

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

Project reference TR050007

Applicant's Response to EXA's Further Written Questions [Appendix A - S106 Table]

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9 February 2024

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations
2009 Regulation 5(2)(q)

1. **Introduction and Update**

- 1.1 This document is submitted in response to the Examining Authority's Further Written Questions ExQ2.0.4.
- 1.2 Since submitting a revised Section 106 Planning Obligation (**Planning Obligation**) at Deadline 4 (Document Reference 9.1A [REP4-089]), the Applicant has been negotiating the terms and obligations to be secured in the Planning Obligation with Hinckley and Bosworth Borough Council (**HBBC**), Blaby District Council (**BDC**) and Leicestershire County Council (**LCC**).
- 1.3 Following the submission of the revised Planning Obligation, the Applicant received correspondence from LCC on 31 January 2024 which included a list of planning obligations that LCC requested be included in the draft Planning Obligation.
- 1.4 The Applicant does not agree that all planning obligations requested by LCC are necessary or justified. The Applicant and LCC have therefore not been able to agree on the planning obligations to be included in the Planning Obligation for the benefit of LCC and, on that basis, LCC have confirmed that they would not enter into a bi-lateral agreement with the Applicant.
- 1.5 Against that background, the Applicant has prepared a draft Section 106 Unilateral Undertaking (**Unilateral Undertaking**) to be given to LCC and has progressed the bi-lateral Planning Obligation with HBBC and BDC.

2. **Ownership Update**

- 2.1 The land bound by the Planning Obligation and the Unilateral Undertaking is identified edged red on the 'Obligation Land Plan', appended to the Planning Obligation and the Unilateral Undertaking.
- 2.2 The 'Obligation Land' comprises the vast majority of the main site. Since the revised Planning Obligation was submitted at Deadline 4, the Applicant has included land within the administrative boundary of HBBC as part of the Obligation Land. The inclusion of the land ensures that land within the administrative area of Hinckley and Bosworth Borough is also bound by the Planning Obligation and the Unilateral Undertaking, not only land within Blaby District.
- 2.3 This additional land in the HBBC area is owned by Tritax Symmetry (Barwell) Limited, who have been added as party to the Planning Obligation and the Unilateral Undertaking.
- 2.4 The Planning Obligation is entered into by all landowners of the 'Obligation Land', the Applicant, HBBC and BDC (both as local planning authorities). The Unilateral Undertaking will be given by all landowners and the Applicant to LCC.
- 2.5 The Applicant has obtained and provided to the local authorities up to date copies of all relevant title registers and plans from HM Land Registry.
- 2.6 The title register for Title Number LT247308, which is land owned by Anne Elizabeth Wincott, includes a charge benefitting National Westminster Bank Plc (**NatWest**). NatWest have confirmed that the charge has been settled and discharged in full and are in the process of completing the relevant documentation to remove the charge from the title register. In the meantime, NatWest are preparing and will issue a letter confirming that the charge has been discharged in full and that it does not need to be party to the Planning Obligation or the Unilateral Undertaking to consent to its terms. This will be provided to the local authorities as soon as it is received.
- 2.7 On that basis, the Applicant does not consider it necessary for NatWest to be party to the Planning Obligation or the Unilateral Undertaking as NatWest no longer has an interest in the property for the purposes of section 106 of the Town and Country Planning Act 1990. The Applicant is liaising with HBBC, BDC and LCC to agree that NatWest does not need to be party to the Planning Obligation or the Unilateral Undertaking.

3. **Planning Obligations – Blaby District Council**

3.1 The Planning Obligation continues to be progressed and negotiated with BDC. The majority of the planning obligations have been agreed with BDC subject to minor drafting amendments, mainly in respect of the detailed drafting of the Works and Skills Plan.

3.2 Below is a summary of the planning obligations included in the Planning Obligation relating to BDC. The Applicant’s position is set out in the third column. The capitalised terms below should be construed as defined in the Planning Obligation.

Planning Obligation	Trigger	Applicant’s Update
Section 106 Monitoring Fee (£250)	Payable prior to Commencement of Development	The obligation is agreed between the Applicant and BDC
Works and Skills Plan	To implement and comply with the Works and Skills Plan in accordance with the timeframes set out in the plan	The obligation is agreed between the Applicant and BDC subject to minor drafting amendments in the Works and Skills Plan to be agreed.
Works and Skills Plan Monitoring Fee (£1,440)	Payable on an annual basis and by no later than 1 (one) month prior to the date the first Works and Skills Plan Monitoring Meeting takes place each year	The obligation is agreed between the Applicant and BDC subject to minor drafting amendments.

4. **Planning Obligations – Hinckley and Bosworth Borough Council**

4.1 The Planning Obligation continues to be progressed and negotiated with HBBC. The majority of the planning obligations have been agreed with HBBC subject to minor drafting amendments.

4.2 Below is a summary of the planning obligations included in the Planning Obligation relating to HBBC. The Applicant’s position is set out in the third column. The capitalised terms below should be construed as defined in the Planning Obligation.

Planning Obligation	Trigger	Applicant’s Update
Bike Shelter Contribution (£10,000)	Payable prior to first Occupation	The obligation is agreed between the Applicant and HBBC
Bridleway Contribution (£70,400)	Payable prior to first Occupation	The obligation is agreed between the Applicant and HBBC
Car Park Contribution (£75,000)	Payable prior to first Occupation	The obligation is agreed between the Applicant and HBBC
Directional Signage Contribution (£15,000)	Payable prior to first Occupation	The obligation is agreed between the Applicant and HBBC

Planning Obligation	Trigger	Applicant's Update
Footpath Improvements Contribution (£75,000)	Payable prior to first Occupation	The obligation is agreed between the Applicant and HBBC subject to approval of the Footpath Plan
New Permissive Route Contribution (£25,000)	Payable prior to first Occupation	The obligation is agreed between the Applicant and HBBC subject to approval of the New Permissive Route Plan
Works and Skills Plan Monitoring Fee (£1,440)	Payable on an annual basis and by no later than 1 (one) month prior to the date the first Works and Skills Plan Monitoring Meeting takes place each year	The obligation is agreed between the Applicant and HBBC subject to minor drafting amendments.
Visitor Centre Contribution (£90,000)	Payable prior to first Occupation	The obligation is agreed between the Applicant and HBBC

5. Planning Obligations – Leicestershire County Council

5.1 As mentioned above, the Applicant does not agree that all planning obligations requested by LCC are necessary or justified. The Applicant and LCC have therefore not been able to agree on the planning obligations to be included in the Planning Obligation for the benefit of LCC and, on that basis, the Unilateral Undertaking has been prepared and will be given to LCC.

5.2 The Unilateral Undertaking continues to be progressed and negotiated with LCC.

Unilateral Undertaking

5.3 Below is a summary of the planning obligations included in the Planning Obligation relating to LCC. The Applicant's position is set out in the third column. The capitalised terms used below are as defined in the Unilateral Undertaking.

Planning Obligation	Trigger	Applicant's Update
Archaeology Monitoring Fee (£7,315)	payable prior to carrying out the Archaeology Works	The obligation is agreed between the Applicant and LCC
Gibbet Hill obligation	not to Occupy the Development unless and until written evidence has been provided to the County Council that the Gibbet Hill Contribution has been paid to Warwickshire County Council in full	Please see paragraph 5.4 – 5.10 for the reasoning and justification behind the Gibbet Hill obligation
HGV Routeing Monitoring Fee (£1,440)	payable no later than 1 (one) month prior to the date of the relevant HGV Route Monitoring Meeting	It is understood by the Applicant that the obligation is agreed by LCC subject to the inclusion of LCC

Planning Obligation	Trigger	Applicant's Update
		<p>'standard' drafting, which the Applicant awaits.</p> <p>The Applicant will consider the drafting and expects to be in a position to agree the drafting prior to Deadline 7.</p>
Monitoring Fee (the sum of £300 or 0.5% of the Contributions (whichever is the greater))	payable prior to first Occupation of the Development	It is understood by the Applicant that the obligation is agreed between the Applicant and LCC subject to minor drafting amendments.
Occupier Travel Plan Monitoring Fee (£6,000)	payable prior to first Occupation of the relevant Unit	<p>It is understood by the Applicant that the obligation is agreed by LCC subject to the inclusion of LCC 'standard' drafting, which the Applicant awaits.</p> <p>The Applicant will consider the drafting and expects to be in a position to agree the drafting prior to Deadline 7.</p>
Works and Skills Plan Monitoring Fee (£1,440)	payable on an annual basis and by no later than 1 (one) month prior to the date the first Works and Skills Plan Monitoring Meeting takes place each year	<p>It is understood by the Applicant that the obligation is agreed by LCC subject to the inclusion of LCC 'standard' drafting, which the Applicant awaits.</p> <p>The Applicant will consider the drafting and expects to be in a position to agree the drafting prior to Deadline 7.</p>
<p>Traffic Regulation Order Contribution</p> <p>(£8,756 in respect of traffic restrictions (on a maximum of 3 (three) roads) or £9,392 (in respect of speed limit changes)</p>	payable in the event that the Owner requires the making of a Traffic Regulation Order in connection with the Development within 30 days of a request from the County Council	<p>It is understood by the Applicant that the obligation is agreed by LCC subject to the inclusion of LCC 'standard' drafting, which the Applicant awaits.</p> <p>The Applicant will consider the drafting and expects to be in a position to agree the drafting prior to Deadline 7.</p>

Planning Obligation	Trigger	Applicant's Update
<p>Travel Pack and Travel Pack Administration Fee (£500)</p> <p>The Travel Pack (physical or web-based application) will be produced by the Applicant but, will be approved by LCC via the planning obligation.</p>	<p>No later than 2 (two) months prior to the first Occupation of the Development:</p> <ul style="list-style-type: none"> • to submit a sample Travel Pack to the County Council together with the Travel Pack Administration Fee for approval in writing; and • not to Occupy the Development until such approval has been given (such approval not to be unreasonably withheld or delayed). <p>Prior to the first Occupation of all relevant Units:</p> <ul style="list-style-type: none"> • to issue the approved Travel Pack to each occupier of the relevant Units for distribution to employees; and • not to Occupy the relevant Units until the Travel Packs have been issued to the occupiers of the Units. 	<p>It is understood by the Applicant that the obligation is agreed by LCC subject to the inclusion of LCC 'standard' drafting, which the Applicant awaits.</p> <p>The Applicant will consider the drafting and expects to be in a position to agree the drafting prior to Deadline 7.</p>
<p>Travel Plan Co-ordinator</p>	<p>To appoint a Travel Plan Co-ordinator prior to first Occupation of the Development for the period until the fifth anniversary of the first Occupation of the final Unit to be Occupied and not to Occupy the Development until the Travel Plan Co-ordinator has been appointed</p>	<p>It is understood by the Applicant that the obligation is agreed by LCC subject to the inclusion of LCC 'standard' drafting, which the Applicant awaits.</p> <p>The Applicant will consider the drafting and expects to be in a position to agree the drafting prior to Deadline 7.</p>
<p>Travel Plan Monitoring Fee (£11,337.50)</p>	<p>payable prior to first Occupation of the Development</p>	<p>It is understood by the Applicant that the obligation is agreed by LCC subject to the inclusion of LCC 'standard' drafting.</p> <p>The Applicant will consider the drafting and expects to be in a position</p>

Planning Obligation	Trigger	Applicant's Update
		to agree the drafting prior to Deadline 7.

Gibbet Hill Obligation

- 5.4 LCC and Warwickshire County Council (**WCC**) have all requested that a contribution is secured as a planning obligation and is made by the Applicant as a proportionate contribution towards the costs associated with highway works and improvements to the part of the road network within Warwickshire and part of Leicestershire known as Gibbet Hill roundabout, on the A5. None of the authorities have been able to quantify the contribution but, as at Deadline 5, the Applicant is calculating an appropriate contribution based on a proposed scheme of works, which the Applicant is discussing with the highway authorities. The Unilateral Undertaking currently therefore includes '[]' that will be replaced with the figure, once known, and ahead of Deadline 7.
- 5.5 The Applicant has confirmed to the local authorities on several occasions that it does not control land or have any land interest in Warwickshire for the purposes of section 106(1) of the Town and Country Planning Act 1990 (**TCPA**), and entering into a direct planning obligation with WCC is therefore not possible.
- 5.6 It had previously been suggested that the contribution could be paid to BDC who would then pass the contribution to WCC to be used for the purposes set out. BDC have however confirmed that they are not willing to receive the contribution, as have HBBC, and LCC have insisted from an early stage of negotiations that they are not willing to receive the contribution and pass to WCC.
- 5.7 The Applicant's position is that it would be an appropriate legal mechanism to secure the Gibbet Hill obligation under section 106 of the TCPA 1990 as it gives the Examining Authority and the Secretary of State confidence that a relevant obligation has been secured relating to the DCO and the development. The Applicant will continue to seek to further progress and finalise this position with the highway authorities and its final position will be reflected at Deadline 8.
- 5.8 The Applicant's position is that, as the obligation relates to highway works and improvements, the obligation best sits with LCC as the local highway authority for the area in which the Obligation Land is situated and the neighbouring County to WCC, and the authority with experience of administering highways related matters.
- 5.9 The Gibbet Hill obligation has therefore been included in the Unilateral Undertaking to be given to LCC but, on the basis that no authority responsible for the area of land the Applicant is capable of binding would agree to receive the monies, the Applicant has structured the obligation so that the Development cannot be Occupied unless and until written evidence has been provided to Leicestershire County Council that the Gibbet Hill Contribution has been paid to WCC in full.
- 5.10 The Applicant will therefore pay the contribution direct to WCC but, the planning obligation, which is enforceable by LCC, restricts occupation of the development unless and until written evidence is provided to LCC confirming that the contribution has been paid to WCC in full. The Applicant considers the obligation to be legal and enforceable against the Owners.

Requests from LCC not agreed

- 5.11 The table below lists items requested by LCC to be secured as planning obligations but not agreed by the Applicant.
- 5.12 The Applicant's position on these requests is set out in column two.

Request from LCC	Applicant's position
<p>Desford Crossroads – contribution of £1,516,344.42 to mitigate the impact of the development at Desford Crossroads as defined in the submitted Transport Assessment</p>	<p>The Applicant's position is that the contribution cannot be agreed it is not justified and is not necessary or related to the Project.</p> <p>The Applicant has been clear in its submissions throughout the Examination that the impact of the development at Desford Crossroads does not warrant any mitigation.</p>
<p>MOVA Validation – contribution of £5000 per junction (total £20,000.00) relating to the following junctions:</p> <ul style="list-style-type: none"> • Spa Lane/Leicester Road, Hinckley • A47 Clickers Way/Station Road, Elmesthorpe • Park Road/London Road, Hinckley • London Road/Brookside, Hinckley 	<p>The Applicant's position is that the contribution cannot be agreed it is not justified and is not necessary or related to the Project as the junctions are outside of the Order limits and not junctions the Applicant will be working on.</p> <p>The Applicant clearly does not accept that the development will impact those junctions, otherwise mitigation or the need to re-validate them would have formed part of the Applicant's proposals.</p>
<p>Public Right of Way (PRoW) improvements - an obligation to improve PRoW to be defined in the agreement</p>	<p>The Applicant understands that this request relates to PRoW outside of the Order limits.</p> <p>The Applicant's position is that all necessary relevant Public Rights of Way works and improvements are included as part of the Applicant's proposals and secured by requirement 25 of the dDCO through the Public Right of Way Appraisal and Strategy. The planning obligation is not required.</p> <p>For the avoidance of doubt, the Applicant has proposed to LCC the inclusion of a further paragraph within the protective provisions (Part 3 of Schedule 13) to ensure that the commuted sums payable under those provisions will include a contribution for maintenance of any new surfacing to PRoW in accordance with LCC's standard requirements.</p>