

Deadline 3 – Submission from National Highways Limited

Applicant	Tritax Symmetry
Proposal	Application by Tritax Symmetry (Hinckley) Limited for an Order Granting Development Consent for the Hinckley National Rail Freight Interchange
Author	National Highways Limited (20040073)
Date	14 November 2023

Introduction

National Highways (“we”) has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such we work to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

This further submission sets out National Highways’ (NH) position pursuant to submissions received at Deadline 2 in regard to our assessment of the revised draft DCO submitted by the Applicant, land parcels and land interests sought by the Applicant and Protective Provisions required by the parties.

Land Parcels and Land Interests

Discussions between the Applicant and NH are ongoing with regard to land parcels and land interests sought by NH. NH is keen to progress matters with the intention that all NH land interests are covered by NH’s Protective Provisions and suitable agreements as necessary.

As matters currently stand:

- we note from the Book of reference that the Applicant seeks to compulsory acquire plots 4, 5, 6, 8, 10, 11, 12, 65, 66, 68 and 69 which NH has an interest in;

- with regard to plots 4, 6, 8, 10, 11 and 12 NH is noted as being the registered owner of the public adopted highway and Leicestershire County Council is the highway authority. The Applicant's position is that these plots of land are only included within the compulsory acquisition limits because the Applicant awaits confirmation from Leicestershire County Council as to whether it requires the transfer of freehold land as part of the dedication of highway works. NH has no objection to these plots being compulsorily acquired by the Applicant and the transfer of freehold land as part of the dedication of highway works to Leicestershire County Council if this is required by Leicestershire County Council;
- with regard to plot 5, NH is noted as being the owner in respect of subsoil fronting agricultural land and scrubland. Leicestershire County Council is the Highway Authority. Again, NH has no objection to this plot being compulsorily acquired by the Applicant and the transfer of freehold land as part of the dedication of highway works to Leicestershire County Council if this is required by Leicestershire County Council;
- NH objects to the compulsory acquisition of plots 65 and 69 for scrubland where NH is the registered owner. The plots constitute land acquired by NH for the purpose of its statutory undertaking. NH considers that there is no compelling case in the public interest for compulsory acquisition and instead welcomes entering into suitable agreements with the Applicant which allows for the proposed works to be undertaken;
- NH also objects to the compulsory acquisition of the drain owned by it at plot 65. To ensure the integrity of the asset and the highway drainage system, it is imperative that the drain remains in the ownership of NH and that there is no interruption of it. NH will need to maintain or potentially replace this drain in the future. Therefore, ownership of plot 65 is required. Any action that prevents NH from adequately draining the SRN has clear safety implications and would cause serious detriment to NH's undertaking;
- the Applicant seeks compulsory acquisition of plots 66 and 98 where NH's interest is by way of riparian rights. NH considers that there is no compelling



case in the public interest for compulsory acquisition and instead welcomes entering into suitable agreements with the Applicant which allows for the proposed works to be undertaken;

- temporary possession of plot 61 (grassland) is sought by the Applicant of which NH is the owner. NH's objection to the temporary possession of this parcel remains and instead welcomes entering into a suitable agreements with the Applicant which allows for access over the plot of land and the proposed works to be undertaken; and
- NH does not agree to the interference, suspension or extinguishment of rights upon compulsory acquisition of plots 39, 54, 67, 71, 84, 101, 101a, 102, 103 and 104 where NH benefits from rights of access and maintenance rights. These interests are necessary for NH to be able to carry out its undertaking. Should these rights be extinguished then this would cause serious detriment to NH undertaking by introducing public safety risks.

Protective Provisions and draft DCO

NH maintains its position as set out in our Deadline 1 submission and during our submission at ISH5 in that our Protective Provisions appended to our Deadline 1 submission be included in their entirety on the DCO. NH and the Applicant have engaged with one another since ISH5 in an attempt to reach agreement on the Protective Provisions and discussions between the parties are ongoing.

Should NH's Protective Provisions not be agreed and accepted in their entirety then the current articles of the revised DCO submitted by the Applicant at Deadline 2 are not capable of being accepted as drafted. The table below sets out NH's objections to the various articles of the revised draft DCO on the basis that they do not protect the safe and proper functioning of the SRN should our Protective Provisions not be accepted.

Article No and heading Provisions	Article No and heading Provisions of concern Reasons	Article No and heading Provisions of concern Reasons
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of concern Reasons		
Interpretation	<p>“Street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street</p>	<p>This definition encompasses the SRN and therefore any article of the DCO that may allow the Applicant to undertake works on “Streets” would encompass the SRN raising issues of safety of the travelling public and impact of such works on the operation of the SRN without the required safeguards in place provided by NH’s Protective Provisions.</p>
Verge	<p>Means any part of the street which is not a carriageway</p>	<p>As above</p>
Article 9- Street Works	<p>The undertaker may, for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may –</p> <ul style="list-style-type: none"> (a) break up or open the street, or any sewer, drain or tunnel under it; (b) tunnel or bore under the street; (c) place apparatus under the street; (d) maintain apparatus in the street or change its position; (e) construct bridges and tunnels; (f) increase the width of the carriageway of the street by reducing the width of any kerb, 	<p>The current drafting keeps open the possibility for the Applicant to undertake works to the SRN. Therefore, NH’s form of Protective Provisions should be included in the event such works are required. NH’s Protective Provisions reference any work authorised by the proposed Order that is on, in, under or over the SRN to ensure any works are carried out in consultation with NH and makes provisions in the event there is non-compliance protecting NH’s position and the public purse. NH is required to ensure public money is spent appropriately and the Protective Provisions provide that protection in the event of default.</p>

	<p>footpath, footway, cycle track or verge within the street;</p> <p>(g) alter the level or increase the width of such kerb, footway, cycle track or verge; (h) reduce the width of the carriageway of the street;</p> <p>(i) make and maintain crossovers and passing places and</p> <p>(j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).</p> <p>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Part 2 and 3 of Schedule 13 (Protective Provisions).</p>	
<p>Article 10 Power to alter layout, etc. of street</p>	<p>(1) Subject to paragraph (2), the undertaker may for the purposes of constructing and maintaining the authorised development, alter the layout of any street within any main site and the layout of any street in at its junction with such a street; and without limitation on the scope of this paragraph the undertaker may.....</p>	<p>This would allow the undertaker in relation to constructing and maintaining the authorised development the ability to permanently or temporarily alter the layout of any street within the main site and any street at its junction with such a street. This drafting is wide and has the potential to impact the SRN on the basis that the SRN falls within the main site. It is another reason why NH's Protective Provisions must be included within the draft DCO.</p>

<p>Article 12 – Temporary closure of streets</p>	<p>(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time...</p> <p>(2) without limitation on the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.</p> <p>(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter or divert any street without the consent of the relevant street authority, which may attach reasonable conditions to the consent but such consent is not to be unreasonably withheld or delayed.</p> <p>(5) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed street.</p> <p>(7) If a street authority which receives an application for</p>	<p>This would allow with the consent of the street authority any street within the Order limits if required in carrying out the authorised development to be temporarily stopped up, altered or diverted in addition to those streets set out in Schedule 3 and 4. This seems unnecessarily wide. NH would reasonably require input and the necessary safeguards to protect its position including for instance a scheme of traffic management, road safety audit, road space booking (if applicable) and a commuted sum to protect our position as per NH's Protective Provisions.</p> <p>If temporarily stopped up streets can be used as a temporary working site, then consideration must be given to the duration and any impacts on NH duty regarding the SRN in the event access is required. Whilst consent is required, deemed consent applies and this is not acceptable to NH for the reasons set out in this response.</p>
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	<p>consent under paragraph (4) accompanied with all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.</p>	
<p>Article 14 - Accesses</p>	<p>The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld) form and lay out such means of access (permanent or temporary), or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</p> <p>(2) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (Protective Provisions).</p>	<p>Any new access off the SRN poses safety concerns and under the Highways Act 1980. NH approval is required to ensure that only safe and appropriate accesses are introduced (s175B). Whilst s175B does not apply if development consent is required under the Planning Act 2008 this is not, in NH's view, because highway authority consent is not required but rather that is expected to be appropriately covered under the DCO and the DCO would provide for such consent to be given, if appropriate.</p> <p>For the reasons above, the NH's Protective Provisions must be included within the draft DCO.</p>

	<p>(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was made, it is deemed to have granted consent.</p>	<p>The draft DCO has deemed consent should NH not respond within the period stated. NH would ask that deemed consent is not accepted given the fact that they may not be able to respond within tight timescales. Given workloads (which includes other DCOs) and restrictions with outsourcing work, NH cannot always commit to responding within tight timescales and deemed acceptance could lead to risks to the safety and integrity of the SRN.</p>
<p>Article 22 - Protective works to buildings and structures</p>	<p>(1) Subject to the provisions of this article, the undertaker may at its own expense carry out the protective works to any building or structure which may be affected by the authorised development as the undertaker considers necessary or expedient.</p> <p>(2) Protective works may be carried out—</p> <p>(a) at any time before or during the carrying out in the vicinity of the building or structure of any part of the authorised development; or</p> <p>(b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of five years beginning with the day on which that part of the authorised development first</p>	<p>This Article would allow the undertaker to enter onto any land for the purposes set out in this article. Prior consent is not required, instead the Applicant is required to serve notice of its intention to undertake the works. A counter notice is capable of being served on the Applicant but its contents are restricted and this must be served within 10 days, a very limited timescale.</p> <p>NH requests that the period is extended and that there is the opportunity to attach conditions to the works being undertaken.</p>

	<p>comes into use or becomes operational.</p> <p>(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building or structure to which the power applies and any land within its curtilage and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.</p> <p>(4) For the purpose of carrying out the protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—</p> <p>(a) enter the building and any land within its curtilage; and</p> <p>(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it).</p> <p>(5) Before exercising—</p> <p>(a) a power under paragraph (1) to carry out protective works to a building or structure;</p> <p>(b) a power under paragraph (3) to enter a building and land within its curtilage;</p>	
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	<p>(c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or</p> <p>(d) a power under paragraph (4)(b) to enter land,</p> <p>the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a) or (c) specifying the planned protective works proposed to be carried out.</p> <p>(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner and or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question as to whether the protective works proposed by the undertaker are necessary or expedient to be referred to arbitration under article 52 (arbitration).</p> <p>(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.</p>	
<p>Article 23 - Authority to</p>	<p>(1) The undertaker may for the purposes of this Order enter on</p>	<p>This Article would allow the undertaker to enter onto any</p>

<p>survey and investigate the land –</p>	<p>any land shown within the Order limits or which may be affected by the authorised development and—</p> <p>(a) survey or investigate the land;</p> <p>(b) without limitation on the scope of sub-paragraph (a), make trial holes or pits in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</p> <p>(c) without limitation on the scope of sub-paragraph (a), carry out environmental, utility or archaeological investigations on such land; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 28 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.</p> <p>(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4)</p>	<p>land for the purposes set out in this article. The consent of the Highway Authority is qualified and deemed consent is granted after 42 days which is too short for NH. NH requests that the period is extended and that deemed consent provisions are not included for the reasons already set out. NH also requests that there is the opportunity to attach conditions.</p> <p>The compensation provisions are not sufficient from NH's perspective as we have a duty to safeguard the SRN and its assets.</p>
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	that includes all relevant information fails to notify the undertaker of its decision within 42 days of receiving the application the authority is deemed to have granted the consent.	
Article 25 - Compulsory acquisition of land	(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.	NH does not agree to the compulsory acquisition of its land. Our Deadline 1 written representation and this Deadline 2 submission set out the reasoning for this.
Article 27 - Compulsory acquisition of rights	(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.	Interests of NH are subject to compulsory acquisition and the Applicant is also seeking the compulsory acquisition of rights over land belonging to NH as shown above. Article 25(1) could therefore result in the extinguishment of NH interests. Given NH role as the strategic highways company responsible for the SRN in England it is not acceptable for its interests to be extinguished in such manner which could make it impossible for NH to fulfil its statutory and Licence obligations.
Article 30 - Private Rights	(4) Subject to the provisions of this article, all private rights over land which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land. (5) Any person who suffers loss by the extinguishment or	Private rights are suspended and unenforceable which may have an impact on day-to-day operations if access is required as any rights will be suspended for as long as the undertaker remains in lawful possession. Given NH role as the strategic highways company responsible



	<p>suspension of any private right or restriction under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute, under Part 1 of the 1961 Act.</p>	<p>for the SRN in England it is not acceptable for its interests to be extinguished in such manner which could make it impossible for NH to fulfil its statutory and Licence obligations. The compensation provisions are not sufficient from NH's perspective as we have a duty to safeguard the SRN.</p>
<p>Article 31 – Rights under or over streets</p>	<p>(1) Subject to paragraph (6) the undertaker may temporarily enter on and appropriate so much of the subsoil of or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.</p> <p>(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.</p>	<p>There is no requirement to obtain the consent prior to doing so. Also, this can be exercised in connection with the authorised development and any other purpose ancillary to the authorised development. This seems to be wide ranging and could potentially interfere with the subsoil of the SRN. NH is concerned that such a wide power, without controls, creates significant safety concerns. Anyone seeking to carry out works above or below the SRN would ordinarily be expected to comply with various safety requirements so NH is concerned with the blanket power this article provides without the ability for NH to influence how any such works are carried out.</p> <p>It is clearly in the public interest to ensure that any works in the airspace above the SRN are appropriately authorised and NH must have a role to play in such.</p>

		<p>For the avoidance of doubt, the Applicant as detailed in the Book of Reference does not seek to acquire sub soil beneath the SRN. Sub soil underneath the local road network belonging to NH is sought.</p>
<p>Article 34 – Temporary use of land for carrying out the authorised development</p>	<p>(1) The undertaker may, in connection with the carrying out of the authorised development—</p> <p>(a) enter on and take temporary possession of— (iii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act; (c) construct any permanent or temporary works (including the provision of means of access), haul roads, fencing and other means of enclosure, bridges, structures and buildings on that land;</p> <p>(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</p>	<p>The undertaker can temporarily use any other Order land in connection with the authorised development subject to the time limit in Article 34. There is an obligation on the undertaker to serve a notice not less than 14 days before doing so. This might include the SRN which would allow the provision of means of access from the SRN. This also gives a power to construct new accesses. Such a wide power has the potential to cause NH significant concerns and could make it impossible for NH to fulfil its statutory and Licence obligations. NH’s Protective Provisions would require the consent of NH and details of any proposed road space bookings, if applicable and/or to submit a scheme of traffic management for NH’s approval.</p>

	<p>(4) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article— (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.</p>	
<p>Article 35 – Temporary use of land for maintaining the authorised development</p>	<p>1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—</p> <p>(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and</p> <p>(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.</p>	<p>As above, this Article gives the ability to take possession of any land within the Order limits which would include the SRN. Apart from the undertaker having to provide not less than 28 days’ notice to the owners and occupiers of the land there is no requirement to obtain consent or the ability for the owner/occupiers to impose any conditions. This period is too short, NH objects generally to notifications without explicit consent being provided and would request that there is the opportunity to attach conditions if required. NH’s Protective Provisions would require the consent of NH and details of any proposed road space bookings,</p>

	<p>(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</p> <p>(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period following completion of that part of the authorised development until the commencement of decommissioning.</p>	<p>if applicable and/or submit a scheme of traffic management for NH approval.</p>
<p>Article 40 - Guarantees in respect of payment of compensation</p>	<p>(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place a guarantee or alternative form of security approved by the relevant planning authority in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the relevant power in relation to that land.</p>	<p>Approval of NH should also be required.</p>

Summary:

This response sets out NH’s position in relation to the revised draft DCO, land acquisitions, Protective Provisions and the current stage of discussions between ourselves and the Applicant. We are hopeful that discussions between us and the Applicant will continue and progress be made on the points not yet agreed.