsory acquisition • how many of those would be subject to temporary possession with rights 	
<p>3</p>	<p>Special Category Land The ExA asked the Applicant to present and justify its case for Compulsory Acquisition of part of Burbage Common as Special Category Land and in particular the interaction with section 132 of the Planning Act 2008.</p>	<p>The Applicant outlined that the Statement of Reasons explains the justification for the powers sought in relation to Common Land (see paragraphs 8.5 - 8.14).</p> <p>The DCO includes the provision of a new bridleway connection into Burbage Common as shown on the Access and Rights of Way Plans (document number 2.3A, APP-017) (Work No. 6(l)). The connection will link an existing bridleway in Burbage Common with a new bridleway which is to be provided within the Main HNRFI site (Work No. 6(e)).</p> <p>The Order Limits therefore extend slightly into Burbage Common to include the area in which the works to provide the new bridleway connection will be carried out.</p> <p>The part of Burbage Common on which the works to provide the new bridleway connection will be carried out was originally envisaged as comprising an area of approximately 950 square metres. This land is described as Plots 120 and 121 in Part 5 of the Book of Reference. The area of land which will contain the permanent bridleway connection will be less than 200 square metres.</p> <p>Plots 120 and 121 are shown shaded pink on the Land Plans (sheet 3) as land proposed to be permanently acquired. However, the Applicant intends to permanently acquire only that part of the land which will contain the bridleway connection, being an area less than 200 square metres. Further, as explained below, following the further work undertaken since CAH1, the Applicant is also confident that the temporary works can be accommodated within</p>

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		<p>this 200 square metres limit. At this stage, the Applicant does still require the flexibility for the precise location of the bridleway connection within the overall 950 square metre area, but is seeking to progress the detail with Leicestershire County Council as highway authority and with Hinckley & Bosworth Borough Council as the landowner in respect of the location and will endeavour, if those discussions can be progressed, to refine and reduce the extent of Common Land required before the end of the Examination. If the Applicant is unable to finalise those detailed discussions with the County Council, the flexibility will need to remain, however the Applicant hopes that its confirmation that all works can be carried out using less than 200 square metres of Common Land provides further clarity to the ExA with regard to the avoidance for any need for Special Parliamentary Procedure.</p> <p>The compulsory acquisition of common land is subject to additional restrictions under section 131 of the Planning Act 2008. Section 131 has the effect that a DCO which authorises the compulsory acquisition of land forming part of a common is subject to special parliamentary procedure unless the Secretary of State is satisfied that one of subsections 131(4) to 131(5) applies and that fact is recorded in the DCO.</p> <p>Subsection 131(5) of the Planning Act 2008 applies if:</p> <ul style="list-style-type: none"> • the land authorised to be compulsorily acquired does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway; and • the giving in exchange of other land is unnecessary, whether in the interests of the persons (if any) entitled to rights of common or other rights or in the interests of the public. <p>The draft DCO therefore includes, at Article 23, a restriction on the extent of common land which may be acquired to no more than 200 square metres and therefore the Applicant considers that section 131(5) Planning Act 2008 applies.</p> <p>The intention of having the restriction in Article 23 of the DCO is to have absolute clarity in respect of the Common Land and special parliamentary procedure position. The Applicant</p>

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	<p>The ExA asked whether any of the SSSI is included within the Common Land and, if so, whether any related restrictions would increase the amount of the Special Category Land affected by the project.</p>	<p>agreed to review other made DCOs to assess whether similar Articles have been included and to consider whether the Article is indeed required as a matter of law. The Applicant will confirm its view on this with the updated dDCO and Explanatory Memorandum to be provided at Deadline 2.</p> <p>The ExA highlighted that there is a risk that, in the event that the Secretary of State considered that limiting the amount of common land proposed to be utilised as suggested in Article 23(2) cannot be secured as proposed, the Secretary of State could insist that the special parliamentary procedure will apply to the Common Land.</p> <p>In the alternative, and at the request of the ExA, the Applicant confirmed it would consider whether it is possible to refine the detail on the public rights of way plans / strategy at this point in time to clarify the extent of Common Land that is required.</p> <p>At the request of the ExA, the Applicant agreed to provide a plan to demonstrate that the Applicant can achieve the proposed development using no more than 200m² of common land. The Applicant has produced the relevant plan titled 'Extent of Works within the Common Land' which is appended at Appendix F. This plan shows that the total area required for the permanent bridleway connection and the temporary construction works to provide it can be accommodated using less than 200 square metres of land within the Common. The Applicant will consider whether any amendments to the dDCO and other documentation should be made to reflect this and confirm the position at Deadline 2. As explained above, any other amendments to the application documentation will also be made, if possible.</p> <p>The Applicant confirms there is no overlap between the SSSI and the Common Land. The relevant designations are illustrated on <i>Plan edp3267/188 - Relationship between Common Land, Country Park and SSSI Designations</i> accompanying this submission at Appendix G. The Woodland Access Management Plan (document reference 6.2.12.4) makes no recommendations for any interventions beyond the Order Limits and therefore no Special</p>

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	<p>At the CAH the ExA requested the Applicant's view in respect of section 127(3) of the Planning Act 2008 in respect of statutory undertaker land, particularly Network Rail and National Highways.</p>	<p>Category Land will be affected by the proposals contained in that document. The Applicant has updated the document title and various paragraphs in that document to help to clarify that position and a revised document is submitted with the Applicant's Deadline 1 submissions (Woodland Management Plan document reference 6.2.12.4A).</p> <p>In respect of Network Rail, the Applicant confirmed it is in extensive and advanced conversations with Network Rail in respect of all technical matters, including land and rights arrangements. The Applicant also confirmed that it is not intending to acquire any of the operational railway. The boundary between the operational railway and the proposed development will change and the Applicant is in discussion with Network Rail in that regard. There will therefore be some 'land swaps' and various other changes and the Applicant will need to acquire some air rights, but none of that will obstruct or make the railway inoperable.</p> <p>The Applicant is also progressing protective provisions with Network Rail, which will also deal with compulsory acquisition and powers sought and land and rights agreed.</p> <p>The Applicant understands there is no objection on a section 127 basis from Network Rail.</p> <p>The Applicant notes that Network Rail confirmed its agreement to the above representation of the position between the Applicant and Network Rail.</p> <p>In respect of National Highways, the Applicant confirmed it has been in discussions with National Highways and has explained relevant parcels of land which are subject to the proposed acquisition powers and much of the intention to acquire any interest also relates to discussions which are being had with Leicestershire County Council in terms of what interests or what land the County requires by way of transfer upon dedication of the new highway. There are a number of complicated land parcels where, whilst the adopted highway is a Leicestershire County Council adopted highway and therefore the highway works will be delivered pursuant to Leicestershire County Council protective provisions,</p>

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		<p>some of the subsoil interests are owned by National Highways. The strategy with this type of land is therefore very much dependent upon whether or not the County Council would be seeking full freehold land with a dedication.</p> <p>Whether or not the County Council requires a freehold transfer has an impact on the Applicant's land assembly strategy, conversations are ongoing with the relevant authorities in that regard to seek to resolve and clarify what is required. The Applicant confirmed it's intention is not to acquire National Highways land where possible, and the desire would be to facilitate a transfer between the authorities should the County require the freehold. The Applicant will continue to progress discussions with both authorities.</p>
<p>4</p>	<p>Crown Land The ExA asked the Applicant to present and justify its case for Compulsory Acquisition of Crown Land and to set out the latest position as to whether it has obtained consent from the Crown under section 135 of the Planning Act 2008.</p>	<p>The Applicant confirmed that the Statement of Reasons explains the justification for the powers sought in relation to Crown Land (see paragraphs 8.1 - 8.4).</p> <p>Crown land is defined by section 227 of the Planning Act 2008 to mean land in which there is a Crown interest or a Duchy interest and such interests are further defined by that provision.</p> <p>In general terms, Crown land is land that is owned outright by a Crown institution such as the Crown Estate Commissioners, the Duchy of Cornwall and government departments.</p> <p>The Order Land includes several plots that would be considered "Crown land" within the scope of section 135 of the Planning Act 2008. These plots are shown on the Crown Land Plans (document reference: 2.26) and the Crown interests are described in Part 4 of the Book of Reference (document reference: 4.3).</p> <p>The Crown interests affected by the development are as follows:</p> <ul style="list-style-type: none"> Plot 36: This is agricultural land the freehold of which is owned by a third party. However, the land is also subject to a conveyance dated 3 October 1972 which reserves rights (including for the use of service media and conduits and access to light or air) for the benefit of 'adjoining or neighbouring land' which is now held by

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		<p>the Department for Environment, Food and Rural Affairs (DEFRA). The precise land benefitting from those rights is unknown despite extensive investigations undertaken by the Applicant's land agent. Plot 36 is part of a larger parcel of undeveloped arable farmland. the Applicant has included Plot 36 within the Order limits for the purpose of undertaking and maintaining soft landscaping works on the northern side of the existing railway line only. The Applicant is seeking to compulsorily acquire the freehold interest only in Plot 36. The Applicant is not seeking to acquire the rights held by DEFRA and so the enjoyment of those rights will remain unaffected by the development. Given that an interest in Plot 36 is held by DEFRA, the Applicant considers that Plot 36 constitutes Crown land for the purposes of the Planning Act 2008. Accordingly, pursuant to sections 135(1) and (2) of the Planning Act 2008, the Applicant has sought consent from DEFRA as the appropriate Crown authority for the inclusion of Plot 36 within the Order Land under the DCO.</p> <ul style="list-style-type: none"> • Plot 53: This is a small area of land which is adopted highway land. The Applicant understands that DEFRA has an interest in land which benefits from a restrictive covenant not to use the subsoil below the adopted highway for agricultural or horticultural purposes. This restrictive covenant is understood to be contained in a conveyance dated 28 May 1970 (despite extensive investigations the Applicant has been unable to obtain a copy of that conveyance). Plot 53 is included within the Order Limits for the purposes of highway works which will be carried out pursuant to the DCO and will only affect the adopted highway and not the subsoil in which DEFRA is assumed to have the interest noted above. Whilst there are no powers of compulsory acquisition sought in respect of this land, pursuant to section 135(2) the Applicant has sought DEFRA's consent as the appropriate Crown authority to the inclusion in the DCO of works powers in respect of Plot 53. • Plots 127, 131, 132, 133 and 135: The land comprised in these plots is adopted public highway. No compulsory acquisition powers are proposed in relation to this land but highway works are proposed to be carried out. The registered owners of the freehold interest in the highway and subsoil of these plots have each gone into

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		<p>liquidation and are no longer corporate entities. Consequently, the subsoil in each of these plots vests in the Crown as "bona vacantia". The Applicant therefore considers that the subsoil in these plots constitutes Crown land for the purposes of the Planning Act 2008. Plots 127, 131, 132, 133 and 135 have been included within the Order Limits for the purposes of highway works to be carried out pursuant to the works powers in the DCO. The highway and subsoil in which the Treasury Solicitor has an interest will be unaffected. Whilst no compulsory acquisition powers are proposed in relation to these plots, pursuant to s131(2) of the Planning Act 2008 the Applicant has sought consent from the Treasury Solicitor as the appropriate Crown authority to the inclusion in the DCO of works powers in respect of these plots.</p> <p>The Applicant confirmed that it would continue seek the relevant consents where needed in respect of the Crown Land. The Applicant has now been able to obtain a final position from the relevant Crown bodies and appends to this document at Appendix H a note explaining the updated position.</p>
<p>5</p>	<p>Statutory Undertakers The ExA asked the Applicant to update it as to the latest position in respect of Operational Land of Statutory Undertakers, as to whether it has obtained agreement for the land to be acquired and whether there are, and if so what, any outstanding matters to be resolved.</p>	<p>The Applicant referred to the explanation of the current status of the protective provision discussions with the various relevant third parties in ISH1. It confirmed its view that protective provisions will deal with the land and rights required in respect of any statutory undertaker apparatus or land to be subject to any compulsory acquisition powers.</p> <p>The Applicant is confident that the position with regard to any necessary interests will be finalised and agreed as part of those protected provisions in the coming weeks and certainly during the course of the Examination.</p> <p>The Applicant does not currently anticipate any need for the exercise of compulsory acquisition in relation to those rights.</p>
<p>6</p>	<p>Funding The ExA asked the Applicant to update it as to the latest position in respect of funding.</p>	<p>The Applicant confirmed it will submit an updated Funding Statement to include updated accounts to reflect revised funding estimates detailed in the statement, at Deadline 1. The</p>

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		<p>updated Funding Statement is therefore included with the Applicant's Deadline 1 submissions (Document 4.2A).</p> <p>The Applicant confirmed that the Accounts demonstrate that Tritax Big Box REIT Plc has a portfolio value of over £5bn. In terms of the costs estimate of funding the development, this will be updated to reflect changes in the market and most notably increased construction costs. The Applicant's current costs estimate is £805m.</p> <p>The Applicant's land acquisition costs are related to market value and following further negotiations with landowners, the Applicant's revised estimate for funding any potential compensation for the interests described in the statement is £3.46m. The revised sums result in an overall increase of approximately £51m, but this does not affect the Applicant's ability to fund the delivery of HNRFI as is evident from the Group portfolio value.</p>
7	Any other matters	N/A