

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 Deadline 5 Submissions [part 1 - BDC]

Document reference: 18.19

Revision: 01

20 February 2024

Planning Act 2008

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

Comments on Deadline 4 submissions

Document Reference	Document Name	Blaby DC Comments	Applicant's Response
Health			
18.13 REP4-120	Applicant's response to deadline 3 submissions BDC Part 1	BDC notes there are a number of responses to different topic areas within the Applicant's response to Deadline 3 submission documents. BDC make the following comments in respect of Health matters;	
		Point 53 – BDC request further clarification on how good quality open space will be achieved. The Landscape Ecological Management Plan document describes habitat creation/enhancement and does not provide an understanding of how the open spaces will be accessed by the public and how they will be well maintained.	The updated PRow Appraisal and Strategy (document reference 6.2.11.2B describes the Informal Open Space Proposals at paragraph 1.94 with suggested routing of public access paths illustrated on Figure 11.20 - Illustrative Landscape Strategy (document reference: 6.3.11.20A, REP4-080) and Figure 11.22 - Burbage Common and Woods Country Park Extension Land (document reference: 6.3.11.22, REP4-081) submitted at Deadline 4. The public access paths to be provided within the public open space will be managed as part of the overall maintenance and management strategy. The LEMP has been updated to include management and maintenance of PRow, public access paths, well-being areas and signage, as submitted at Deadline 6 (document reference: 17.2B)
		Point 59 – In general, points of discussion around the Leicestershire 2022- 2032 Joint Health and Wellbeing Strategy (JHWS) have been agreed in the latest Statement of Common Ground (SOCG). However, at 7.1. (Improved Mental Health) of the Applicant's response to BDC's deadline 3 submissions, consideration is only given to the provision of net additional long-term employment and the working environment for employees. It does not consider the impacts associated with noise, vibration and landscape and visual effects which are all known to affect mental health. This is particularly pertinent given the recreational use of Burbage Common and Woods and other Public Rights of Way in close proximity to the Proposed Development.	<p>Regarding the BDC comment on point 59, this is in relation to one of the key items in the Leicestershire Joint Health and Wellbeing Strategy, to improve mental health (Key Priority 7.1).</p> <p>The original question was a concern that the Leicestershire Joint Health and Wellbeing Strategy (HWBS) was not specifically referenced, and that local burdens of poor health and relative sensitivity were not considered appropriately. It is now agreed that they were. However, a residual point was raised on Key Priority 7.1, that "mental health improvements" have only been communicated for the creation and retention of significant income and employment opportunities during both construction and operation. This is correct, as it is the key aspect directly linked to the proposed project with the opportunity to "improve mental health". The recreational use of Burbage Common, Woods and other Public Rights of Way are retained through mitigation measures, where any resultant change in environmental circumstance and user experience would not be sufficient to materially alter behavior (engagement in physical activity or recreation) or the benefits to physical, social and mental health that such behaviors provide. Please note that the approach taken to mitigate adverse impacts on health and wellbeing (be it mental, physical or social) are primarily addressed through design, to retain community amenities and facilities of value to health and wellbeing, and to remove or manage any significant change in exposure to a known hazard, such that it prevents or manages risk. In this context, changes in noise, vibration, landscape and visual effects are managed through design and mitigation set to preclude any measurable adverse health outcome.</p> <p>On this basis, the proposed project does not impact on the delivery of Key Priority 7.1 of the Joint Health and Wellbeing Strategy, and remains supportive of it.</p>
		Point 62 – As set out in the latest, SoCG, BDC still uphold that the Health and Equalities Appendix has failed to consider the travelling communities in proximity to the site. It is noted that a Written Statement of Oral Case ISH3 has been provided which	Table 3 Operational Equality Appraisal from ES Appendix: Equalities Impact Statement (document reference: 6.2.7.2C, REP3-014) does address the proximity of the Gypsy and Travellers' site (Aston Firs) to HNRFI in respect of the proposed acoustic barrier. The assessment concludes that there will be no residual visual impacts which would be

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		confirms the points the Applicant made at the meeting, however, this document does not consider the socio-economic impacts on the travelling communities.	sufficient to amount to a material adverse health or wellbeing impact. HNRFI will provide local employment opportunities for the Gypsy and Traveller community. The Gypsy and Traveller community are included in the Work and Skills Plan.
		Point 64 – BDC still considers that the analysis of the quality of open space remains unclear, thus making it difficult to assess the impacts of the Proposed Development of users of those nearby open spaces.	The Applicant does not agree that the analysis of the quality of open space is unclear. The updated LEMP (document reference: 17.2A, REP4-111) and Illustrative Landscape Strategy (document reference: 6.3.11.20A, REP4-080) submitted at Deadline 4 detail the public access paths to be provided within the public open space which will be managed as part of the overall maintenance and management strategy.
Construction Environmental Management Plan			
17.1A REP4-109	Construction Environmental Management Plan (CEMP)	<p>Ecology – BDC raise the following points in respect of the updated Ecology section of the CEMP that are still unsatisfactory and need to be addressed:</p> <ul style="list-style-type: none"> • The Applicant should ensure the bat protection is in line with the updated and latest Institute of Lighting Professionals (ILP) guidance note. • The Applicant should outline the sensitive clearance methodology for Amphibian and Reptiles to ensure adherence with standard and accepted guidance/methodology. • Whilst BDC acknowledge that work will be ceased on discovery of Great Crested Newts, the Applicant should provide an outline methodology that details specific measures that will be undertaken in this eventuality. • Where water bodies have dual benefit for ecology and Sustainable Urban Drainage the Applicant should outline pollution control measures that must be suitable to ensure no adverse impact to biodiversity/ecological receptors. <p>Working hours - BDC have now agreed the working hours and these have been updated within the dDCO submitted at Deadline 4 [REP4-027] and now align with the CEMP [REP4-110].</p> <p>Contaminated land – BDC has no comments to make on contaminated land.</p>	The CEMP (document reference: 17.1B) has been updated to address BDC comments on lighting and sensitive clearance, and submitted at Deadline 6 (document reference: 17.1B). However in respect of great crested newts, the approach of ceasing works and contacting Natural England should a great crested newt be found is a standard procedure recommended by Natural England itself. Should a newt be found, the situation will be context specific and will require liaison with Natural England to ensure all appropriate steps are taken. The CEMP (document reference: 17.1B) also includes a range of pollution control measures at paragraphs 1.95 - 1.109 which the Applicant considers sufficient. Where required, detailed CEMPs (Requirement 7) will include any phase-specific measures that might be required, with these subject to local authority discharge.
Ecology			
18.7.5 REP3-060	Chapter 12: Ecology and Biodiversity	BDC notes that within the Ecology and Biodiversity Chapter of the Environmental Statement (ES) there has been updated wording around designated sites and Biodiversity Net Gain (BNG). In addition, there has been updated wording regarding operational buffers, BDC would consider the updated wording to the operational buffers vague and would require details on species mixes and age classes of the proposed planting.	The updated Biodiversity Chapter of the ES (document reference: 6.1.12A, REP4-044) references buffers, however the updated Illustrative landscape sections AA – HH (document reference: 6.3.11.18, RE4-079) now provides detail on buffers widths. As stated within the LEMP (document reference 17.2A), detailed planting will be dealt with at the detailed design stage (paragraphs 4.12 – 4.13). This will therefore be subject to local authority sign off.
Appendix 12.2 REP4-067	Biodiversity Impact Assessment Calculations	BDC notes that the pre detailed assessment precautionary methodology has been provided. Notwithstanding this, BDC would	The revised Biodiversity Impact Assessment Calculations (document reference: 6.2.12.2A, REP4-067) includes information on the linear, area and watercourse habitats. Annex 1 of

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		<p>want to see a full BNG assessment produced for the entirety of the site for all linear, area and watercourse habitats.</p> <p>Should the Applicant produce a detailed BNG assessment at a later date, this should be produced using the Statutory Metric rather than Metric 3.1. No calculations have been provided as part of the update document.</p>	<p>the document has now been sent to BDC directly, and will be submitted at Deadline 6. (document reference: 6.2.12.2A)</p>
17.2A REP4-111	Outline Landscape and Ecology Management Plan (LEMP)	<p>BDC notes that there has been updated text added to the Landscape and Ecology Management Plan. The updated text states that <i>"the actions described in this document promote the stewardship of the land from a public and private amenity perspective as well as ensuring the maximum biodiversity credits are achieved"</i> – BDC would want to see this separated as much as possible and for the public and private amenity areas. Without this separation the post development BNG condition will have to be set to "poor" to account for heavy footfall/dog fouling etc.</p> <p>BDC also notes there has been an update to species mixes and methodology for implementation. Upon first inspection, the details included are an improvement on the previous version of the document. However, the Applicant should be reminded that if they are to use the Statutory Metric in future, the LEMP will need to be replaced by a Habitat Management and Monitoring Plan (HMMP).</p>	<p>The Applicant has provided a full BNG assessment, including now the Defra Metric (Annex 1 of Biodiversity Impact Assessment Calculations (document reference: 6.2.12.2A)) which will be submitted formally at Deadline 6), directly to BDC – there is no requirement to provide a Statutory Metric in the future. The latest metric includes assessors' comments for amenity areas (i.e. modified grassland), which states for modified grassland <i>"low species diversity predicted as well as uniformed sward height and no bare ground therefore likely meeting 4/7 of the condition criteria achieving Moderate condition."</i> The Applicant considers that the provision of formal footpaths, combined with strategic planting as part of the detail designs and Woodland Management Plan (document reference: 6.2.12.4A, REP1-015) (Requirement 31), will largely keep footfall and dog fouling (and therefore, the associated impacts) to specific locations. It is therefore considered appropriate to set the BNG condition to 'moderate'.</p>
18.13 REP4-120	Applicant's response to deadline 3 submissions BDC Part 1	<p>BDC notes there are a number of responses to different topic areas within the Applicant's response to Deadline 3 submission documents. However, BDC make the following comments in respect of Ecology matters;</p> <p>Point 14 – The Applicant has accounted for temporary habitat losses. The Applicant does not need to account for habitat loss where there are temporary impacts to a habitat and the area can be restored to both:</p> <ul style="list-style-type: none"> • baseline habitat type within two years of the initial impact; and • baseline condition within two years of the initial impact <p>It is possible to enter these habitats as 'enhanced' within the BNG Metric if there is the ability to enhance the habitat above its baseline type and condition. If it is entered as enhanced, a 1 or 2 year delay should be applied in starting habitat creation or enhancement. Accounting for temporary losses cannot be used where policies or permissions require that a specific baseline is applied.</p>	<p>Point 14 – Noted. The Applicant has taken a precautionary approach as it's not possible at this outline stage guarantee which areas will achieve baseline habitat and condition within 2 years. As detailed designs come forward with a fixed program of works and construction phasing, it will be possible to add detail to the assessment which will likely increase the overall net gain scores.</p> <p>Point 21 – The revised Biodiversity Impact Assessment Calculations (document reference 6.2.12.2A) submitted at Deadline 4 includes Annex 3 River Corridor Assessment. In addition, Annex 1 (the Defra Metric) has since been sent to BDC separately and is submitted formally at Deadline 6.</p> <p>Point 42 – the Applicant notes that BDC agreed to the current wording of Requirement 19 within their DCO responses, stating <i>"The wording of Requirement 19 submitted in the deadline 4 dDCO [REP4-028] is agreed as recorded in SOCG submitted at deadline 4 [REP4-134]."</i>..For clarity, the Applicant did not state that Requirement 19 wording would be updated at Point 42 of <i>Applicant's response to deadline 3 submissions [Part 1 -BDC] (document reference: 18.13, REP4-120)</i>, only that the outline LEMP (document reference 17.2A, REP4-111) would be updated to include specific reference to BNG habitat condition assessments. The additional wording has been reviewed, however given BNG is covered within a separate Requirement (29) the Applicant suggests no further changes are</p>

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		<p>Point 21 – The Applicant has not provided the River Condition Assessment for full review which should be provided for proper scrutiny and to ensure that the HNRFI complies with Requirement 29 of the dDCO.</p> <p>Point 42 – The Applicant's comments are noted, however, the wording has not been included within Requirement 19 as stated. Additional wording has been suggested and provided. This wording has been included within BDC's response to the ExA's Written Questions at Deadline 5.</p>	<p>required. However, the Biodiversity Impact Assessment Calculations document has been updated and submitted at Deadline 6 (document reference 6.2.12.2B) to explicitly state that a detailed version of the metric will be required at the detailed design stage, and that the BNG strategy will cover a period of 30-years.</p>
Planning			
<p>7.1B REP4-086</p>	<p>Planning Statement</p>	<p>BDC note there have been a number of changes to the Planning Statement.</p> <p>Paragraphs 3.255 and 9.11/9.13 appear to be contradictory. Paragraph 3.255 makes generalised comments about the site being adjacent to a nearby urban settlement and suggest that this means there will be access to sustainable travel modes because it is an urban area rather than giving any specific details. BDC considers this is an inaccurate representation of the site and immediate locality. Paragraphs 9.11/9.13 indicate that opportunities to maximise sustainable transport solutions will not be the same as might be available with an existing urban area which suggests more limited opportunities. Both refer to paragraph 105 of the NPPF. The Applicant should provide clarification on this.</p>	<p>There is plainly no contradiction between the statements at paragraph 3.255 and 9.11/9.13. Paragraph 3.255 refers to statements made by Hinckley and Bosworth BC concerning the locational proximity of HNRFI to Hinckley, Earl Shilton and Barwell.</p> <p>Paragraph 9.11 refers to the resolution of the concerns raised by the Sports Council. Paragraph 9.12 emphasises:</p> <ol style="list-style-type: none"> i. That a countryside location is required for a SRFI as no site is suitable within existing urban areas. This is agreed with all 3 local authorities. ii. Paragraph 9.12 refers to the pragmatic national policy provision (now Framework 109) that <i>'the opportunity to maximise sustainable transport solutions'</i> will vary between urban and rural areas. National planning policy for promoting sustainable transport seeks to limit the need to travel and offering the genuine choice of transport. Limiting the need to travel reasonably includes consideration of the distance to be travelled. The locational proximity of HNRFI to the large urban area of Hinckley, Burbage and to the SUEs of Barwell and Shilton is hence an advantage with the location of HNRFI. <p>Fundamentally it must be recognised that the locational requirements for a SRFI are:</p> <ul style="list-style-type: none"> • Large sites PA 2008 S26(3) • Adequate links to the rail and road networks are 'essential' (NPS 4.85) <p>In consequence such locations are not likely to replicate the level of opportunities for active travel that may be available within the confines of an existing urban area.</p> <p>The consideration raised in NPPF 109 exercised the judgement of the EXA in Northampton Gateway. The ExA reported to the Secretary of State. (ExA Report paragraph 5.3.98)</p> <p><i>'We noted paragraph 103 [as was in the NPPF] above which advises that significant development should be focussed on locations which are or can be made sustainable through limiting the need for travel and offering a genuine choice of transport modes. The Applicant, however, would provide a new bus service and the proposals would provide for cycling and walking. If there were still to be a concern that this is not a sustainable location we consider</i></p>

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		<p>Paragraphs 5.7 – 5.10 refers to BDC's Core Strategy Policy CS12 and states that "Policy CS12 does not require the mitigation of any adverse impacts". Policy CS12 should be read in conjunction with Policy CS11, provided at Appendix 1 of BDC's deadline 4 submissions [REP4-165]. Policy CS11 states that "New developments must be supported by the required physical, social and environmental infrastructure at the appropriate time" and Policy CS12 sets out how this will be secured with planning obligations and developer contributions. Given the remaining concerns, particularly in respect of highways impacts, BDC considers that it is likely there will be residual impacts that would warrant further obligations. Therefore, BDC considers that the Proposed Development will be in conflict with Policies CS11 and CS12 whilst at the same time acknowledging that, as set out by the Applicant in 5.10 of the Planning Statement, "some adverse impacts will remain which are to be weighed in the balance with the merits of HNRFI".</p> <p>BDC notes the inclusion of point 1 under 'Blaby District Council' on page 97 which sets out that the application has given due consideration to the Development Plan documents. This has not been agreed within the latest SoCG submitted at Deadline 4 [REP4-134].</p>	<p><i>that this is overridden by the NPSNN's policies – SRFIs need large sites and can only realistically be located adjacent to railway lines and the road network.'</i></p> <p>All development brings about some degree of change to the locality in which the development is to be located. National Planning Policy – both the NPS-NN and the NPPF do not require all impacts to be offset through planning obligations and planning conditions (Requirements). The statutory tests for planning obligations are set out at the Regulation 122 of the CIL Regulations 2010.</p> <p>Whilst the local authorities may urge 'more is possible' (Rebecca Henson at ISH6) by way of planning obligations relating to transport matters including the provision for active travel, such an approach is not consistent with the statutory provisions for planning obligations. The Applicant's position is that the provisions for planning obligations achieves compliance with the provision of the NPS-NN for HNRFI.</p>

Comments on the Applicant's revised draft Development Consent Order

Provision	BDC Comment and proposed drafting	Applicant's Response
<p>Art 5 (Authorisation of Use)</p>	<p>BDC maintains its position on this article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3- 096]. It is unclear how article 5 operates in relation to article 42 (Operation and use of railways) and there appears to be a degree of overlap with these provisions. Article 5 suggests the undertaker and any persons authorised by the undertaker may operate the railway comprised in Works Nos 1 and 2. But article 42 suggests the railway may only be operated by the undertaker. It is therefore unclear whether 'persons authorised by the undertaker' may operate and use the railway comprised in the authorised development (as suggested by article 5), or whether such use is limited to 'the undertaker' by article 42.</p> <p>As the identity of persons falling within the second limb of the definition of 'the undertaker' in article 2 is not known at this stage, we suggest the more limited scope of article 42 should take priority and article 5 should be amended as shown. It is important this ambiguity is removed.</p> <p>We suggest the following amendment to article 5:</p> <p><i>5. (1) Subject to the provisions of this Order and to the requirements, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development comprised in Works Nos. 1 to 7 inclusive for the purposes of a rail freight terminal and warehousing, any purposes for which such parts of the authorised development is designed and for any purposes ancillary to those purposes.</i></p> <p><i>(2) In accordance with article 42 only the undertaker may operate and use the railway comprised in the authorised Development.</i></p>	<p>The Applicant disagrees that this change is required. The general wording authorising use of Work Nos. 1 and 7 in Article 5 is clearly constrained by the remainder of the Order (including Article 42 which constrains the purposes of the railway use by the undertaker) by virtue of the words "Subject to the provisions of this Order". There is precedent for the same drafting in Article 5 of The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 and Article 5 of the Northampton Gateway Rail Freight Interchange Order 2019.</p>
<p>Art 7 (Benefit of Order)</p>	<p>BDC maintains its position in relation to this provision as outlined in our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. It is not appropriate for a power of entry onto private land to be given to a person whose identity is not known. The Applicant's response to BDC's deadline 3 submissions [REP4-120] has stated that there 'may' be a need for persons to exercise the powers under articles 22 and 23. Citing an event where the rail freight terminal operator needs to undertake protective works and / or the need for statutory undertakers to enter private land. Whilst the Applicant cites that compensation provisions are available, it is unknown if the authorised parties would have the financial capacity to pay this compensation if required.</p> <p>We do not consider the Applicant has provided ample justification based on both examples in light of the ability for the rail freight terminal operator to notify the undertaker of this requirement and for the agents of the undertaker to undertake the work themselves.</p> <p>The Applicant should be asked to provide a more substantive explanation for why entry onto land is required for unknown parties.</p> <p>As such BDC consider that article 7(2) should be amended to read as follows:</p>	<p>The Applicant disagrees with this change, the effect of which would be to frustrate parties expressly stated to benefit from the Order from realising those benefits. The Applicant does not consider that these provisions should be restricted. See recent precedent in Article 8(2) of the Sizewell C (Nuclear Generating Station) Order 2022.</p>

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	<p>2) Tritax Symmetry (Hinckley) Limited, has the sole benefit of the provisions of – a) Part 5 (powers of acquisition); b) article 22 (protective works to buildings); and c) article 23 (authority to survey and investigate the land), unless the Secretary of State consents to the transfer of the benefit of those provisions</p>	
<p>Article 9 (Street Works)</p>	<p>BDC maintains its position in relation to this provision as outlined in our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. The activities listed in article 9(1)(e) to (i) go well beyond the model provisions and should be deleted. The Applicant's draft explanatory memorandum states that <i>"the inclusion of this Article in the draft DCO provides a statutory right to undertake street works within the specified streets and means that the undertaker will not need to obtain a separate licence from the street authority under the New Roads and Street Works Act 1991."</i></p> <p>The drafting of this article represents a misunderstanding of the scope of 'street works' in the 1991 Act. The activities listed in art 9(1)(e) to (i) do not fall within the definition of 'street works' in section 48 of the 1991 Act and therefore do not require (and would not be capable of being consented by) a street works licence under the 1991 Act. To be clear, the deletions suggested by BDC would not prevent the applicant from being able to carry out the works listed in 9(1)(e) to (i). Alterations to streets are authorised by article 10. The point of the deletion from article 9 is that such works do not require (and would not be capable of being consented by) a street works licence under the 1991 Act.</p> <p>BDC consider the provision should be amended to read: <i>9. –(1) 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—</i> <i>(a) break up or open the street, or any sewer, drain or tunnel under it;</i> <i>(b) tunnel or bore under the street;</i> <i>(c) place apparatus in the street;</i> <i>(d) maintain apparatus in the street or change its position; and</i> <i>(e) construct bridges and tunnels;</i> <i>(f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;</i> <i>(g) alter the level or increase the width of such kerb, footway, cycle track or verge;</i> <i>(h) reduce the width of the carriageway of the street;</i> <i>(i) make and maintain crossovers and passing places; and</i> <i>(e)-(j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d)(i).</i></p>	<p>The Applicant refers to its response at pages 54 and 55 of the Applicant's Response to Deadline 3 submissions (document reference: 18.13, REP4-120) in respect of the rationale and precedent for retention of this drafting. Further precedent is in Article 8(1) of the Northampton Gateway Rail Freight Interchange Order 2019 and Article 10(1) of the East Midlands Gateway Rail Freight Interchange and Highway Order 2016.</p> <p>The Applicant accepts that the power to carry out the works at (f) to (i) are provided pursuant to Article 10(1) and accordingly will delete (f) to (i).</p>
<p>Article 10 (Power to alter layout, etc., of streets)</p>	<p>The Applicant has amended article 10 in the manner sought by BDC as shown in the latest draft of the DCO [REP4-027].</p>	<p>No further comment.</p>
<p>Article 22 (Protective works to</p>	<p>BDC maintains its position in relation to this article. The Applicant has not justified why it is necessary for this power of entry to apply outside the order limits.</p>	<p>The Applicant refers to its response to comments on Article 7 (Benefit of Order) above. With respect to the geographic extent of this power, the Applicant does not agree that the provision should be limited in this way, since it may be possible that a building or structure which adjacent to the Order limits or near the works being undertaken is "affected by the</p>

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<p>buildings and structures)</p>	<p>This power should be amended so that it can only be exercised (a) by Tritax Symmetry Limited; and (b) within the Order limits. As drafted the article provides a power of entry onto any land regardless of whether that land is within the Order limits. We do not consider the Applicant has provided sufficient justification for this.</p> <p>Whilst the article provides that compensation is payable by the undertaker for loss or damage caused by the exercise of this power, this liability is not subject to the guarantee in article 40.</p> <p>Whilst the Applicant's DCO Explanatory Memorandum [REP4- 030] cites The Boston Alternative Energy Facility Order 2023 and the Drax Power (Generating Stations) Order 2019 as precedent for this approach. Both orders include the specific amendment sought by BDC.</p> <p>The article should be amended as shown.</p> <p><i>22(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 lying within the Order limits which may be affected by the authorised development as the undertaker considers necessary or expedient</i></p>	<p>authorised development" and it is considered that the power to undertake protective works, in addition to the compensation provisions related to it, should apply.</p> <p>The Applicant's current provision is included in the A12 Chelmsford to A120 Widening Development Consent Order 2024 (article 25) and not restricted to the Order limits.</p>
<p>Article 23 (Authority to survey and investigate the land)</p>	<p>BDC maintains its position in relation to this article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096], the powers conferred by this article should be restricted to Tritax Symmetry (Hinckley) Limited. See the suggested amendment to article 7 which would restrict the exercise of Article 23 solely to Tritax Symmetry Limited. The liability to pay compensation under this article should also be subject to the guarantee in article 40 as per the suggested amendment to that provision.</p>	<p>The Applicant refers to its response to comments on Article 7 (Benefit of Order) above.</p>
<p>Article 34 (Temporary use of land for carrying out the authorised development)</p>	<p>BDC maintains its position in relation this article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. The Applicant wrongly asserts this is a standard provision. It is not. If there is a specific safety risk that would justify a power of entry onto private land without notice the Applicant should be asked to explain. An unspecified safety risk is not a sufficient justification for this power. Article 34(3) should be deleted.</p>	<p>The Applicant disagrees with deletion of Article 34(3). By its very nature a safety risk may be unforeseeable and necessitate urgent action to safeguard the authorised development (a nationally significant development) the public or surrounding environment. Without this provision, the undertaker would be frustrated from taking such remedial action as may be necessary in an emergency which could cause substantial and entirely avoidable harm to the aforementioned receptors. Nothing in Article 34 permits the undertaker to not give notice – on the contrary it is still obliged to do so for "such period as is reasonably practicable in the circumstances". This is a prudent and reasonable safeguard, and a common provision included in development consent orders (whether or not BDC treat it as a "standard provision"). For example see precedent in Article 41(4) of the Sizewell C (Nuclear Generating Station) Order 2022.</p>
<p>Article 35 (Temporary use of land to maintain the authorised development)</p>	<p>BDC maintains its position in relation to this article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. The Applicant wrongly asserts this is a standard provision. It is not. If there is a specific safety risk that would justify a power of entry onto private land without notice the Applicant should be asked to explain. An unspecified safety risk is not a sufficient justification for this power. Article 35(9) should be deleted for the same reasons given above in relation to article 34(3).</p>	<p>See response to Article 34. The same principles apply in respect of Article 35(9).</p>

Comments on the Applicant's revised draft Development Consent Order

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<p>Article 40 (Guarantees in respect of payment of compensation)</p>	<p>BDC maintains its position in relation to this article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. Without the amendments suggested by BDC the DCO provides a power of entry onto private land to a person whose identity is not known and whose financial standing may not be sufficient to meet any compensation liability that arises as a result.</p> <p>The guarantee in respect of compensation should be extended to all articles which impose an obligation to pay compensation.</p> <p>The article should be amended to read as follows: <i>40.—(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.</i> <i>(2) The provisions are—</i> <i>(a) article 12 (temporary closure of streets)</i> <i>(b) article 22 (protective works to buildings);</i> <i>(c) article 23 (authority to survey and investigate the land)</i> <i>(d) article 25 (compulsory acquisition of land);</i> <i>(e) article 26 (compulsory acquisition of land - incorporation of the mineral code);</i> <i>(f) article 27 (compulsory acquisition of rights);</i> <i>(g) article 30 (private rights);</i> <i>(h) article 31 (rights under or over streets);</i> <i>(i) article 34 (temporary use of land for carrying out authorised development);</i> <i>(j) article 35 (temporary use of land for maintaining authorised development); and</i> <i>(k) article 36 (statutory undertakers).</i></p>	<p>The Applicant refers to its response to comments on Article 7 (Benefit of Order) above and fundamentally disagrees that articles 12, 22 and 23 should be subject to this provision. Furthermore, the nature of some of these works could be time sensitive and requiring a guarantee or form of security in respect of compensation to be in place (which would require agreement on the likely extent of compensation, involving valuers and the execution of agreements or bonds) before they are undertaken is unreasonable and imposes undue delay. Indeed, valuation may not be possible before any works commence since some of these provisions allow the powers to be exercised in a reactive manner and in emergency circumstances.</p>
<p>Article 43 (Operational Land for the purposes of the 1990 Act)</p>	<p>BDC maintains its position in relation to this article as outlined at our Deadline 3 comments on the Applicant's revised dDCO [REP3-096]. The ability to exercise permitted development rights should only apply to land that can properly be regarded as 'operational land' within the definition in s. 263 of the TCPA 1990 (i.e. land which is used for the purpose of carrying on their undertaking; and land in which an interest is held for that purpose). The Applicant should be asked to reconsider this point.</p>	<p>The Applicant retains its position as set out at page 58 of the Applicant's response to deadline 3 submissions (document reference: 18.13, REP4-120) it is considered prudent for this provision to relate to all land within the Order limits and limits of deviation approach to defining the authorised development given that it is likely that the spatial extent of rail related land would not simply be confined to the area of the tracks themselves.</p>
<p>Art 45 (Defence to proceedings in respect of statutory nuisance)</p>	<p>BDC consider article 45 requires a minor amendment to clarify drafting. Article 45 should be amended as follows: <i>45. – (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings aggrieved by statutory nuisance)(a) in relation to a nuisance falling within section 79(1) of that Act (statutory nuisances and inspections therefore) no order may be made, and no fine may be imposed, under section 82(2)(b) of that Act if –</i></p> <p>a The defendant shows that the nuisance – <i>I. Relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the</i></p>	<p>The Applicant will include "or" between article 45(1)(a)(i) and article 45(1)(a)(ii).</p>

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	<p><i>authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction) of the Control of Pollution Act 1974(c); or</i></p> <p><i>II. Is a consequence of complying with a requirement or any other provision of this Order and that it cannot be reasonably be avoided; or</i></p> <p><i>B) the nuisance is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or</i></p> <p><i>C) it relates to premises used by the undertaker for the purposes of or in connection with the maintenance, operation of use of the authorised development and that the nuisance is attributable to the maintenance, operation or use of the authorised development which is being maintained, operated or used in compliance with a requirement or any other provision of this Order and that it cannot be reasonably avoided</i></p> <p><i>(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development</i></p>	
<p>Schedule 2 Part 1 Requirement 8 (Travel Plan)</p>	<p>BDC is content with the proposed wording in the latest draft of the DCO [REP4-027].</p>	<p>Noted. Please also refer to the Applicant's Responses to the ExA's Commentary on the dDCO (document reference: 3.5) .</p>
<p>Requirement 10 (Rail)</p>	<p>BDC maintains its position as set out in our Deadline 3 comments on the Applicant's revised dDCO [REP3-096] and paragraphs 3.1 – 3.6 of it's Written Representation [REP1-050]. BDC are still concerned about the uncertainty regarding highways related impacts and as such consider that the provision of rail from the outset is appropriate. Notwithstanding the above concerns BDC do acknowledge that the Applicant has provided market evidence regarding the uptake of rail freight.</p> <p>Without prejudice to BDC's maintained position, BDC would be willing to accept an amendment to requirement 10 which enables the Applicant to occupy 105,000 sqm prior to the completion of the rail terminal whilst also providing added transparency to ensure that BDC and the other local authorities have visibility over how the rail terminal is used.</p> <p>BDC submit requirement 10 should be amended to read as follows:</p> <p><i>10. (1) No more than 105,000 square metres of warehouse (including ancillary office) floorspace to be provided as part of the authorise development may be occupied until the rail freight terminal which is capable of handling a minimum of four 775m trains per day and any associated infrastructure has been completed.</i></p> <p><i>2 The undertaker must notify the local planning authority of the date of the first occupation of more than 105,000 square metres of warehousing within 28 days of such occupations occurring.</i></p> <p><i>3. Following completion of the rail terminal works the undertaker must retain, manage and keep the rail terminal works available for use.</i></p>	<p>This is a repetition of BDC's response to the ExA's Further Written Questions. The Applicant has responded to that response separately in document reference: 18.19 .</p> <p>The Applicant's position in respect of the timing for the provision of the rail terminal has been clear throughout the Examination, with clear reference to the current policy requirements, the emerging draft NPS and all other made SRFI DCOs.</p> <p>As per the Applicant's Responses to HBBC's comments on the dDCO at Deadline 5 (document reference: 18.17, REP5-041), the Applicant has agreed to add wording to requirement 10 which accommodates paragraphs 1 and 2 of BDC's response (notification of occupation and in respect of the retention of the rail terminal throughout the occupation of the warehousing). This will be reflected in the final dDCO submitted at Deadline 7.</p> <p>The further wording is not agreed. There is no policy basis for the inclusion of this wording and the Applicant does not consider that the proposed wording meets the tests for the inclusion of a requirement in a Development Consent Order pursuant to section 120(2)(a) PA 2008 or to the NPS (paragraph 4.9).</p> <p>The current wording of Requirement 10 is sufficient to ensure that the authorised development meets the requirements of the Act and the NPS for the delivery of the NSIP.</p>

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	<p>4. The undertaker must appoint a rail freight co-ordinator prior to the completion of the rail terminal works who must report to the local planning authority no less than once a quarter on the operation of the rail terminal when open including—</p> <ul style="list-style-type: none"> a. the appointment of a rail operator to operate the rail terminal; b. the amount of rail freight usage of the rail terminal; c. the number of trains using the rail terminal; d. the warehousing receiving or sending goods through the rail terminal; and e. the amount of goods being received or sent through the rail terminal by freight <p>The undertaker must maintain a person in the position of rail freight co-ordinator throughout the life of the authorised development unless otherwise agreed with the local planning authority.</p>	
<p>Requirement 11 (Container stack height)</p>	<p>The wording of Requirement 11 submitted in the deadline 4 dDCO [REP4-028] is agreed as recorded in SOCG submitted at deadline 4 [REP4-134].</p>	<p>No further comment.</p>
<p>Requirement 16 (construction hours)</p>	<p>BDC is content with the amended wording submitted in the deadline 4 dDCO [REP4-028].</p>	<p>No further comment.</p>
<p>Requirement 19 (Landscape Ecological Management Plan)</p>	<p>The wording of Requirement 19 submitted in the deadline 4 dDCO [REP4-028] is agreed as recorded in SOCG submitted at deadline 4 [REP4-134].</p>	<p>The Applicant notes that BDC confirm this is agreed. The Applicant has responded to BDC's apparent new commentary on the requirement in the Applicant's Responses to BDC's Responses to the ExA's Further Written Questions set out later in this document.</p>
<p>Requirement 20 (Ecological Mitigation Management Plan)</p>	<p>BDC maintain it's position as outlined in the SOCG [REP4-134] that the Ecological Mitigation and Management Plan must provide continuity of habitat creation through the phases of development to ensure that habitat types that are lost as a result of a phase are created as part of the landscape provisions associated with that phase. We do not consider that because the majority of habitat loss/creation will occur in the initial phases of the development, that it is likely that not every phase will be able to deliver landscape provisions which equal habitat losses for that particular phase. BDC seek justification for the Applicant's position.</p> <p>BDC seek that requirement 20 is amended to read:</p> <p><i>20 – (1) Subject to paragraph (3) no phase is to commence until a detailed ecological mitigation and management plan for that phase has been submitted to and approved in writing by the relevant planning authority. The detailed ecological mitigation and management plan must be in accordance with the principles</i></p> <p><i>set out in the ecological mitigation and management plan and must —</i></p> <p><i>(a) apply a precautionary approach to working methodologies and habitat creation for reptiles and amphibians;</i></p>	<p>The Applicant does not agree with the proposed addition. BDC is aware that the development is to be delivered in phases, and some of those phases, on their own, may not be capable of providing continuity of habitat creation within the landscape provisions that phase. The Applicant has not assessed the losses and deliverability of habitats on a phase basis, nor does it need to - this must be considered on a site wide basis. An example would be Phase 5 (creation of Unit 8) which will involves the loss of the plantation woodland, grassland and hedgerows. Phase 5 is almost entirely hardstanding, including a unit and rail port return area. There is no scope for woodland planting.</p>

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	<p><i>(b) ensure that mitigation and compensation measures have demonstrable and measurable outcomes, which are monitored and reported on; and</i></p> <p><i>(c) create alternative habitats to an agreed form to compensate for the loss of irreplaceable habitats.</i></p> <p><i>(d) provide continuity of habitat creation through the phases of development to ensure that habitat types that are lost as a result of a phase are created as part of the landscape provisions associated with that phase.</i></p>	
<p>Requirement 21 (Landscape Scheme)</p>	<p>The wording of Requirement 21 submitted in the deadline 4 dDCO [REP4-028] is agreed as recorded in SOCG submitted at deadline 4 [REP4-134].</p>	<p>Noted and agreed.</p>
<p>Requirement 31 (Lighting)</p>	<p>The wording of Requirement 31 submitted in the deadline 4 dDCO [REP4-028] is agreed as recorded in SOCG submitted at deadline 4 [REP4-134].</p>	<p>Noted and agreed.</p>
<p>Schedule 2, Part 2, Paragraph 5 (Fees)</p>	<p>BDC is not currently content with the drafting of the fees provision. The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 do not expressly apply to applications for the approval of matters under DCO requirements. It is therefore unclear exactly how fees will be calculated when applying those regulations. This creates significant scope for disagreement. To avoid this, BDC proposes the following amendment which follows the approach taken in The Northampton Gateway Rail Freight Interchange Order 2019:</p> <p><i>5. (1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, other than where the parties have agreed otherwise, the fee that would have been payable had the fee been determined under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(b), as though the application were a reserved matter application, is to be paid to that authority.</i></p>	<p>The Applicant has confirmed several times since the submission of the Deadline 4 dDCO, including directly to BDC that fees payable will be akin to fees that would be payable for approval of reserved matters under a TCPA application. As confirmed in the Applicant's Responses to the ExA's Further Written Questions at Deadline 5 (document reference: 18.16, REP5-036). The Applicant is content to add further drafting to clarify that is the intention by reference to the relevant Regulation numbers and will do so in its final draft DCO to be submitted at Deadline 7.</p>

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Question Reference	Question	Blaby DC Response	Applicant's Response
2.0 General and Cross-Cutting Questions			
2.0.1.	<p>Revised National Planning Policy Framework In December 2023 a revised version of the National Planning Policy Framework was published. All Interested Parties are given the opportunity to make representations on how any changes affect consideration of the Proposed Development.</p>	<p>The revised NPPF (December 2023) includes several changes that affect consideration of the proposed HNRFI relating to beautiful design and climate change. These are set out below with key changes highlighted in bold.</p> <p>BDC's strong view is that the scheme does not represent good design. BDC's joint response with HBBC on the Applicant's response to our joint submission with HBBC on design matters at Deadline 1 details the failings of design matters in the Applicant's scheme.</p> <p>It is noted that the Applicant has submitted a rebuttal to BDC's joint response with HBBC on design at Deadline 4 alongside and amended Design Code and Design and Access Statement. BDC jointly with HBBC have prepared a response to these three documents which forms part of the Councils Deadline 5 response.</p> <p>Several paragraphs of the NPPF have had references to 'beautiful design' and or/ 'beauty' inserted highlighting the Government's intentions in terms of design:</p> <p>Para 20 - Strategic policies should set out an overall strategy for the pattern, scale and design quality of places (to ensure outcomes support beauty and placemaking), and make sufficient provision...</p> <p>Para 88 - Planning policies and decisions should enable:</p> <p>a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings;</p> <p>Para 96 - Planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which:</p> <p>a) promote social interaction,;</p> <p>b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of beautiful, well-designed, clear and legible pedestrian and cycle routes, and high quality public space, which encourage the active and continual use of public areas;</p>	

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		<p>Para 128 - Planning policies and decisions should support development that makes efficient use of land, taking into account: a) the identified need e) the importance of securing well-designed and beautiful, attractive and healthy places.</p> <p>The addition of the above to the NPPF highlights the Government's commitment to beautiful design in new development and strengthens BDC's argument for the need for well-designed and attractive development.</p> <p>BDC's joint response with HBBC, submitted as part of BDC's Deadline 5 submissions to the Applicant's submitted rebuttal on design matters, reiterates the importance that the HNRFI should have a clear Design Code and Landscape Strategy but unfortunately at present they only provide high level information.</p> <p>Paragraph 140 highlights the importance of clear and accurate plans and drawings:</p> <p>Para 140 - Local planning authorities should ensure that relevant planning conditions refer to clear and accurate plans and drawings which provide visual clarity about the design of the development, and are clear about the approved use of materials where appropriate. This will provide greater certainty for those implementing the planning permission on how to comply with the permission and a clearer basis for local planning authorities to identify breaches of planning control. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).</p> <p>The addition of the above to the NPPF highlights the Government's commitment to ensure that plans and documents submitted for applications are clear and accurate. Therefore, this addition strengthens the Councils' position that the Design Code and plans should be strengthened to illustrate how the various strands of the application fit together with its functional requirements and together achieve a well-designed development that is beautiful.</p>	<p>In the 1878 novel Molly Bawn, written by a Margaret Wolfe Hungerford, there is the line, <i>'It is an old axiom, and well said, that <u>'beauty is in the eye of the beholder'</u></i>. The perception of beauty is subjective – people can have a differing opinion of what is beautiful.</p> <p>The NPS-NN which is the primary basis for making the decision on HNRFI (Paragraph 1.2), acknowledges that, <i>'Given the nature of much national network infrastructure development, particularly SFRIs, there may be a limit on the extent to which it can contribute to the enhancement of the quality of the area'</i> (paragraph 4.30).</p> <p>The NPPF makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. The <i>'National Design Guide'</i></p>

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			<p>and the 'National Model Design Code and Guidance Notes for Design Codes' illustrate how well-designed places that are beautiful, healthy, greener, enduring and successful can be achieved in practice.</p> <p>The submitted Design Code for HNRFI will achieve a well-designed place, functioning as critical national infrastructure. It is of course recognised that the local authorities 'hurl stones' at HNRFI and now an attack is advanced against HNRFI on the basis the development will not be beautiful.</p> <p>This objection should be considered proportionately, and balanced with the particular form of development required by a SRFI. In the eye of the Applicant, the proposed investment cost of £805m (document reference: 4.2A, REP1-007) Funding Statement Paragraph 7.1) will indeed create a beautiful place for national and multi-national businesses to occupy – and as a place of work for many thousands of personnel.</p> <p>The submitted Design Code (document reference: 13.1B, REP4-094) is appropriately not intended to form a prescriptive set of rules, but will ensure that the details of the development through provision of the Requirements will create a well-designed place that is of high quality, making a very substantial contribution to the expanded network of SRFIs, compellingly needed in the national interest.</p> <p>In short form HNRFI comprises high quality design that meets the aspirations of national planning policy, for achieving well-designed and beautiful places.</p>
2.0.4	<p>Planning Obligation</p> <p>a) Could the Applicant please ensure that the full text of the draft Obligation (that is including the Appendices) is provided.</p> <p>b) Could the Local Authorities please comment on any draft Obligations that they seen, but have not as yet been submitted into the Examination, as well as those they have been submitted.</p>	<p>BDC have reviewed both the latest Heads of Terms (HoT) for the s. 106 Agreement that was submitted at Deadline 4 [REP4-092] and the most recent version of the draft s. 106 agreement that was sent to BDC on 8 February 2024. Detailed is BDC's position on the obligations for BDC.</p> <p>With regards to the obligation included in both the HoT and the draft s.106 agreement, BDC has agreed to the principles of the Skills and Training Plan outlined in Schedule 1. BDC sought confirmation from the Applicant, that given Schedule 1 of s.106 will require the Applicant to implement and comply with the Skills and Training Plan in accordance with the timeframes set out in the Skills and Training Plan that the obligations regarding the Skills and Training Plan will have effect prior to the carrying out of a material operation as per clause 3.1 of the draft s.106 agreement that provides that the Agreement will not come into effect until the carrying out of a material operation save where specifically provided to the contrary obligations contained in Schedules 1 and 2. BDC consider that as the Skills and Training Plan provides obligations on the parties to carry out actions in advance of the "Enabling Phase", that the obligation to implement and comply with the Skills and Training Plan is an obligation which comes into</p>	<p>The point relating to the Skills and Training Plan obligations taking effect upon the grant of the DCO is noted and agreed. As confirmed by BDC, the drafting in the section 106 agreement has been updated to reflect this position.</p> <p>The point relating to suggested drafting amendments to the Skills and Training Plan itself is noted and agreed. As confirmed by BDC, relevant amendments have been made to the Skills and Training Plan to address BDC's comments and have been agreed between BDC and the Applicant.</p> <p>The Applicant has agreed and updated the section 106 agreement to include monitoring fees to BDC relating to the Skills and Training Plan / Meetings, HGV Route Management Plan and Strategy (document reference: 17.4D)/ Meetings and monitoring of the section 106 obligations generally.</p>

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		<p>effect prior to carrying out of material operations. BDC have since welcomed the amendment to the section 106 proposed by the Applicant which specifies that the obligation to implement the skills and training plan will have effect from the date the DCO is granted.</p> <p>With regards to the drafting of the Skills and Training Plan itself, BDC considered that further clarity was required with regard to the use of defined terms so to provide further certainty as to timing of implementation so as to not frustrate the implementation of the Skills and Training Plan. In particular BDC consider that the term Construction Phase should be defined with recourse to the definition of “commencement of construction works” as provided in Schedule 2 of the dDCO. Further clarity is sought from the Applicant as to the whether the first application to discharge a requirement under the dDCO would also precede the defined Enabling Phase as this is the trigger point for the establishment of the Work and Skills Group which will oversee the implementation of the Work and Skills Training Plan. The Applicant has since amended the draft section 106 to address these concerns.</p> <p>BDC welcomes the provision of an obligation to provide a Skills and Training Plan Monitoring Fee and agrees to the principle of the fee being provided, however, BDC still seek to discuss further the amount proposed by the Applicant. Furthermore and without prejudice to BDC’s submissions on the HGV Route Management Plan and Strategy and BDC’s proposed enforcement role that were made by BDC at Issue Specific Hearing 6 as outlined in the Summary of Oral Submissions at ISH6, BDC seek for a monetary contribution in the section 106 agreement to BDC’s enforcement role under the HGV Route Management Plan and Strategy. BDC consider that a monitoring and enforcement role will invoke a further burden on BDC from a resourcing perspective. BDC understand that the Applicant is currently reviewing the HGV Route Management Plan and Strategy which will involve a review of BDC’s enforcement role.</p> <p>Furthermore, BDC also sought for a monetary contribution to the monitoring of the s.106 agreement as a whole, inclusive of the bespoke monitoring/enforcement fees in relation to the Skills and Training Plan and</p> <p>HGV Route Management Strategy and Plan. In addition to the bespoke monitoring which will be undertaken by the Work and</p>	

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		<p>Skills Group and internal enforcement team in relation to the HGV Route Management Strategy and Plan, like other developments in the District BDC will still be required to undertake monitoring of the implementation of section 106 agreement as a whole. BDC therefore seek for the payment of a monitoring fee for the section 106. This would be a flat fee of £250 paid prior to the commencement of development in accordance with paragraph 4.4 of BDC's Developer Contributions Supplementary Planning Document adopted in 2013. This has been agreed between the Applicant and BDC.</p>	
<p>2.5. Draft Development Consent Order [REP4-027] & Explanatory Memorandum [REP4-029]</p>			
<p>2.5.1.</p>	<p>Schedule 2, Requirement 10 – Provision of Rail Freight Terminal The Applicant proposes that the construction and occupation of up to 105,000 square metres (m2) of logistics floorspace prior to the Rail Port (Phase 1) becoming operational as set out within the submitted Planning Statement (Document reference: 7.1 paragraphs 3.113 –3.117, paragraphs 3.124 – 3.126) and included within Requirement 10. The ExA notes the provision of paragraph 4.86 of the draft NPSNN which states: the Secretary of State recognises that applicants may need to deliver warehousing ahead of the final delivery and commissioning of connections to the rail network coming forward. In these circumstances the Secretary of State will want to ensure that operational rail connections are brought forward in a timely manner, which may include using requirements that secure operational rail</p>	<p>As outlined at paragraph 3.5 of BDC's Written Representation [Rep1-050], BDC has acknowledged the policy at paragraph 4.86 of the draft National Policy Statement for National Networks (NPSNN) as well as the existing precedents for the approach proposed by the Applicant with regards to the occupation of warehousing prior to the final delivery and commissioning of the rail connection.</p> <p>BDC maintains it's position outlined at paragraphs 3.1 – 3.6 of its Written Representation [Rep1-050], in light of the likely significant impacts on the highway network and related highways impacts that the operation of rail from the outset is necessary and reasonable.</p> <p>Without prejudice to this position, were the Secretary of Stated be minded to allow the occupation of some warehousing before the final delivery and commissioning of connections to the rail network, BDC considers that additional transparency over how the rail terminal is used and the level of rail freight uptake is required. BDC consider that in light of the likely significant impacts on the highways it is imperative that there is transparency in how the scheme is being used and assurance that the scheme will deliver on the modal shift for freight it proposes to deliver.</p> <p>In this respect, BDC submit Requirement 10 should be amended (amendments shown in bold and red) to read as follows: 10. (1) No more than 105,000 square metres of warehouse (including ancillary office) floorspace to be provided as part of the authorise development may be occupied until the rail freight terminal which is capable of handling a minimum of four 775m trains per day and any associated infrastructure has been completed.</p>	<p>The Applicant's position in respect of the timing for the provision of the rail terminal has been clear throughout the Examination, with clear reference to the current policy requirements, the emerging draft NPS and all other made SRFI DCOs. The Applicant does not propose to repeat that position in this response.</p> <p>As per the Applicant's Responses to HBBC's comments on the dDCO at Deadline 5 (document reference: 18.17, REP5-041), the Applicant has agreed to add wording to requirement 10 which accommodates paragraphs 1 and 2 of BDC's response (notification of occupation and in respect of the retention of the rail terminal throughout the occupation of the warehousing). This will be reflected in the final dDCO submitted at Deadline 7.</p> <p>The further wording (assumed to be a proposed paragraph 3) is not agreed. There is no policy basis for the inclusion of this wording and the Applicant does not consider that the proposed wording meets the tests for the inclusion of a requirement in a Development Consent Order pursuant to section 120(2)(a) PA 2008 or to the NPS (paragraph 4.9).</p> <p>The current wording of Requirement 10 is sufficient to ensure that the authorised development meets the requirements of the Act and the NPS for the delivery of the NSIP. The final red wording at the bottom of the BDC response which appears to have no context is not agreed for the same reason above – there is no policy basis for it and it is not required for the development to meet the requirements of the Act and the NPS, nor does it meet the tests for inclusion of a requirement.</p>

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Question Reference	Question	Blaby DC Response	Applicant's Response
	<p>connections after a specified period and/or before a development threshold is reached.</p> <p>This being the case and accepting precedents from other similar proposals, does BDC agree the requirement as proposed by The Applicant is acceptable?</p>	<ol style="list-style-type: none"> 1. <i>The undertaker must notify the local planning authority of the date of the first occupation of more than 105,000 square metres of warehousing within 28 days of such occupations occurring.</i> 2. <i>Following completion of the rail terminal works the undertaker must retain, manage and keep the rail terminal works available for use.</i> <p><i>The undertaker must appoint a rail freight co-ordinator prior to the completion of the rail terminal works who must report to the local planning authority no less than once a quarter on the operation of the rail terminal when open including— the appointment of a rail operator to operate the rail terminal; the amount of rail freight usage of the rail terminal; the number of trains using the rail terminal; the warehousing receiving or sending goods through the rail terminal; and The undertaker must maintain a person in the position of rail freight co-ordinator throughout the life of the authorised development unless otherwise agreed with the local planning authority.</i></p> <p>Finally, and without prejudice to the two positions above, were the Secretary of Stated be minded to reject the above insertion of transparency, BDC considers that no more than the currently drafted floorspace of 105,000sqm should be occupied before the final delivery and commissioning of connections to the rail network.</p> <p>Overall, BDC consider that given the potentially significant and yet insufficiently modelled impacts on the strategic and local highway networks, Requirement 10 should be revised to either prevent occupation of warehousing floorspace prior to the final delivery and commissioning of connections to the rail network or provide transparency on the operation of that connection.</p> <p><i>the amount of goods being received or sent through the rail terminal by freight</i></p>	
2.5.3.	<p>Schedule 2, Requirement 19 - Green Space</p> <p>In response to concerns over the provision of green space, the Applicant at D4 has submitted a Landscape Ecological Management Plan (document 17.2A) and green space provision will be secured by Requirement 19. Can BDC and HBBC confirm they are</p>	<p>BDC is generally content with the drafting of Requirement 19, as set out in the latest dDCO [REP4-028] which has been agreed via the Statement of Common Ground. However, whilst the outline Landscape Ecological Management Plan (LEMP) [REP4-112] describes the measures by which provision for habitat creation and enhancement will be made, BDC still have concerns that there is not presently a clear distinction between habitat creation enhancement for Biodiversity Net Gain ('BNG') and habitat creation/enhancement for the provision of public open space. Currently the LEMP speaks to habitat creation/enhancement in the round with little consideration of the specific purpose for</p>	<p>As BDC notes here, and as they confirm in their separate Deadline 5 submission in their comments on the DCO, Requirement 19 as currently drafted has been agreed for some time and this is reflected in the Statement of Common Ground.</p> <p>The Applicant does not agree that the requirement needs further amending to refer to BNG. The delivery of BNG is covered through requirement 29. However, the Biodiversity Impact Assessment Calculations document has been updated and submitted at Deadline 6 (document reference 6.2.12.2B) to explicitly state that a detailed version of the metric will be required at the detailed design stage, and that the BNG strategy will cover a period of 30-years.</p>

Response to questions posed by the Examination Authority

Question Reference	Question	Blaby DC Response	Applicant's Response
	happy with the approach set out and the Requirement?	<p>which such measures are undertaken. To avoid the risk of stacking (double counting), BDC consider that the principles of the LEMP should clearly distinguish between measures undertaken for the purpose of biodiversity net gain and public open space provision.</p> <p>Express consideration of BNG particularly surrounding the minimum 30 year requirement needs to be included. The work schedule needs to include BNG management and monitoring prescriptions in line with the conditions criteria for each individual habitat, including associated BNG specific reporting that reflects extreme weather events that impact the ability to attain the proposed final BNG score.</p>	<p>The Applicant will review requirements 19 and 29 before Deadline 7 and if it considers appropriate, it will incorporate some further drafting to deal with this new request from BDC.</p> <p>With reference to the management of habitats for open space, the Applicant does not agree that a distinction needs to be made between habitat creation for biodiversity and habitat creation for public open space as habitat creation and biodiversity enhancement applies to all land whether it is publicly accessible or not. The BNG assessment, in line with standard guidance, considers all space, formal and informal when calculating gains and losses. However, it is noted that the LEMP (document reference: 17.2B) has not to date included provision for management and maintenance of public access paths and well-being areas. Thus, these aspects have been added to a revised LEMP (document reference 17.2B) submitted at Deadline 6 for completeness.</p>
2.5.6	<p>Schedule 2, Part 2 – Fees The Applicant has finalised its drafting of these provisions. Could the Local Authorities indicate whether they are content with this. If not, could they please provide alternative drafting, explaining why they consider this should be preferred.</p>	<p>BDC have been liaising with HBBC on this matter and both Councils are not currently content with the drafting of the fees provision. The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 do not expressly apply to applications for the approval of matters under Development Consent Order (DCO) requirements. It is therefore unclear exactly how fees will be calculated when applying those regulations. This creates significant scope for disagreement.</p> <p>BDC has asked the Applicant what the total fee figure would be and under which phases it would be provided (due to concerns that resourcing demands on BDC will not align with the receipt of application fees, particularly before the submission of requirements relating to warehousing floorspace) and for clarity on who receives the fee, mindful that some of the site is within HBBC but that all the proposed building floorspace lies within BDC. Based on the information currently available, BDC expects that it will be necessary, in addition to the operation of the 2012 Fee Regulations referenced above, to agree a post DCO decision Planning Performance Agreement with the Applicant (in the event the application is approved) to ensure that BDC's costs of discharging requirements is met in full.</p> <p>Overall, BDC considers that further discussion with the Applicant around the detail and practical implications of their current drafting is needed.</p> <p>Notwithstanding this, to provide further clarity on the proposed drafting, BDC proposes the following amendment which follows the approach taken in The Northampton Gateway Rail Freight Interchange Order 2019:</p>	<p>The Applicant has confirmed several times since the submission of the Deadline 4 dDCO, including directly to BDC and HBBC that fees payable will be akin to fees that would be payable for approval of reserved matters under a TCPA application. As confirmed in the Applicant's Responses to the ExA's Further Written Questions at Deadline 5 (document reference: 18.16, REP5-036), The Applicant is content to add further drafting to clarify that is the intention by reference to the relevant Regulation numbers and will do so in its final draft DCO to be submitted at Deadline 7.</p>

Response to questions posed by the Examination Authority

Question Reference	Question	Blaby DC Response	Applicant's Response
		<p>5. (1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, other than where the parties have agreed otherwise, the fee that would have been payable had the fee been determined under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(b), as though the application were a reserved matter application, is to be paid to that authority.</p>	

Written summary of BDC's oral case for Issue Specific Hearing 6 (ISH6)

No.	BDC Comment	Applicant's Response
3. Agenda Item 3 – Road Highway Network		
3.1	<p>DO outlined BDC's position regarding enforcement of the HGV Route Management Plan and Strategy [REP4-113]. DO noted that paragraphs 5.37 and 5.38 of the HGV strategy states:</p> <p><i>Blaby District Council has the power to take Enforcement Action against any landowner, tenant or other person(s)/company responsible or with an interest in a breach in the HGV strategy. The tools available are set out in the Council's Local Enforcement Plan and any enforcement investigations will follow the process set out in this Local Enforcement Plan.</i></p> <p><i>The decision on whether to take planning enforcement action will be based on the planning harm caused by any breach of the HGV Routing Strategy. Consequently, notification of all breaches will be shared with the Blaby District Council Enforcement Team in line with the notification procedure in paragraphs 5.7 to 5.10 to assist with any enforcement investigations. These notifications will supplement any other evidence provided directly to the Council's Planning Enforcement Team by complainants such as members of the Public, ward members, parish councils, or Council employees etc.</i></p>	See response to 3.2.
3.2	<p>DO submitted that Requirement 18 of the draft DCO requires compliance with the HGV Route Management Strategy and Plan. However, the HGV Route Management Strategy and Plan does not state whether an HGV's travel through a 'prohibited' route constitutes non-compliance with the HGV Route Management Strategy and Plan. Therefore, BDC submitted that as drafted there may be instances where HGV's drive through the prohibited routes but could still be compliant with the plan. Therefore, in order to have a robust enforcement role, BDC consider the HGV Route Management Strategy and Plan should be amended to specifically state that HGV travel via a prohibited route (bar certain exceptions) would constitute non-compliance under the HGV Route Management Strategy and Plan.</p>	<p>The HGV Route Management Strategy and Plan ("HGV Strategy") (document reference: 17.4D) includes robust measures to promote desirable routes and to identify, manage and ultimately discourage the use of "Prohibited Routes" including through a Tenant notification process by the Travel Plan co-ordinator and an ANPR system to ensure ongoing monitoring and justification for use of such routes by Tenants (see the further detail in Table 1 of the HGV Strategy). It is self-evident that use of "Prohibited Routes" out with the clearly defined circumstances permitted in the HGV Strategy is discouraged and that steps are available to encourage use of desirable routes (see in particular the "encouragement measures" at paragraph 5.6 of the HGV Strategy) and to ultimately compel the Tenant comply through management intervention (see paragraph 5.38 of the HGV Strategy).</p> <p>Taken together the Applicant strongly disagrees that the HGV Strategy should be amended to state that travel via "Prohibited Routes" constitutes a breach of the HGV Strategy. An amendment to this effect would mean that any travel on a Prohibited Route outside of the exceptions in the HGV Strategy would constitute an automatic breach of Requirement 18 and consequently amount to the commission of a criminal offence pursuant to Section 161 of the Planning Act 2008. That is plainly a disproportionate response that would be entirely at odds with how the HGV Strategy is intended to operate (as described above) and inconsistent with precedent travel plans for other major infrastructure development that involve operational stage HGV movements. It would also be at odds with the town and country planning enforcement regime which operates on the basis of a notification and remedial stage process before criminal sanctions are imposed. That is precisely what the procedure in the HGV Strategy is intended to mimic whereby measures are in place to identify breaches and steps have been identified to remedy such breaches without triggering criminal sanctions.</p>

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No.	BDC Comment	Applicant's Response
		<p>It must be borne in mind that BDC (and other planning authorities and Highway Authorities) are members of the Strategy Steering Group Review Panel which has the power to agree appropriate actions or suggest any amendments to the plan where breach thresholds on Prohibited Routes are exceeded. That procedure is, in the first instance, the appropriate forum for addressing reported breaches noting that it is ultimately in the gift of the Strategy Steering Group members to impose more stringent measures where there is continued non-compliance.</p> <p>With respect to the availability of BDC's statutory enforcement powers, BDC is the enforcing authority under the Schedule 2 Requirements. If it is not satisfied that the measures contained in the HGV Strategy are being complied with, including either failure on the part of the undertaker to enforce management interventions or adopt new measures proposed by the Steering Group, BDC (if it is satisfied that there is a sufficient public interest) ultimately retain the option to pursue criminal sanctions on the basis that there is a breach of Requirement 18. However it is entirely reasonable, proportionate and consistent with the approach adopted on other major infrastructure proposals, and ultimately the most effective way of resolving perceived impacts, for HGV routeing issues to first be addressed by way of the measures in the approved plan.</p>
3.3	ES noted that there is nothing presently in the s. 106 Agreement that would contribute resourcing to BDC's enforcement role of the HGV Route Management Strategy and Plan. BDC would welcome working with the Applicant to agree to a contribution towards BDC's enforcement role under the HGV Route Management Strategy and Plan.	As per the Applicant's Responses to BDC's Responses to ExQ2.0.4 (document reference 18.17, REP5-040), the Applicant has agreed and updated the section 106 agreement to include monitoring fees to BDC relating to the HGV Route Plan document reference: 17.4D) / Meetings.
3.4	<p>Post Hearing Notes</p> <p>BDC consider this gives a misleading impression of BDC's role under the HGV Strategy and its ability to take enforcement action where HGVs are using routes which are prohibited under the Strategy.</p>	See response to 3.2.
3.5	Paragraphs 5.37 and 5.38 cited above imply that BDC could use the enforcement powers available to local planning authorities in response to notifications it would receive that HGVs have been using the prohibited routes. This is not accurate and overstates the enforcement role that BDC has in the Strategy as currently drafted.	See response to 3.2.
3.6	The enforcement 'tools' available in BDC's Local Enforcement Policy which are referred to in paragraph 5.37 are only available where a breach of planning control has occurred as per s. 171A of the Town and Country Planning Act 1990. These tools would not be available to BDC in response to notifications that HGVs have been travelling to and from the site using the 'prohibited' routes because this would not constitute a breach of planning control for the purposes of the 1990 Act.	See response to 3.2.
3.7	BDC would only have the ability to take enforcement action where the Applicant or the occupiers of the site have failed to comply with HGV Strategy. Such a non-compliance would constitute a breach of Requirement 18 (HGV route management plan and strategy) of the dDCO and therefore the enforcement provisions in Part 8 of the Planning Act 2008 would come into play. In particular, a failure to comply with the Strategy would constitute an offence under s. 161 of the Planning Act 2008 and BDC as the local planning authority would have certain powers available to it under Part 8.	See response to 3.2.
3.8	BDC's overriding concern is that compliance with the HGV Strategy (as currently drafted) will not prevent unacceptable numbers of HGVs from using the 'prohibited' routes. The Strategy is intended to provide a means by which movements in excess of	See response to 3.2.

Written summary of BDC's oral case for Issue Specific Hearing 6 (ISH6)

No.	BDC Comment	Applicant's Response
	certain daily trigger thresholds would be identified. However, the consequence of such a trigger being breached is simply that internal management measures will be implemented on site, or where the higher thresholds are breached the matter is referred to the Strategy Review Panel – which includes BDC. The Panel then meets to discuss and consider what changes may be needed to the Strategy (see para. 5.56 of the draft Strategy).	
3.9	Provided these procedures were followed, there would have been no breach of the Strategy or Requirement 18 which would be enforceable by BDC as the local planning authority. In other words, the remedy for breaches of the daily trigger thresholds is for the Strategy to be reviewed. There is no mechanism or legal basis for BDC to take enforcement action.	See response to 3.2.
3.10	BDC is not satisfied with the HGV Strategy as currently drafted and considers it does not provide sufficiently robust mechanisms to prevent unacceptable numbers of HGVs from using the prohibited routes. BDC is considering this matter with the other local authorities and will make further submissions on its recommendations for how these defects should be remedied.	See response to 3.2. The Applicant does not agree that the HGV Routeing Management Plan (document reference: 17.4D) and Strategy does not provide robust mechanisms. The approach is a standard and commonly accepted strategy generally secured through planning condition.
3.11	The above also constitutes BDC's response to Action Point 132 from this hearing where it was asked "to provide written clarification in terms of its concerns in relation to its role in enforcing HGV routing breaches, should these still exist following further discussions with the Applicant on this point." In addition, BDC lends support to Hinckley and Bosworth Borough Council's (HBBC) Deadline 5 submission on the HGV Route Management Plan and Strategy [REP4-113] in its request that the HGV Route Management Strategy and Plan be amended to include a section on Undesirable or Illegal HGV parking in HBBC and BDC administrative areas. HGVs from the site would be able to access and cause such problems in some settlements within Blaby district such as Stoney Stanton, Huncote, Croft, Leicester Forest East, Kirby Muxloe and Braunstone.	See response to 3.2 and the Applicant's Response to HBBC's Deadline 4 Submission in this regard (document reference 18.17, REP5-040). The Lorry Park provision and layover space within each unit will be available for HGVs, which the Applicant considers suitably addresses such issues in respect of HNRFI HGVs. However, should a vehicle be causing an issue and the license plate details provided to the Site Travel Plan Coordinator, a courtesy check can be done to determine if this vehicle is associated to a tenant and the tenant notified. Commitment 12 and paragraph 5.24 enables this. <i>The travel Plan Co-Ordinators details will be on the HNRFI website and provided to Leicestershire County Council, Warwickshire County Council, Hinckley & Bosworth Borough Council and Blaby District Council to display on their websites should they choose, to enable any concerns to be raised directly with the Travel Plan Co-Ordinator.</i>
6. Agenda Item 6 – Noise		
6.2	NF responded to a question from the ExA regarding BDC's position on the methodology of the noise impact assessment. NF noted that BDC were content with the use of Design Manual for Roads and Bridges (DMRB) guidance (LA111 Noise and Vibration, May 20201), specifically, the short and long-term impact descriptors for the purposes of assessing the significance of impact. However, NF submitted that the Applicant should follow the methodology outlined in paragraphs 7.85 and 7.86 of the Institute for Environmental Management and Assessment (IEMA) guidance (version 1.2, November 2014) ² which requires cumulative impact to also be considered. NF stated that following the IEMA guidance would require the Applicant to remove the committed development from the future baseline and add it to the cumulative impact, BDC consider this will enable for a better understanding of the overall impact of the Proposal in conjunction with the committed development.	This issue has been addressed under the 'Traffic levels and cumulative developments' subheading for Agenda Item 6d of the Applicant's written statement of oral case at ISH6, submitted at Deadline 5 (document reference: 18.15, REP5-025).
6.3	Post Hearing Note: Paragraph 7.85 of the attached IEMA guidelines defines cumulative effects as "those that result from additive impacts caused by other past, present or reasonably foreseeable actions together with the plan, programme or project itself and	See response at 6.2

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No.	BDC Comment	Applicant's Response
	synergistic effects (in-combination) which arise from the reaction between impacts of a development plan, programme or project on different aspects of the environment”	
6.4	Post Hearing Note: Paragraph 7.86 goes on to state that “There can be situations when separate, independent proposals are put forward at about the same time and which are going to impact on the same receptors. The various proposals need to be assessed independently, but at some point, there should be liaison between the projects to consider the cumulative impact on the sensitive receptors of all the proposals. The cumulative impact is likely to be of concern for the local planning authority and, of course, those affected by the proposals are unlikely to differentiate between the noise from the different environment, should all the developments be implemented.”	See response at 6.2
6.5	NF noted that it was for the reason outlined above that BDC have requested from the Applicant sensitivity testing of the cumulative noise impact of the Proposal following the IEMA guidance outlined above. BDC will continue to liaise with the Applicant on this issue with an aim to come to agreement by deadline 5.	See response at 6.2
6.6	Post Hearing Note: The Applicant has not provided any update on the progress of the sensitivity test referenced above since ISH6.	See response at 6.2
6.7	NF noted that the Applicant had complied with BDC's request for additional information regarding gantry cranes. However, further information was requested regarding the proposed mitigation measures for maximum impacts associated with soft docking. BDC still await this information from the Applicant.	<p>The Applicant has obtained further information regarding source noise measurements undertaken by another acoustic consultancy (Vanguardia Limited) on 24th February 2022 for soft dock technology at East Midlands Gateway. The measurements specifically relate to 'Eco' reach stackers, but would also apply to gantry cranes adopting the same technology.</p> <p>Eco units showed significant improvement over the diesel units in the impact noise associated with engaging the twist locks during a lift operation. The Eco units have several features that have assisted in this respect, including:</p> <ul style="list-style-type: none"> - Lifting gear-mounted cameras that allow the driver to properly align the twistlocks with the container corner casting holes; - Automatic sensors that slow the downward motion of the lifting gear twist locks just as they are engaged into the container; and - Toughened plastic twistlock seating pads that prevent metal-to-metal contact when lifting the container. <p>The observations from consultant in attendance were that the technology virtually eliminated the 'bang' produced during the lifting portion of the container movement. This will therefore significantly reduce the number of occurrences of impact noise levels.</p>
6.8	ES responded to a query regarding BDC's position on the proposed provision of acoustic barriers. BDC submitted that there is a variance between the width of the hedge indicated on the drawings and the existing hedges on site, BDC consider these inconsistencies may require the existing hedgerows and hedgerow trees to be removed.	The applicant is confident that the alignment of acoustic barriers can be adjusted on the ground to ensure the retention of hedgerows that are desirable to maintain.
6.9	ES noted that BDC were in agreement with the Applicant regarding the baseline for offsite rail movements.	Noted
6.10	Post Hearing Note: An important note of clarification is that BDC still consider that the scheme will have a detrimental effect on receptors close to the site given the subjective nature of noise coupled with the fact that the scheme will be audible. However, subject to the verification of the proposed mitigation measures as outlined within the latest SoCG on noise and vibration (and subject to the outcomes of the	See response at 6.2 regarding the sensitivity test outline above.

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No.	BDC Comment	Applicant's Response
	sensitivity test outlined above), BDC are content that the Applicant's assessment approach and conclusions are in line with current guidance.	