

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 7 Submissions [part 4 - WCC]

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8 March 2024

Planning Act 2008

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

TR050007 Hinckley SRFI – Warwickshire County Council (20040686) Comments on Documents Requested to be Submitted by Deadline 7 Further to the most recent Rule 8 Letter dated 23rd November 2023 and the Rule 17 Letter dated 20th February Warwickshire County Council (WCC) would like to submit comments as set out below:

No	WCC Response	Applicant's Response
1.	<p>Rule 17 Letter – response re Planning Obligations Section 106 Agreement (doc ref 9.1B)</p> <p>The s106 bilateral agreement includes landowners, developer, and mortgagees Hinckley Borough Council and Blaby District Council as parties. There is no reference to Warwickshire County Council (WCC), and Hinckley and Blaby are described as the LPA's for the "Obligation Land". As this land is not within Warwickshire then it is understood that WCC should not be included as WCC are not the LPA or LHA and have no authority to carry out any enforcement action should it be necessary. Therefore WCC do not have any comments to make in relation to the drafting of this agreement.</p> <p>However, WCC do consider that should contributions be required in order to mitigate for development impacts, and where the obligations require more than one party to deliver them, then these obligations should be included with the s106 agreement as opposed to a Unilateral Undertaking. Such an example would include any contributions for the Gibbet Hill junction.</p>	<p>The Applicant set out its position and the approach taken in respect of the S106 bilateral agreement and the Unilateral Undertaking (including the appropriate parties to the agreement) in the 'Applicant's Response to ExA's Further Written Questions (Appendix A - S106 Table)' (document reference: 18.16.1; REP5-037) at Deadline 5 and the Applicant's 'S106 Update Rule 17 Letter' document (documents reference: 9.3, REP7-050) at Deadline 7. Specifically, the Applicant addresses again the need to convert the county obligations into a Unilateral Undertaking in its responses to LCC's Deadline 7 submission (document reference 18.21 part 3).</p> <p>The Applicant does not intend on repeating its position in this submission.</p>
2.	<p>Unilateral Undertaking (Doc ref 9.1)</p> <p>The s106 unilateral agreement is drafted such that obligations are given by landowners/developer/mortgagee to Leicestershire County Council (LCC). Warwickshire County Council (WCC) are not a party but there is reference within the agreement to the Gibbet Hill Contribution and its payment to WCC. Therefore WCC would be reliant on LCC to enforce if the contribution was not paid in accordance with the agreement.</p> <p>The agreement prevents occupation until the Gibbet Hill Contribution has been paid to Warwickshire County Council ("WCC") in full. It is WCC's understanding that this sum still has to be agreed with National Highways. However as it is National Highways and not WCC who will be responsible for delivering the highway works and improvements to the Gibbet Hill roundabout, there is no obligation within this document to ensure that the contribution is then paid to National Highways. On this basis WCC are of the view that this schedule should be amended so that the Gibbet Hill Contribution is paid to National Highways.</p> <p>The Gibbet Hill Contribution Purpose is defined as "highway works and improvements to the part of the road network within Warwickshire known as Gibbet Hill roundabout", whilst this is a general definition and a more detailed description would be preferred it is understood that this is not possible at this time. However if the National Highways scheme should prove to not be deliverable for some reason, then the fall-back position should either be the delivery of the scheme of works shown to mitigate for the impacts of the proposed development, or some other scheme which the Highway Authorities are satisfied will also mitigate for the development impacts.</p>	<p>The Applicant has previously set out its reasoning and justification for its approach relating to the Gibbet Hill Contribution in the 'Applicant's Response to ExA's Further Written Questions (Appendix A - S106 Table)' (document reference: 18.16.1; REP5-037) and the Applicant's 'S106 Update Rule 17 Letter' document (documents reference: 9.3, REP7-050). The Applicant does not intend on repeating its position / submission in full here but, it remains the Applicant's position that the S106 Unilateral Undertaking is the appropriate legal mechanism for securing the planning obligation.</p> <p>As set out in the Applicant's 'S106 Update Rule 17 Letter' document (documents reference: 9.3, REP7-050), 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 the Applicant's 'S106 Update Rule 17 Letter' document (documents reference: 9.3, REP7-050) and it had previously been suggested that the contribution could be paid to Blaby District Council who would then pass the contribution to WCC to be used for the purposes set out. Blaby District Council however confirmed that they are not willing to receive the contribution, as did Hinckley and Bosworth Borough Council, and Leicestershire County Council insisted from an early stage of negotiations that they are not willing to receive the contribution and pass to WCC (although that position did change at Deadline 7, the Applicant is not in a position to impose or agree with LCC that they can do that, since the planning obligation is unilateral and not bi-lateral for reasons explained elsewhere).</p> <p>The Gibbet Hill obligation has therefore been included in the S106 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</p>

No	WCC Response	Applicant's Response
		<p>been paid to WCC in full. There is no alternative to WCC being reliant on LCC enforcing the obligation and the Applicant's position is that this still remains a legally sound and enforceable planning obligation.</p> <p>The Applicant is disappointed with WCC's comments at this late stage in the Examination, particularly given the extent of discussions throughout and that the Applicant is aware that WCC has secured financial contributions towards the Gibbet Hill improvements in other section 106 agreement relating to developments within WCC and has clearly agreed to take transfer and hold the funds on other occasions. This once again shows a lack of cooperation with the Applicant and the DCO Examination process.</p> <p>The definition of the Gibbet Hill Contribution Purpose is deliberate. It is intended that the monies are used towards highway works at the junction to enable the costs to be used towards either the scheme that the Applicant has drawn up in calculating its contribution, or to a larger scheme that the Applicant understands NH may deliver, but which has not yet been defined or released into the public domain. The Applicant's position on Gibbet Hill and how the contribution has been derived is set out in the Applicant's Final Summations and Signposting document (document reference 23.1).</p> <p>Notwithstanding the Applicant's position, the Applicant has reviewed and considered WCC's submissions submitted at Deadline 7 and, in response to WCC's submission, has made a manuscript amendment to the obligation securing payment of the Gibbet Hill Contribution in the S106 Unilateral Undertaking to secure that the contribution can be paid to WCC or National Highways.</p> <p>The obligation now reads:</p> <p><i>"8.1 Not to Commence Development unless and until written evidence has been provided to the County Council that the Gibbet Hill Contribution has been paid to WCC or National Highways in full."</i></p> <p>The manuscript amendments have been agreed by all parties giving the S106 Unilateral Undertaking and the Applicant.</p> <p>The Applicant will therefore pay the contribution direct to WCC OR National Highways but, the planning obligation, which is enforceable by LCC, restricts commencement of the development unless and until written evidence is provided to LCC confirming that the contribution has been paid to WCC or National Highways in full. The Applicant considers the obligation to be legal and enforceable against the Owners.</p>
	<p>Comments made by the Applicant at D6 to our D5 submission are attached with our updates in green font.</p> <p>Any remaining comments in respect of the HGV Route Management Strategy (doc ref 17.4), the Sustainable Transport Strategy (doc ref 6.2.8.1) and the Construction Environmental Management Plan (doc ref 17.1) will be provided at Deadline 8 as part of the overall position summary. It is understood that updates to these documents will be submitted by the Applicant and extensive comments have already been provided on these documents.</p>	

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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. 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>WCC is in agreement with the other Local Authorities that WCC should not be a party to the s106 Agreement as we do not have ability to carry out enforcement. However it is noted that should the DCO be approved there may be a requirement for Blaby DC to collect contributions towards off-site highway improvements to be carried out by National Highways, and that both Blaby and National Highways would prefer WCC to hold any contributions. In respect of that obligation, WCC consider that any contribution should be paid on commencement of development (not occupation as proposed) to be consistent with the delivery of other off-site mitigation which the applicant has stated will be in place prior to occupation.</p>	<p>As the ExA is aware, it has always been the Applicant's position that it cannot enter into a s106 planning obligation with WCC because it has no land to bind within WCC's area and therefore WCC cannot be an enforcing authority under section 106 TCPA 1990. This had been the subject of numerous discussions with the authorities who seemingly appeared to disagree, but the Applicant notes the authorities have now agreed with this legal position.</p> <p>The latest position with regard to the proposed Gibbet Hill contribution, to which this comment relates, is set above at response 2.</p> <p><i>Comments on the s106 and uu are provided in our D7 response letter</i></p>	<p>Noted. The Applicant's response is set out above.</p>
2.5.6.	<p>Schedule 2, Part 2 – Fees</p> <p>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>Within the dDCO the following definition is given - "discharging authority" means the authority from whom a consent, approval or agreement is required or requested by the undertaker under the requirement concerned; Whilst this would usually be correlated to a discharge of condition application in the conventional planning process, the dDCO includes provision for consents/approvals from the Local Highway Authority to carry out works. The payment of fees associated with technical approvals, commuted sums and roadspace booking is covered at Schedule 13 Part 4 – Payments (for WCC) and so our understanding is that Schedule 2b, Part 2 – Fees is not relevant to WCC. However we do note the current drafting refers to a 42 day period for the return of fees is applications are undetermined. As previously advised, if an LPA is reliant on consultees for advice, the consultation period is a minimum of 21 days, so achieving a 42 day turnaround is likely to be unreasonable.</p>	<p>As the ExA is aware from the Applicant's previous submissions, the Applicant had followed other SRFI drafting in respect of Part 2 Schedule 2 (West Midlands Interchange and Northampton Gateway).</p> <p>The Applicant considers it necessary for the inclusion of this timeframe in order that the delivery of the nationally significant infrastructure project is not delayed. Again, this is consistent with PINS' own Advice Note and the Applicant does not consider that it should be disadvantaged through the failure of third parties to engage with it seeking to discharge details in order to deliver nationally significant infrastructure.</p> <p><i>This proposal is a complex one involving three Highway Authorities and two Local Planning Authorities as well as other statutory consultees, therefore the ExA will have to form a view as to whether the imposition of such timescales will ensure the delivery of the best scheme. Understand that the Applicant is focused on its delivery programme, but there is a risk that what is delivered may not be the most appropriate if LPA's do not receive consultations back in good time.</i></p>	<p>The Applicant disagrees. It is not reasonable for the Applicant to be disadvantaged by delayed response times. The LPAs must acknowledge that the Applicant is seeking to deliver nationally significant infrastructure which is intended to have 'fast track' and priority status. This should be reflected in the ability to discharge requirements. The Applicant's position is set out in the final Explanatory Memorandum (document reference 3.2C).</p>

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2.11.1.	<p>Furnessing The Applicant states that additional surveys have been undertaken at the relevant junctions to allow for confirmation of traffic flows utilising the agreed furnessing methodology.</p> <p>a) Can the Applicant set out those junctions where surveys have taken place and when the surveys will report.</p> <p>b) Can the Applicant, NH and LCC please set out their respective positions on this matter including what the implications are for the overall modelling and when final positions are likely to be identified?.</p>	<p>b) with respect to the junctions of interest to WCC (Gibbet Hill, Cross-in-Hands, Longshoot-Dodwells and M69 junction 1) these have been reviewed with respect to the November 2023 surveys carried out and the forecast 2036 without development.</p> <p>The furnessed turning flows included within the BWB spreadsheet received 18th December 2023 have been used to carry out the ARCADY and VISSIM assessments (as reported in submitted Doc 18.13.2 rev 01), and if the turning movements are incorrect then the mitigation identified is unlikely to address the true impacts of the development.</p> <p>The general principle of the furnessing methodology is acceptable, however the resultant matrices do not appear to have been sense checked to ensure traffic assignment/turning movements reflect that which would be expected in reality.</p> <p>Concerns are raised with regards to the resultant turning matrices derived from the furnessing process as applied to the PRTM forecast link flows, at both Cross in Hands and Gibbet Hill junctions.</p> <p>For instance at the Cross-in-Hands junction there have been significant increases in traffic turning from B4027 Lutterworth Road (Arm D) to the A4303 E (Arm B) in the AM Peak and from the A4303 E (Arm B) to the B4027 Lutterworth Road (Arm D) in the PM Peak. The cells highlighted yellow in WCC Spreadsheet 1.xlsx (attached) shows that the proportion has increased from 5% to 12% in the AM Peak and 5% to 10% in the PM Peak when comparing the 2023 observed surveys and the 2036 WoD flows – notwithstanding that increases in volumes would be expected over the 2023 to 2036 period, the proportions would not be expected to change so significantly.</p>	<p>Sensitivity tests for the Cross-in-Hand Roundabout and the Gibbet Hill Roundabouts have been further provided to WCC and the TWG. Such tests have addressed the comments here in terms of adjusted turning proportions and assignment of traffic on the A5 junctions.</p> <p>Specific to the Cross-in-Hands; the reassigned traffic provided an improvement in capacity and throughput. This has been shared with WCC and has been agreed to be satisfactory. WCC have advised they may now no longer require the proposed mitigation, however this has not been reviewed and agreed by NH or LCC and therefore the works are to remain within the DCO with amendments to requirement 5 to allow the parties to agree that the works are not required to be undertaken.</p> <p>Discussions have taken place and suitable wording agreed for the dDCO</p> <p>The Gibbet Hill sensitivity assessment has been deemed satisfactory by NH within their DL5 submission.</p> <p>In terms of the Gibbett Hill Modelling a prior signalised scheme was modelled in the originally submitted Transport Assessment alongside a standalone model of the baseline position. The signalised scheme formed part of the submission for the Magna Park Extension. NH informed the Applicant that the Magna Park scheme had been superseded (NH Meeting- 24 July 23) and that a further design had been developed. However, this is not in the public domain, nor had it been shared with the Applicant.</p> <p>A VISSIM model of the baseline position within an extensive corridor network was shared by NH in early 2021. The Applicant's team reviewed and informed the TWG that for the HNRFI forecast impacts, to update the full</p>	<p>Noted. The wording WCC is referring to is the new sub-paragraph (3) added to Requirement 5 in the Applicant's final dDCO (document reference 3.1D) submitted at Deadline 7.</p>

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		<p>Similarly there has been a decrease in the proportion of vehicles travelling from A5 North (Arm A) to A5 South (Arm C) and vice versa in the PM Peak – from 18% to 8% in the AM Peak and from 15% to 9% in the PM Peak as shown in the cells highlighted orange in WCC Spreadsheet 1.xlsx.</p> <p>In discussion with the applicants transport consultants they have advised that this is the result of the furnishing methodology being doubly constrained.</p> <p>However this does not explain why the growth predicted by PRTM is assigned to the B4027 and not assigned to more appropriate routes such as the A5, there is no significant allocated development along the B4027 corridor. Just agreeing to the mitigation at this junction based on the PRTM forecasts is not appropriate given the impacts on the village of Pailton would not be mitigated. This matter was raised at the model scoping stage, and WCC requested that the RRAM model be used to assess impacts on the WCC network.</p> <p>More information is required to understand the reason for the growth assignments within PRTM for the Cross in Hands junction and this needs to be compared to those in the RRAM. We anticipate that the junction assessments should be rerun with either the observed surveyed and then furnished turning flows adjusted if necessary for the PRTM growth assumptions, or rerun with the observed surveyed turning flows and the RRAM forecast growth and HNRFI development traffic added.</p> <p>At the Gibbet Hill junction, Gibbet Lane (Arm C) is forecast to have an increase in traffic entering the junction from this arm. In the AM Peak there is an increase from 4% to 11% as shown in the cells highlighted yellow in WCC Spreadsheet 2.xlsx (attached) whilst for the PM Peak the proportion entering into Arm C remains consistent at around 3% as shown in the cells highlighted in orange.</p>	<p>corridor model was disproportionate as most of the network was unaffected by HNRFI forecast traffic. This was further supported with outputs from the Rugby Rural Area Model. Hence the submitted standalone capacity-based modelling included within the Transport Assessment. Without a model of the re-designed Gibbet Hill, the requirement from NH was to develop a theoretical scheme to mitigate the HNRFI impacts alone. The Applicant has done this, only within the standalone capacity model rather than the Corridor Study VISSIM.</p> <p>BWB have reviewed the flows forecast from Gibbet Lane, and provided a set based on the 2023 observed turning proportions and WCC consider these to be more likely to occur , and understand that a similar exercise has been carried out for the flows highlighted by National Highways. WCC are accepting of the</p>	<p>Noted. The flows have been tested and further shared with the respective Authorities. The conclusions remain the same on mitigation.</p>

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		<p>Whilst there is an increase in both AM and PM peak hours for the A5 South (Arm D) to A426 S (Arm E) this is considered potentially to be attributable to committed developments i.e. DIRFT, Houlton and Coton Park East and is therefore not a concern. These are indicated in WCC Spreadsheet 2 (cells shaded blue).</p> <p>The increase in traffic using Gibbet Lane at the Gibbet Hill junction is not considered to be realistic given that Gibbet Lane principally provides access to a quarry and relatively small villages such as Shawell and Swinford.</p> <p>Whilst furnessing to the PRTM forecast link flows (origin and destination matrix totals) is acceptable in principle some of the individual cells/turning movements are questionable and therefore this brings into question the outputs and needs to be clarified. If the turning movements are incorrect, then the modelling carried out will not reflect the likely reality and will be an incorrect base on which to assess the development impacts. As a consequence any mitigation scheme identified will not necessarily be suitable to address the true impacts of the development.</p> <p>WCC will continue to discuss this issue with the applicant and will update at each Deadline. It is noted that to date a VISSIM assessment of Gibbet Hill has not been carried out by the applicant. WCC's previous comments from Deadline 1 are listed below and these set out why an assessment is necessary to enable a CIL compliant decision to be made in respect of any potential contributions in mitigation of development impacts.</p>	<p>use of these turning flows for assessment purposes.</p> <p>Discussions have continued with the Applicant team, understand that they do not consider it proportionate to undertake the VISSIM modelling for this junction. However for the reasons set out previously, and that the ARCADY modelling results to not reflect observed conditions, WCC consider a VISSIM assessment the only fair and reasonable way to assess impact and therefore develop a CIL compliant mitigation scheme</p>	<p>As noted within the previous responses. It is the Applicant's view that the impacts from HNRFI at Gibbet Hill Roundabout are limited and do not extend into the corridor model area of the VISSIM model shared by NH. The shared model required significant updates to flows and validation which is disproportionate to the impacts. The Junction 10 (ARCADY) model is a capacity-based model and clearly indicates impacts. It has been used by other applications and is frequently used to develop mitigation designs. The approach required by NH is to develop a mitigation based on the impacts of the</p>

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		<p>3.21. → Whilst BWB has noted in its response to point 19 in HNRFI-BWB-GEN-XX-RP-TR-0031-Rev-P01 that there is not full correspondence between the 18 entry points identified within the VISSIM model and the traffic flows derived from PRTM, Warwickshire County Council consider that it is still important for the VISSIM to be used to assess development impact for the reasons set out below:¶</p> <ul style="list-style-type: none"> • → National Highways does not have a committed scheme at this junction as highlighted previously and therefore the baseline position for the modelling must be the existing non-signalised junction arrangement (i.e., a Do-Nothing)¶ • → Blocking back towards M6 Junction 1 along the A426 and platooning of traffic between M6 Junction 1 and the Gibbet Hill junction can only be considered within the VISSIM model¶ • → Whilst Warwickshire County Council understands that flow correspondence may only exist across 8 loading points, we do not necessarily consider this to be a limitation which invalidates the use of the VISSIM model¶ • → For example, if the loading points within the VISSIM model which correspond to the PRTM data include the A5 (2), the A426 north and south (2) the M6 (2) and Gibbet Lane (1) then there is sufficient network correspondence to assign the development trips across the study area from the PRTM outputs¶ • → Warwickshire County Council does not require the interaction on the minor roads (i.e., Lutterworth Road or Arthur James Drive) to be considered in terms of changes in development flows and, as such, impacts at these locations can still be considered, particularly in the context of the effects arising from delivery of any proposed mitigation at Gibbet Hill.¶ <p>3.22. → Therefore for these reasons Warwickshire County Council does not accept the modelling or proposed mitigation at this location, and requires the VISSIM modelling to be carried out.¶</p>		<p>development and cost accordingly. The developed design for which NH are requesting a contribution has not been shared and is not in the public domain.</p> <p>In a meeting between National Highways and the Applicant on 20th February, National Highways' consultant AECOM verbally agreed that the Applicant's approach to treat the junction as a standalone model was reasonable.</p>

Comments on any additional submissions received by Deadline 4

No	Matter	Applicant's Response	Applicant's Response
1	<p>Further to the most recent Rule 8 Letter dated 23rd November 2023 Warwickshire County Council would like to submit comments as set out in the attached documents:</p> <p>WCC responses to the ExAQ2 – at question 2.11.1 Furnessing, this also relates to information submitted at Deadline 4 within Doc Ref 18.13.2 Rev 01.</p> <p>WCC update on discussions and drafting of the dDCO – copy of the most recent tracked change version for that part of the dDCO relating to Warwickshire County Council as local highway authority is submitted. Agreement has not been reached over Approvals in respect of the 42 days response time else a deemed consent. This is not considered reasonable as Warwickshire County Council are a public body and would not act unreasonably, and would provide regular updates/hold meetings in order to progress a technical approval for what would be the equivalent of a section 278 scheme.</p>	<p>The Applicant's position on this one final outstanding item in respect of the protective provisions was outlined by the Applicant in its Protective Provisions Table submitted at Deadline 5 in response to ExQ2.5.8 (document reference: 18.16.2. REP5-038).</p> <p>As set out this remains the one unresolved matter (although see note above re Schedule 2 Part 2 Fees above), and whilst it is understood that this is requested in order to ensure a dialogue is maintained during technical approval stages, no design details have been provided to understand the full engineering scale and complexity of works and there is no similar requirement imposed on The Applicants design team – LHA's often receive subsequent design details from applicant's designers and they expect to go back to the front of the queue when engineers have extensive workloads with other schemes to deal with</p>	<p>The Applicant's position remains unchanged and is consistent with other DCO as it has submitted on numerous occasions. The Applicant refers to the DCO section of its Final Summations and Signposting document (document 23.1) which confirms the position on all protective provisions.</p>
2	<p>It is understood that the applicant has been in discussions with Leicestershire County Council, Blaby District Council and Hinckley and Bosworth Borough Council over the draft wording for a Section 106 agreement should the DCO be approved. We understand that to date there is no agreement as to the mechanism and obligation for securing any contributions towards mitigation at the Gibbet Hill junction. Warwickshire County Council have confirmed that whilst the Authority would be prepared to hold the contributions on behalf of National Highways until such time as they require the contributions to be forwarded, Warwickshire County Council should not be a signatory to the Section 106 agreement because the Authority would not be in a position to carry out any enforcement on the development site. Therefore this matter remains unresolved at this time. However, should a way forward be identified, Warwickshire County Council would recommend</p>	<p>The Applicant notes that the highway authorities have now accepted the Applicant's position that WCC should not be party to the s106 Agreement since it is not an enforcing authority pursuant to section 106 in the absence of any land to bind within Warwickshire County.</p> <p>The Applicant advised National Highways in a meeting 2 February 2024 that details of a mitigation scheme for Gibbet roundabout would be provided and a costing of a contribution in lieu would be set out to contribute to a comprehensive scheme for Gibbet roundabout to be delivered by National Highways. WCC currently hold a funding pot which a number of schemes have paid into for this roundabout. This scheme and cost plan has now been provided to National Highways and they are currently reviewing it.</p>	<p>Please see above responses.</p>

	<p>that any contributions should be payable on commencement of development (not as proposed on occupation) to enable National Highways to progress the design and delivery of their scheme as quickly as possible.</p>	<p>Comments on the s106 and uu are provided in our D7 response letter</p>	
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