

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

Project reference TR050007

S106 Update Rule 17 Letter

Document reference: 9.3

Revision: 01

27 February 2024

Planning Act 2008

1. Introduction and Update

- 1.1 This document is submitted in response to the Examining Authority's Rule 17 Letter dated 20 February 2024.
- 1.2 Since submitting a revised Section 106 Planning Obligation (**Planning Obligation**) at Deadline 4 (Document Reference 9.1A; REP4-089), the Applicant has been negotiating the terms and obligations to be secured in the Planning Obligation with Hinckley and Bosworth Borough Council (**HBBC**), Blaby District Council (**BDC**) and Leicestershire County Council (**LCC**).
- 1.3 As confirmed by the Applicant in the document titled '*Applicant's responses to ExA's Further Written Questions [Appendix A – S106 table]*' submitted at Deadline 5 (Document Reference 18.16.1; REP5-037), following the submission of the revised Planning Obligation, the Applicant received correspondence from LCC which included a list of planning obligations that LCC requested be included in the draft Planning Obligation.
- 1.4 The Applicant does not agree that all planning obligations requested by LCC are necessary or justified. The Applicant and LCC have therefore not been able to agree on the planning obligations to be included in the Planning Obligation for the benefit of LCC and, on that basis, LCC have confirmed that they would not enter into a bi-lateral agreement with the Applicant.
- 1.5 Against that background, the Applicant has submitted (at Deadline 7) a final version Section 106 Unilateral Undertaking (**Unilateral Undertaking**) to be given to LCC and a final version Section 106 Planning Obligation with HBBC and BDC, which has been agreed by BDC and HBBC.

2. Ownership Update

- 2.1 The land bound by the Planning Obligation and the Unilateral Undertaking is identified edged red on the 'Obligation Land Plan', appended to the Planning Obligation and the Unilateral Undertaking.
- 2.2 The 'Obligation Land' comprises the vast majority of the main site and includes land within the administrative boundary of HBBC, owned by Tritax Symmetry (Barwell) Limited, who have been added as party to the Planning Obligation and the Unilateral Undertaking.
- 2.3 The Planning Obligation is entered into by all landowners of the 'Obligation Land', the Applicant, HBBC and BDC (both as local planning authorities). The Unilateral Undertaking will be given by all landowners and the Applicant to LCC.
- 2.4 Following a title enquiry from LCC, the Applicant has removed very small parcels of unregistered land and a small electricity sub-station from the Obligation Land.
- 2.5 The Applicant has obtained and provided to the local authorities up to date copies of all relevant title registers and plans from HM Land Registry.
- 2.6 In respect of the land registered at HM Land Registry under Title Numbers LT260280 and LT278346 (identified as land owned by the 'Fourth Owner') the land is registered to David Jack Ronald Mace and Madeline Mace. The Applicant has received confirmation that David Mace has passed away. David Mace is not therefore included as a party to the Planning Obligation or the Unilateral Undertaking.
- 2.7 The Applicant has liaised with BDC, HBBC and LCC in respect of the land ownership position and has received confirmation that BDC, HBBC and LCC are satisfied as to title to the Obligation Land, save that LCC have requested a copy of the death certificate relating to David Mace.
- 2.8 The solicitor acting for Mrs Mace has confirmed that they have requested the death certificate but unfortunately the family are currently unable to locate it. The Applicant is

liaising with the relevant landowner solicitor as to the appropriate avenues to obtaining the certificate.

3. The Planning Obligation – BDC and HBBC

3.1 The Applicant has negotiated and agreed the Planning Obligation with BDC and HBBC.

3.2 It is the Applicant’s understanding that BDC and HBBC agree that:

3.2.1 the drafting in the final version Planning Obligation is as approved between the parties; and

3.2.2 the Planning Obligation does not have any drafting defects that would mean that the Planning Obligation was unenforceable or otherwise deficient.

3.3 There are no areas of disagreement in respect of the Planning Obligation between the Applicant, BDC or HBBC.

4. The Unilateral Undertaking – LCC

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

Unilateral Undertaking

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

Planning Obligation	Trigger	Applicant’s Update
Archaeology Monitoring Fee (£7,315)	payable prior to carrying out the Archaeology Works	The obligation is agreed between the Applicant and LCC
Gibbet Hill obligation	not to Occupy the Development unless and until written evidence has been provided to the County Council that the Gibbet Hill Contribution has been paid to Warwickshire County Council in full	Please see paragraphs 4.3 – 4.10 for the reasoning and justification behind the Gibbet Hill obligation
HGV Routeing Monitoring Fee (£1,440)	payable per meeting and within 30 days of a written request from the County Council	The Applicant has responded and set out its position in respect of the HGV Route Management Plan & Strategy related obligations in the document titled ‘Applicant’s response to Deadline 5 Submissions [Part 3 – LCC]’ submitted at Deadline 6 [document reference 18.19] The Applicant’s position remains as set out at Deadline 6. However, the

Planning Obligation	Trigger	Applicant's Update
		<p>Applicant has included additional obligations in the Unilateral Undertaking relating to the HGV Routeing Enforcement Fund that requires the 'Owners':</p> <p><i>"Not to Commence Development unless and until written evidence has been provided to the County Council evidencing that the HGV Routeing Enforcement Fund has been secured and placed in a holding account.</i></p> <p><i>To administer the HGV Routeing Enforcement Fund in accordance with the principles established in the HGV Route Management Plan and Strategy and in accordance with any reasonable measures suggested and agreed at the HGV Routeing Monitoring Meeting."</i></p> <p>The obligations secure that the £200,000 fund is secured and in place prior to commencement of development and that the fund is administered in accordance with the HGV Route Management Plan and Strategy and any reasonable measures suggested and agreed at the HGV Routeing Monitoring Meeting.</p>
Monitoring Fee (the sum of £300 or 0.5% of the Contributions (whichever is the greater))	payable prior to first Occupation of the Development	The obligation is agreed between the Applicant and LCC
Occupier Travel Plan Monitoring Fee (£6,000)	payable prior to first Occupation of the relevant Unit	The obligation is agreed between the Applicant and LCC
Works and Skills Plan Monitoring Fee (£1,440)	payable per meeting and within 30 days of a written request from the County Council	The Applicant has agreed the Works and Skills Plan with the relevant authorities and the plan secures that the meetings will be held twice a year.

Planning Obligation	Trigger	Applicant's Update
		<p>As set out in the Applicant's document titled '<i>Applicant's response to Deadline 5 Submissions [Part 3 - LCC]</i>' submitted at Deadline 6 [document reference 18.19], the relevant obligations apply to Blaby District Council and Hinckley and Bosworth Borough Council, as well as LCC, the Applicant therefore considers it necessary that the obligations in the relevant S106 Planning Obligations are consistent to ensure effective delivery and compliance.</p>
<p>Traffic Regulation Order Contribution</p> <p>(£8,756 in respect of traffic restrictions (on a maximum of 3 (three) roads) or £9,392 (in respect of speed limit changes))</p>	<p>payable in the event that the Owner requires the making of a Traffic Regulation Order in connection with the Development within 30 days of a request from the County Council</p>	<p>The obligation is agreed between the Applicant and LCC</p>
<p>Travel Pack and Travel Pack Administration Fee (£500)</p>	<p>No later than 2 (two) months prior to the first Occupation of the Development:</p> <ul style="list-style-type: none"> • to submit a sample Travel Pack to the County Council together with the Travel Pack Administration Fee for approval in writing; and • not to Occupy the Development until such approval has been given (such approval not to be unreasonably withheld or delayed). 	<p>It is understood by the Applicant that the submission of the Travel Pack for approval and the payment of the administration fee is agreed.</p> <p>LCC has however suggested that drafting relating to the provision of the travel packs and bus passes to employees should be included in the S106, see below however for the Applicant's position in respect of those suggested obligations.</p>
<p>Travel Plan Co-ordinator</p>	<p>To appoint a Travel Plan Co-ordinator no later than three (3) months prior to first</p>	<p>The obligation is agreed between the Applicant and LCC</p>

Planning Obligation	Trigger	Applicant's Update
	Occupation of the Development and to ensure that the Travel Plan Co-ordinator remains in place for the lifetime of the Development	
Travel Plan Monitoring Fee (£11,337.50)	payable prior to first Occupation of the Development	The obligation is agreed between the Applicant and LCC

Gibbet Hill Obligation

- 4.3 BDC, HBBC, LCC and Warwickshire County Council (**WCC**) have all requested that a contribution is secured as a planning obligation and is made by the Applicant as a proportionate contribution towards the costs associated with highway works and improvements to the part of the road network within Warwickshire known as Gibbet Hill roundabout, on the A5.
- 4.4 The financial contribution included in the Unilateral Undertaking is £344,967.07. The Contribution is based on a mitigation scheme proposed by the Applicant and the contribution value is based on costings calculated by an appropriately qualified quantity surveyor. The proposed scheme does not include works within LCC's administrative boundary and the contribution has been discussed with National Highways.
- 4.5 The Applicant has confirmed to the local authorities on several occasions that it does not control land or have any land interest in Warwickshire for the purposes of section 106(1) of the Town and Country Planning Act 1990 (**TCPA**), and entering into a direct planning obligation with WCC is therefore not possible.
- 4.6 It had previously been suggested that the contribution could be paid to BDC who would then pass the contribution to WCC to be used for the purposes set out. BDC have however confirmed that they are not willing to receive the contribution, as have HBBC, and LCC have insisted from an early stage of negotiations that they are not willing to receive the contribution and pass to WCC.
- 4.7 The Applicant's position is that the appropriate legal mechanism to secure the Gibbet Hill obligation is under section 106 of the TCPA 1990 as it gives the Examining Authority and the Secretary of State confidence that a relevant obligation has been secured relating to the DCO and the development.
- 4.8 The Applicant's position is that, as the obligation relates to highway works and improvements, the obligation best sits with LCC as the local highway authority for the area in which the Obligation Land is situated and the neighbouring County to WCC, and the authority with experience of administering highways related matters.
- 4.9 The Gibbet Hill obligation has therefore been included in the Unilateral Undertaking to be given to LCC but, on the basis that no authority responsible for the area of land the Applicant is capable of binding would agree to receive the monies, the Applicant has structured the obligation so that the Development cannot be commenced unless and until written evidence has been provided to LCC that the Gibbet Hill Contribution has been paid to WCC in full.
- 4.10 The Applicant will therefore pay the contribution direct to WCC but, the planning obligation, which is enforceable by LCC, restricts occupation of the development unless and until written evidence is provided to LCC confirming that the contribution has been paid to WCC in full. The Applicant considers the obligation to be legal and enforceable against the Owners.

Requests from LCC not agreed

4.11 The table below lists items requested by LCC to be secured as planning obligations but not agreed by the Applicant, with LCC's position set out in column 2.

4.12 The Applicant's position on these requests is set out in column two.

Request from LCC	LCC's Position	Applicant's position
Bus Passes	The deletion of the bus pass provisions is not agreed. It is standard LCC practice to deal with bus passes as a section 106 obligation. It also makes enforcement much more straightforward in this case.	<p>The Applicant has responded and set out its position in respect of the bus pass obligation in the document titled 'Applicant's response to Deadline 5 Submissions [Part 3 - LCC]' submitted at Deadline 6 [document reference 18.19]</p> <p>The Applicant's position remains as set out at Deadline 6. The Applicant does not therefore intend on repeating its submission / position. LCC "standard practice" is not appropriate since LCC will not be providing the bus passes.</p>
Employee Travel Packs	LCC have suggested wording for inclusion within the Uniltareal Undertaking on the basis there is reference in the Sustainable Transport Strategy. This has not been accepted by the Applicant. LCC consider that all financial commitments should be within the UU in their entirety. It is standard LCC practice to deal with bus passes as a section 106 obligation. It also makes enforcement much more straightforward in this case given that LCC are not a discharging or enforcing Authority in respect of the DCO Requirements	<p>The Applicant has responded and set out its position in respect of the employee travel packs obligation in the document titled 'Applicant's response to Deadline 5 Submissions [Part 3 - LCC]' submitted at Deadline 6 [document reference 18.19]</p> <p>The Applicant's position remains as set out at Deadline 6. The Applicant does not therefore intend on repeating its submission / position.</p>
Construction Traffic Routeing Scheme	This commitment is not explicit in the Construction Traffic Management Plan. This needs to be amended if LCC are to accept the position of the Applicant that it is covered by Requirement 23.	<p>The Applicant has responded and set out its position in respect of the Construction Traffic Routeing Scheme obligation in the document titled 'Applicant's response to Deadline 5 Submissions [Part 3 - LCC]' submitted at Deadline 6 [document reference 18.19]</p> <p>The Applicant's position remains as set out at Deadline 6. The</p>

Request from LCC	LCC's Position	Applicant's position
		Applicant does not therefore intend on repeating its submission / position.
Desford Crossroads	A contribution of £1,516,344.42 to mitigate the impact of the development at Desford Crossroads as defined in the submitted Transport Assessment	<p>The Applicant has responded and set out its position in respect of the requested Desford Crossroads related obligations in the document titled 'Applicant's response to Deadline 5 Submissions [Part 3 - LCC]' submitted at Deadline 6 [document reference 18.19].</p> <p>The Applicant's position remains as set out at Deadline 6. The Applicant does not therefore intend on repeating its submission / position.</p>
MOVA Validation	<p>A contribution of £5000 per junction (total £20,000.00) relating to the following junctions:</p> <ul style="list-style-type: none"> • Spa Lane/Leicester Road, Hinckley • A47 Clickers Way/Station Road, Elmesthorpe • Park Road/London Road, Hinckley <p>London Road/Brookside, Hinckley</p>	<p>The Applicant has responded and set out its position in respect of the requested MOVA validation related obligations in the document titled 'Applicant's response to Deadline 5 Submissions [Part 3 - LCC]' submitted at Deadline 6 [document reference 18.19].</p> <p>The Applicant's position remains as set out at Deadline 6. The Applicant does not therefore intend on repeating its submission / position.</p>
Public Transport	<p>Provision of bus services serving the site - defining routes, hours/days of operation and frequency</p> <p>This commitment is not explicit in the Sustainable Transport Strategy and Plan. This needs to be amended if LCC are to accept the position of the Applicant that it is covered by Requirement 9</p>	<p>The Applicant has responded and set out its position in respect of the public transport obligations in the document titled 'Applicant's response to Deadline 5 Submissions [Part 3 - LCC]' submitted at Deadline 6 [document reference 18.19]</p> <p>The Applicant's position remains as set out at Deadline 6. The Applicant does not therefore intend on repeating its submission / position.</p>

Request from LCC	LCC's Position	Applicant's position
ANPR Monitoring Contribution	£X to be confirmed pending the Applicant confirming role of LCC in enforcement and monitoring in a revised HGV Route Management Plan & Strategy	<p>The Applicant has responded and set out its position in respect of the requested ANPR related obligations in the document titled '<i>Applicant's response to Deadline 5 Submissions [Part 3 - LCC]</i>' submitted at Deadline 6 [document reference 18.19]</p> <p>The Applicant's position remains as set out at Deadline 6. The Applicant does not therefore intend on repeating its submission / position</p>
Public Right of Way (PRoW) improvements	An obligation to carry out improvements to PRoW relied upon for access to the site on the basis that this commitment is not explicit in the Public Rights of Way Strategy. If the Applicant is relying on Requirement 25 then the Strategy requires amendment to include clear identification of commitments at Deadline 5 or Applicant does not agree with request accept an obligation (not financial contribution) to improve PRoW to be defined in the Agreement	<p>The Applicant has responded and set out its position in respect of the requested Public Rights of Way related obligations in the document titled '<i>Applicant's response to Deadline 5 Submissions [Part 3 - LCC]</i>' submitted at Deadline 6 [document reference 18.19]</p> <p>The Applicant's position remains as set out at Deadline 6. The Applicant does not therefore intend on repeating its submission / position.</p>

- 4.13 As mentioned previously, LCC has confirmed that it is satisfied as to title to the Obligation Land.
- 4.14 So far as the Applicant is aware, LCC does not consider the Unilateral Undertaking to have any drafting defects that would mean that the obligations secured in the Unilateral Undertaking were unenforceable by LCC or otherwise deficient.
- 4.15 The reason a bilateral planning obligation has not been entered into between the Applicant and LCC is that the obligations requested by LCC listed in the table above cannot be agreed by the Applicant.