

# HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

*Blaby District Council (IP ref.  
20040018) Deadline 8  
submission: Comments on  
Deadline 7 submissions and  
dDCO (ref. TR05007).*

**Deadline 8 – March 08, 2024**

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## Comments on Deadline 7 submissions

1. This document outlines Blaby District Council's ("BDC's") response to documents submitted by Tritax Symmetry (Hinckley) Limited ("the Applicant") at Deadline 7.
2. BDC wishes to highlight the approach that has been taken in responding to these Deadline 7 submissions. In order to ensure that the response documents are not unnecessarily lengthy, BDC has only responded where it feels that a full response or clarification is required. Therefore, where BDC has not directly responded to a comment or document, it can be taken that BDC notes the comment and has nothing further to add.
3. At the time of finalising this document (Friday 8 March 2024, 13:00) the Examination Library had not been updated; therefore, references have not been included for Deadline 7 documents which link to the Library.

Landscape		
Document Reference	Document Name	BDC comments
6.3.11.17B	Illustrative Landscape Sections AA to HH	BDC acknowledged that no technical changes have been made from the previous version (6.3.11.17A <a href="#">[REP4-078]</a> ). Notwithstanding this, BDC have noted that the Applicant has increased the scale of the cars and HGVs shown (this may reduce the perceived height of the proposed development and stacks etc in the images). Having regard to the displayed scale rule, some of the HGVs are now being shown as being up to 4m wide and 6m high.
Ecology		
Document Reference	Document Name	BDC comments

6.1.12B	ES Chapter 12 Ecology and Biodiversity	Within the latest revision of the ES Chapter 12 Ecology and Biodiversity, BDC have noted that Great Crested Newts are still not recognised as an Important Ecological Feature (IEF) (as per the SoCG). BDC notes that they are considered as an IEF within the Landscape Ecological Management Plan, therefore consistency is required.
6.2.12.2C	ES Appendix 12.2 Biodiversity Impact Assessment Calculations	<p>BDC is aware that a full Biodiversity Net Gain (BNG) assessment will be submitted as per Requirement 29 should the Development Consent Order (DCO) be approved. However, BDC would note that within document 18.13 <a href="#">[REP4-120]</a> (Applicant's response to Deadline 3 submissions), row 14 states that the loss of 0.4ha of broadleaved plantation woodland cannot be temporary due to expected time to reinstate.</p> <p>BDC note that in this most recent BNG metric, there is no longer any mention of 0.4ha of broadleaved plantation woodland present on site. The only woodland category in the baseline is 0.57ha of broadleaved mixed deciduous woodland. As such, it is essential that when the Applicant submits the full BNG strategy, should the DCO be approved, this should be addressed.</p>
<b>Lighting</b>		
<b>Document Reference</b>	<b>Document Name</b>	<b>BDC comments</b>
6.2.3.2A	Lighting strategy	BDC acknowledge the updated document and the letter and can confirm that they include everything the Applicant and BDC have discussed and requested.
<b>Design</b>		
<b>Document Reference</b>	<b>Document Name</b>	<b>BDC comments</b>

13.1C	Design Code	<p>BDC acknowledge the submission of a revised Design Code and have detailed further comments on this below;</p> <p><u>Pages 14, 15 and 35</u> It is noted that there is reference made to a revised colour masterplan/diagram. BDC is of the assumption that this is to accommodate the new cycle route north of the railway, although, this is unclear.</p> <p><u>Page19 (Amenity areas)</u> The addition of the Applicant’s statement; “<i>subject to the agreement of the local planning authority</i>” for planting along estate roads and the detailing of swales is welcomed.</p> <p><u>Pages 21 and P22 - Sections 6.1 &amp; 6.3</u> The Applicant has added “<i>The details associated with this design principle will be subject to Local Highway Authority technical approval where relevant</i>”. BDC welcome this approach, however, it is unclear which areas specifically this statement refers to and therefore, it is difficult to assess its true value.</p> <p><u>Page 34 - Section 8.5.1 (Public rights of way – specific codes)</u> The Applicant has added a separate point which states; “<i>Create a new combined footpath and cycle route north of the new bridge to connect the development with the existing public bridleway network</i>”. BDC welcome this addition, however, BDC have commented on the loss of both visual and physical amenity that users of the replacement Public Rights of Way (“PROW”) will experience. This route down the side of a railway embankment appears unlikely to meet the attractiveness of the current PROW’s and therefore, this does not alleviate the previously raised concerns on this matter.</p>
8.1B	Design and Access Statement	Page 29 - Section 5 (Scheme evolution)

		<p>It is acknowledged that the Applicant has added the statement outlining; ‘As a direct request from Leicestershire County Council to improve the connectivity of the development with the existing and wider footpath / cyclepath networks, a new combined footpath cycleway, just north of the new railway crossing bridge, down to Burbage Common Road, providing a connection with the existing bridleway network, has been added.’ BDC welcome this addition and is of the opinion it will help in mitigating for the loss of amenity experienced by neighbouring residents, in particular, those residing within Elmesthorpe. Notwithstanding this, the replacement connection down the railway embankment is considered to lack detail and it is unlikely to be as attractive as current PRoW’s, still resulting in an overall loss of amenity and attractiveness for these residents and wider users.</p>
<b>Traffic and Transport</b>		
<b>Document Reference</b>	<b>Document Name</b>	<b>BDC comments</b>
17.4E	HGV Route Management Plan and Strategy Document	<p>BDC at Deadline 6 submitted a revised HGV Route Management Plan and Strategy [<a href="#">REP6-030</a>] which sought to resolve BDC’s concerns on the efficacy of the HGV Route Management Plan and Strategy. The Applicant’s revised HGV Route Management Plan and Strategy that was submitted at Deadline 7 [17.4E] does represent some improvement, and BDC welcomes the various changes that have sought to address some of BDC’s concerns.</p> <p>However, some of BDCs concerns regarding the HGV Route Management Plan and Strategy are still outstanding. The key concern which BDC have reiterated in BDC’s Deadline 6 Submissions [<a href="#">REP6-029</a>] and Deadline 7 [Deadline 7 submission, Comments on Deadline 6 submissions] submissions is the need for explicit wording which states what would constitute a breach of the HGV Route Management Plan and Strategy and therefore, a breach of Requirement 18. Whilst paragraphs 6.43 – 6.45 now more accurately describe the powers available to BDC under the Planning Act 2008 to take</p>

		<p>enforcement action, the HGV Route Management Plan and Strategy still does not definitively state that the use of prohibited routes above a certain threshold constitutes a breach of the Strategy. BDC therefore seeks that a threshold, like the one outlined at table 4 of BDC’s version of the HGV Route Management Plan and Strategy [<a href="#">REP6-030</a>], is provided.</p> <p>BDC acknowledge that in practice it does not expect to require enforcement action to be taken, assuming the HGV Route Management Strategy is operating effectively. By providing such a threshold, this would ensure an effective enforcement mechanism for repeated breaches, which BDC considers the HGV Route Management Plan and Strategy currently lacks.</p> <p>BDC note that its proposed amalgamation of Stages 1 and 2 of the management interventions and the lowering of the thresholds of intervention to 1 daily breach, as proposed at paragraphs 5.46 – 5.50 and table 5 of BDCs Appendix 1 HGV Route Management Plan &amp; Strategy [<a href="#">REP6-030</a>] was not reflected in the Applicant’s Deadline 7 [17.4E] submission version. This would have had the effect of management fines being issued for any use of the prohibited routes. BDC acknowledge that, practically speaking, a very small number of daily breaches through honest mistakes could be allowed. As a compromise, BDC considers that Stages 1 and 2 should still be amalgamated but that the threshold for such intervention should be set at the 3 daily breaches. BDC maintains the position set out at Deadlines 6 [<a href="#">REP6-029</a>] and 7 [Deadline 7 submission, Comments on Deadline 6 submissions] that fines should be set at £1000 rather than a maximum of £1000. As an example, a £10 fine would clearly not be a suitable deterrent and would result in an unnecessary escalation of intervention measures should this change not be made.</p> <p>Furthermore, BDC still consider that it is necessary to clarify that part of the HGV Strategy Steering Groups remit will be to consider the additional measures set out in Table 3.</p>
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		Finally, BDC still consider it necessary to clarify that in the event the Strategy is reviewed by the HGV Strategy Steering Group, and any proposed changes to the Strategy cannot be agreed by the parties, then they will be referred to arbitration in accordance with Article 52 of the DCO.
Funding Statement		
Document Reference	Document Name	BDC comments
4.2B	Funding Statement	<p>BDC undertook a review of the Applicant’s revised Funding Statement to ensure consistency in the drafting of the Articles referenced in the Funding Statement and the drafting of the dDCO.</p> <p>The Funding Statement at paragraph 6.5 references Article 40. BDC observed discrepancies in the drafting of Article 40 as expressed in the Funding Statement and that in the dDCO. It should be noted that such observations are without prejudice to BDC’s position on the drafting of Article 40. BDC observed the following discrepancies:</p> <ul style="list-style-type: none"> <li>• The Funding Statement includes the following wording at the Article 40(1): “...<i>In respect of <u>the exercise of the relevant power in relation to that land</u></i>”. The dDCO omits the underlined wording.</li> <li>• The statement omits the word “the” ahead of the phrase ‘authorised development’ in article 40(2)(f) and (g), while the draft Order includes it in both cases.</li> <li>• The statement includes an additional Article 40(5), whereas the dDCO does not have such a provision included.</li> </ul> <p>BDC seeks that these errors are rectified in the final Funding Statement to ensure it accurately reflects the correct drafting of Article 40.</p>



## Comments on the Applicant's dDCO

This document outlines BDC's response to the draft Development Consent Order ('dDCO') submitted by Tritax Symmetry (Hinckley) Limited at Deadline 7.

Comments of the Applicant's dDCO	
Provision	BDC Comment and proposed alternative Drafting
Article 7 (Benefit of Order)	<p>BDC maintains its position in relation to the Article 7 provision as outlined in BDC's Deadline 3 comments on the Applicant's revised dDCO [<a href="#">REP3-096</a>] as well as BDC's Deadline 7 submission [Deadline 7 submission, Comments on Deadline 6 submissions]. It is not appropriate for a power of entry onto private land to be given to a person whose identity is not known.</p> <p>The Applicant's response to BDC's Deadline 3 submissions [<a href="#">REP4-120</a>] 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.</p> <p>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>Furthermore, as outlined in BDC's Deadline 7 submissions [Deadline 7 submission, Comments on Deadline 6 submissions], BDC does not consider that the Sizewell C (Nuclear Generating Station) Order 2022 is a relevant precedent. Article 8(2) of the Sizewell C Order relates to specific works for which consent is granted for the express benefit of owners, occupiers of land, statutory undertakers and other persons affected by the authorised development. This is wholly different from the position in the Applicant's dDCO which seeks to give the benefit of all provisions of the order (except for the powers of acquisition) to persons with an interest in the land.</p>

	<p>BDC does 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, <u>as per the bold red text</u> to read as follows:</p> <p><i>2) Tritax Symmetry (Hinckley) Limited, has the sole benefit of the provisions of –</i>  <b><i>a) Part 5 (powers of acquisition);</i></b>  <b><i>b) Article 22 (protective works to buildings); and</i></b>  <b><i>c) Article 23 (authority to survey and investigate the land),</i></b>  <i>unless the Secretary of State consents to the transfer of the benefit of those provisions.</i></p>
<p>Article 9 (Street Works)</p>	<p>BDC maintains its position in relation to provision Article 9 as outlined in BDC’s Deadline 7 submissions [Deadline 7 submission, Comments on Deadline 6 submissions]. BDC acknowledges the Applicant’s removal of Article 9(1)(f) – (i).</p> <p>BDC maintains its position that, regardless of precedent, the construction of bridges and tunnels does not constitute "Street Works" for the purposes of the New Roads and Street Works Act 1991 and therefore, 10(1)(e) should also be deleted.</p>
<p>Article 22 (Protective Works to buildings and structures)</p>	<p>BDC maintains its position in relation to Article 22. The Applicant has not justified why it is necessary for this power of entry to apply outside the Order Limits.</p> <p>This power should be amended so that it can only be exercised (a) by Tritax Symmetry (Hinckley) 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. BDC does 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 [<a href="#">REP4-030</a>] cites article 22(1) of The Boston Alternative Energy Facility Order 2023 and article 35(1) of 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 <b>as shown in bold red text</b>.</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 <b>lying within the Order</b> Limits which may be affected by the authorised development as the undertaker considers necessary or expedient.</i></p>
<p>Article 23 (Authority to survey and investigate the land)</p>	<p>BDC maintains its position in relation to Article 23 as outlined in BDC's Deadline 3 comments on the Applicant's revised dDCO [<a href="#">REP3-096</a>], 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 (Hinckley) 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>Article 34 (Temporary use of land for carrying out the authorised development)</p>	<p>BDC maintains its position in relation to Article 34 as outlined in BDC's Deadline 3 comments on the Applicant's revised dDCO [<a href="#">REP3-096</a>] and Deadline 7 submissions [Deadline 7 submission, Comments on Deadline 6 submissions]. 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.</p> <p>Article 34(3) should be deleted.</p>
<p>Article 35 (Temporary</p>	<p>BDC maintains its position in relation to Article 35 as outlined in BDC's Deadline 3 comments on the Applicant's revised dDCO [<a href="#">REP3-096</a>] and Deadline 7 submissions [Deadline 7 submission, Comments on Deadline 6 submissions]. The Applicant wrongly asserts this is a standard provision. It</p>

<p>use of land to maintain the authorised development)</p>	<p>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.</p> <p>Article 35(9) should be deleted for the same reasons given above in relation to Article 34(3).</p>
<p>Article 40 (Guarantees in respect of payment of compensation)</p>	<p>BDC maintains its position in relation to Article 40 as outlined in BDC’s Deadline 3 comments on the Applicant’s revised dDCO [REP3-096] and Deadline 7 submissions [Deadline 7 submission, Comments on Deadline 6 submissions]. 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 (<u>as per the bold red text</u>), to read as follows:</p> <p><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></p> <p><i>(2) The provisions are—</i></p> <ul style="list-style-type: none"> <li><b>(a) Article 12 (temporary closure of streets)</b></li> <li><b>(b) Article 22 (protective works to buildings);</b></li> <li><b>(c) Article 23 (authority to survey and investigate the land)</b></li> <li><i>(d) Article 25 (compulsory acquisition of land);</i></li> <li><i>(e) Article 26 (compulsory acquisition of land - incorporation of the mineral code);</i></li> <li><i>(f) Article 27 (compulsory acquisition of rights);</i></li> <li><i>(g) Article 30 (private rights);</i></li> <li><i>(h) Article 31 (rights under or over streets);</i></li> <li><i>(i) article 34 (temporary use of land for carrying out authorised development);</i></li> <li><i>(j) Article 35 (temporary use of land for maintaining authorised development); and</i></li> </ul>

	<p><i>(k) Article 36 (statutory undertakers).</i></p>
<p>Requirement 5 (Design and phasing of highway works)</p>	<p>The Applicant has amended Requirement 5 by including an additional sub paragraph in Requirement 5(3), which would enable the undertaker to agree with the relevant Planning Authority and relevant Highway Authority that the highway works listed at subparagraph (1) are not undertaken in lieu of an alternative to that work being undertaken by either the undertaker or a third party.</p> <p>BDC are generally content with the principle of the Requirement and recognise that there is precedent for such an approach. However, BDC is concerned that alternative work may likely result in new impacts or environmental effects that are materially different from what has been reported and assessed by the Applicant. BDC consider that the following amendment, <u>shown in bold red text</u>, is required to ensure such a result does not occur:</p> <p><i>(3) The undertaker is not obliged to undertake any individual work specified in sub-paragraph (1) where-</i></p> <p><i>(a) the undertaker has agreed with the relevant planning authority and the relevant highway authority that an alternative to that work has been proposed which will mitigate the effect of the authorised development at the location of that work; and</i></p> <p><b><i>(b) the alternative work will not result in any new, or materially different, likely significant effects on the environment; and</i></b></p> <p><del><i>(b)(c)</i></del> <i>the relevant planning authority and the relevant highway authority agree that such alternative work should be carried out in lieu of the individual work specified in sub-paragraph (1), and either –</i></p> <p><i>(i) an agreement for carrying out that alternative work has been entered into between the relevant highway authority and a third party; or</i></p> <p><i>(ii) the undertaker has entered into an agreement with the relevant highway authority in relation to the carrying out of that alternative work.</i></p>

<p>Requirement 10 (Rail)</p>	<p>BDC maintains its position as set out in BDC’s Written Representation, paragraphs 3.1 – 3.6 [REP1-050], Deadline 3 comments on the Applicant’s revised dDCO [REP3-096] and as maintained in BDC’s Deadline 7 submissions [Deadline 7 submission, Comments on Deadline 6 submissions]. 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.</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>There is a clear policy basis for a Requirement which serves to provide transparency as to the actual usage of the rail terminal.</p> <p>The drafting clearly meets the tests for the inclusion of a Requirement in a Development Consent Order and there is a direct precedent – see paragraph 28 of Part 2, Schedule 2 to the West Midlands Rail Freight Interchange Order 2020.</p> <p>BDC submit Requirement 10 should be amended, <u>with the text shown in bold and red</u> 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 authorised 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><b><i>(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—</i></b></p>
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	<p><b>a. the appointment of a rail operator to operate the rail terminal;</b>  <b>b. the amount of rail freight usage of the rail terminal;</b>  <b>c. the number of trains using the rail terminal;</b>  <b>d. the warehousing receiving or sending goods through the rail terminal; and</b>  <b>e. the amount of goods being received or sent through the rail terminal by freight</b></p> <p><b>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.</b></p>
<p>Requirement 28 (Combined heat and Power)</p>	<p>BDC consider that the drafting of Requirement 28 requires amending so as to clarify that the usage reports will be produced annually for the lifetime of the development. BDC consider that the Requirement should be amended with the text and <u>changes shown in bold and red</u> as follows:</p> <p><i>28. The combined heat and power plant may not be operated for more than 30% of the hours in a calendar year. <b>For the lifetime of the authorised development</b> <del>The</del> undertaker must maintain an up-to-date <del>annual</del> usage report <b>covering</b> a period of at least 12 months and shall make the information available to the relevant planning authority within 14 days of it being requested by the relevant local planning authority.</i></p>